



Mochoge v Ndinini & another (Environment & Land Miscellaneous Case E008 of 2023) [2024] KEELC 4034 (KLR) (7 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4034 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND MISCELLANEOUS CASE E008 OF 2023**

MN GICHERU, J

MAY 7, 2024

BETWEEN

PIUS NYABUGA MOCHOGE PLAINTIFF

AND

DANIEL NDININI 1ST DEFENDANT

RERAI PARSITAU 2ND DEFENDANT

RULING

1. This ruling is on the amended notice of motion dated 19/5/2023. The motion which is brought under Sections 1A, 1B and 3A of the Civil Procedure Act and 152E and G of the Land Act (Act No 6 of 2012) seeks the following residual orders.
 2. That this court do issue an eviction order against the respondents, their servants, agents, heirs and dependants from LR Kajiado/Loodariak/159, suit land.
 3. That this court do issue an order for demolition of all structures erected on the suit land by the respondents or anybody claiming through them so as to ensure vacant possession.
 4. That High Class Auctioneers do effect and execute the above eviction orders.
 5. That the officer commanding Kisamis Police Station (OCS) be ordered to provide security during the exercise.
 6. That the costs of this application be borne by the respondents.
2. The motion is based on ten (10) grounds and is supported by an amended supporting affidavit dated 19/5/2023 which has eight (8) annexures. The gist of the above material is as follows.

Firstly, the plaintiff is the registered owner of the suit land.



Secondly, he is a successful litigant in Kajiado ELC 701/2017 in which the respondents were restrained from trespassing onto the suit land.

Thirdly, it has been established through a survey that the respondents have encroached onto the plaintiff's land.

Fourthly, in the plaint in ELC 701/2017 there was no prayer for eviction and that is why the filing of this suit has become necessary.

Fifthly, the respondents have been served with an eviction notice on 16/6/2022 which they have not heeded.

Finally, the plaintiff cannot enjoy the fruits of his litigation unless the motion is allowed.

For the above and other reasons, the applicant prays that the notice of motion dated 19/5/2023 be allowed.

3. The motion, though served is not opposed. On 30/5/2023 Daniel Tauta Ndinini attended court but though given time, did not file any response to the motion.
4. I have carefully considered the motion in its entirety including the grounds, the supporting affidavit and the annexures. I find merit in the motion for the following reasons.
5. Firstly, the applicant is the registered owner of the suit land. This ownership has been confirmed by the court in ELC 701/2017 and by the Land Registrar in the report dated 14/6/2022 which also confirms encroachment on the suit land by the respondents.

Secondly, the rights conferred on a registered owner of land under Sections 24 and 25 of the [Land Registration Act](#) cannot be defeated by any of the defendants in any way.

Thirdly, even though the respondents have been given ample opportunity to lay an lawful claim to the plaintiff's land, they have failed to do so. I find that the motion is meritorious and I allow it in terms of prayers 2, 3, 4, 5 and 6.

It so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 7TH DAY OF MAY 2024.

M.N. GICHERU

JUDGE

