



**Opande v Opondo (Environment and Land Miscellaneous Application
16 of 2023) [2024] KEELC 1702 (KLR) (4 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 1702 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 16 OF 2023**

E ASATI, J

APRIL 4, 2024

BETWEEN

DR. GEORGE TIMOTHY OPANDE APPLICANT

AND

MARY OPONDO RESPONDENT

RULING

1. This ruling is in respect of the Notice of Motion application dated 29th October, 2023 brought by the Applicant pursuant to the provisions of Sections 152A, 152B, 152E and 152F of the Land Act 2012 (as amended) and sections 3 and 3A of the Civil Procedure Rules. The application seeks for an order of eviction of the Respondent from land parcel known as Kisumu Municipality Block 12/353, an order of vacant possession of the property to be delivered to the applicant, for an order directing the Officer in Charge of Kisumu Central Police Station to ensure compliance with the eviction order and for costs to be provided for.
2. The application was based on the grounds that the applicant is the proprietor and/or registered Lessee of the land parcel known as Kisumu Municipality Block 12/353 (the suit land herein) and has been paying land rates and rent since 1998. That the Respondent entered the suit land illegally and occupied a residential house thereon without the authority of the applicant. That notice of eviction has been issued to no avail. That unless the Respondent is evicted from the suit land, the applicant will continue to run into losses.
3. The application was supported by the averments in the Supporting Affidavit sworn by the Applicant on 29th October, 2023 and the annexures thereto.
4. The application was opposed vide the grounds of opposition dated 4th December, 2023. It was the Respondent's case that the application was subjudice hence offends the provisions of section 6 of the Civil Procedure Rules and that the application is vexatious and an abuse of the court process.



5. The Respondent further filed a Replying Affidavit sworn on 4th December, 2023 in opposition to the application.

6. It was submitted on behalf of the Applicant that from the provisions of section 152A of the Land Act the procedure for the eviction of person occupying land unlawfully is clear. That the applicant had issued eviction notice as envisaged under the Act that the Respondent who failed to vacate the suit property should be evicted. That the eviction Notice was served on the Respondent as a civilian and it makes no sense how the same attracts the attention of the Attorney General. That no leave of the court has been sought under article 156(5) of the Constitution of Kenya for the Attorney General to appear, hence the documents filed by the Attorney General should be expunged from the record.

Counsel relied on the case of Ringera v Mubindi (Environment and Land Miscellaneous Application E128 of 2021) (2022), KEELC 2481 (KLR) to support the submission.

7. It was submitted on behalf of the Respondent that the matter is subjudice to KSM CM Civil Suit No. E250 of 2023 George Timonthy Opande v Mary Opondo And 2 Others wherein the prayers sought are similar as the prayers sought herein and the subject matter the same. Counsel relied on section 6 of the Civil Procedure Act and the case of Kinatwa Co-operative Saving and Credit Society Limited v Kinatwa Prestige Ltd [2021] eKLR to support the submissions.

8. Section 152E provides for the procedure to be followed for issuance of eviction notice to unlawful occupiers of private land. It provides that the owner or the person in charge of the private land may serve on that person a notice of not less than 3 months before the date of the intended eviction.

Section 152E (2) gives the conditions with which the eviction notice must comply in order to be valid. It provides partly: -

- “(2) the notice under subsection (1) shall:-
- (a) be in writing and in the national and official language;
 - (b)
 - (c) specify any terms and conditions as to the removal of buildings, the reaping of growing crops and any other matters as the case may require and;
 - (d) be served on the Deputy County Commissioner in charge of the area as well as the officer commanding the police division of the area.”.

9. The applicant’s case is that he served eviction notice as envisaged by the law upon the Respondent. In paragraph 5 of the Supporting Affidavit, the applicant avers that he has since served several eviction Notices upon the Respondent to no avail. A copy of eviction Notice dated 14/3/2023 is annexed to the Supporting Affidavit. Also annexed to the Supporting Affidavit is Affidavit of Service of even date.

10. I have keenly perused the eviction Notice and noted that while the applicant gave the Respondent three (3) months to vacate the land as per the law, the notice did not comply with the other mandatory conditions under Section 152E (2) of the Land Act. There is no indication that the Notice was copied to or served upon the Deputy County Commissioner and the Officer Commanding Police Division of the area.



11. I have also perused the Affidavit of Service sworn by Julius Otieno Raminya. It indicates that the Notice was served upon the Respondent only. There is no indication that the Deputy County Commissioner or the Officer Commanding Police Division of the area was served.
12. The court is mandated under Section 152F of the *Act* to consider, inter alia, the matters set out in Section 152E before proceedings to make orders on the eviction Notice. When this court considers the provisions of section 152E in the light of the eviction Notice and Affidavit of Service exhibited to the court, it finds that the notice did not comply with the mandatory provisions of section 152E (2).
13. The options open to the court in considering an eviction Notice are contained in Section 152F (2) of the *Act*. The option available to the court in the circumstances of this matter is to cancel the eviction Notice for non-compliance with the provisions of Section 152E(2) of the *Land Act*.
14. The Respondent contended that the application was sub-judice to an existing suit over the same subject matter, seeking similar orders and between, essentially, the same parties. The existence of the other suit was not denied by the applicant.
15. For the foregoing reasons, the court finds that the application dated 29th October, 2023 lacks merit and hereby dismisses it. Costs to the Respondent.

Orders accordingly.

RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 4TH DAY OF APRIL 2024 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:-

Maureen: Court Assistant.

Onyango for the Applicant.

Miss Ochola holding brief for Juma for the Respondent.

