



Mparo & 5 others v Kanji (Being sued as the Administrator of the Estate of Kanji Naran Patel-Deceased) (Environment & Land Case 662 of 2017) [2023] KEELC 543 (KLR) (8 February 2023) (Ruling)

Neutral citation: [2023] KEELC 543 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 662 OF 2017
MN GICHERU, J
FEBRUARY 8, 2023**

BETWEEN

**SAMUEL KIMINTAE MPARO 1ST PLAINTIFF
WANGUI KIMINDAI JOSEPH 2ND PLAINTIFF
ANNA MBENEK 3RD PLAINTIFF
ALBERT MPARO 4TH PLAINTIFF
RICHARD TURERE MPARO 5TH PLAINTIFF
ANDREW SAIBULU KIMINTAE 6TH PLAINTIFF**

AND

ARVIND KANJI (BEING SUED AS THE ADMINISTRATOR OF THE ESTATE OF KANJI NARAN PATEL-DECEASED) DEFENDANT

RULING

1. This ruling is on the notice of motion dated September 27, 2021. the motion is brought under sections 3 and 3A of the [Civil Procedure Act](#) and order 22 of the [Civil Procedure Rules](#), seeks one main order namely-
 - i. Eviction of the plaintiffs, their agents, servants or anybody claiming through them from LR Kajiado/Kaputiei-South/44.
 - ii. Costs be provided for.
2. The motion is supported by an affidavit sworn by Arvind Kanji Patel which has one annexure which is a copy of the judgment dated April 30, 2020. In addition to the above, there are two grounds.



The gist of the material filed by the applicant is that the Plaintiffs filed this suit seeking to be declared the owners of the suit land through adverse possession. Their suit was dismissed. They did not file any appeal and they have refused to vacate the suit land. Only an order of eviction would enable the defendant regain his land of which he is the registered owner, and the plaintiffs, trespassers thereon.

3. The motion is opposed by the defendants whose counsel has field seven grounds of opposition. The grounds are as follows.
 - i. This court has no jurisdiction and has become functus officio since it passed judgment in the matter.
 - ii. The notice of motion has been brought under the wrong provision.
 - iii. The ownership of the suit land was not addressed by the court in its judgment of April 30, 2020.
 - iv. That the orders sought cannot be granted vide an application and the defendant ought to have filed a suit.
 - v. That the application is fatally defective, frivolous, vexatious among others.

Only the defendant's counsel filed written submissions on June 6, 2022.

4. I have carefully considered the notice of motion, the supporting affidavit, the annexure and grounds of opposition and I make the following findings on the issues raised by both parties.

Firstly, I find that this court has jurisdiction to deal with the matter after judgment. All post judgment applications are within the powers of this court. The current application is no exception.

Secondly, I agree with the plaintiff's counsel that the current application is brought under the wrong provision of law. it should have been under section 152 E of the Land Act. Failure to cite the current provision is not however fatal to the application.

The Constitution and the law commands courts to look at the substance and not at the form. Order 2, rule 14 of the Civil Procedure Rules provides as follows.

No technical objection may be raised to any pleadings on the ground of any want of form”.

Article 159 (2) (d) of the Constitution provides as follows.

Justice shall be administered without undue regard to procedural technicalities”.

5. Thirdly, on the ownership of the suit land, I find that it was addressed by the court. It was the subject matter of the suit and the ownership thereof was never in doubt. The defendant is the registered owner and he is entitled to all rights appurtenant to such ownership.

Fourthly, section 152E of the Land Act provides a complete procedure of eviction of unlawful occupiers of private land without the need to file a suit. Again this suit is an extra avenue to ensure that the rights of the owners of the suit land are protected and the owner put into occupation.

Finally, I find that the application is properly before court and in accordance with law. I allow it in the following terms.

- a. A 90 days notice to be served on the plaintiffs/respondents to move out of the suit land voluntarily failing which they may be evicted forcefully.
- b. The said notice to be in Kiswahili or English languages.



- c. The notice to specify what needs to be removed from the land, eg buildings, crops, fences, livestock and human beings.
- d. The notice to be served upon the deputy commissioner and the officer commanding the police division in which the land is situated.
- e. The area OCS to provide adequate security during the eviction exercise.
- f. Costs to the defendant/applicant.

It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 8TH DAY OF FEBRUARY, 2023.

M.N. GICHERU

JUDGE

