



Gisa v Letela & another (Environment & Land Miscellaneous Case E043 of 2023) [2024] KEELC 6837 (KLR) (15 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6837 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND MISCELLANEOUS CASE E043 OF 2023
MN GICHERU, J
OCTOBER 15, 2024**

BETWEEN

TETEIYO ENE GISA PLAINTIFF

AND

SOSISO MOSIANY LETELA 1ST DEFENDANT

LESIMAI MOSIANY LETELA 2ND DEFENDANT

RULING

1. This ruling is on the notice of motion dated 8/11/2022. The motion which is by the applicant Teteiyo Ene Gisa seeks the following orders.
2. An order of eviction against the respondents Sosiso Mosiany Letela and Lesimai Mosiany Letela, their agents and or servants from L.R. Kajiado/Dalalekutuk/16788 pursuant to the notice to vacate dated 15/6/2022 that lapsed on 16/9/2022.
3. That the OCPD and the OCS Kajiado Police Station do enforce the eviction order.
4. That the costs of this application be borne by the respondents.
5. That the court do issue such further orders as it deems fit.
2. The motion which is brought under Sections 1A and 3A of the *Civil Procedure Act*, 153 of the *Land Act* and all other enabling provisions of the law is based on four grounds and is supported by an affidavit sworn by the applicant dated 8/11/2022 which has three annexures. In brief, the applicant's case is as follows. Firstly, he is the registered proprietor of the suit parcel which is situated at Enkorinka Division, Orinie Sub Location Kajiado Central Sub County in Kajiado County. Secondly, the respondents have illegally entered the suit land, built structures and grazed livestock thereon. Thirdly, when the applicant asked the respondents to leave the land, they threatened him with physical harm. Fourthly, on 15/6/2022, the applicant issued a notice to vacate upon the respondents which was served upon them



by a process server by the name of Simon Githiomi who served it upon the respondents at Captain restaurant in Kajiado Town and on the suit land respectively. The said notice was also served on the County Commissioner and the OCS Kajiado Police Station on the same date.

3. The respondents' counsel filed a notice of appointment dated 16/12/2022 but did not file anything else despite service.
4. I have carefully considered the motion in its entirety including the grounds, the affidavit and the annexures. I have also considered the provisions of Section 152 E of the Land Act (Act No. 6 of 2012). In regard to the unlawful occupiers of private land, I find that the following issues arise in the suit.
 - i. Whether the applicant is the registered owner of the suit land.
 - ii. Whether the respondents are in lawful occupation of the suit land.
 - iii. Whether the notice to vacate the suit land complies with Section 152E of the Land Act (Act No. 6 of 2012).
 - iv. Whether the applicant is entitled to the orders sought in the motion dated 8/11/2022.
5. On the first issue, I find that the applicant is the registered owner of the land as per the copy of title deed dated 16/6/2021 which is annexure 1. The said title deed is prima facie evidence that the applicant is the absolute and indefeasible owner of the suit land as per Section 26(1) of the Land Registration Act (Act No. 3 of 2012).
6. As for the second issue, I find that the respondents are in unlawful occupation of the suit land because even after they were duly served with the motion dated 8/11/2022, they did not respond to it by way of replying affidavit or grounds of opposition.
7. Looking at the third issue, I find that the requisite notice required by the law has been served upon the respondents as well as on the Deputy County Commissioner and the Officer Commanding the police division of the area in which the suit land is situated.
8. For the above stated reasons, I find merit in the motion dated 8/11/2022 and I allow it in terms of prayers 2, 3 and 4.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 15TH DAY OF OCTOBER 2024.

M.N. GICHERU

JUDGE

