



**Conpak Industries Limited v Muturi (Environment and Land Miscellaneous Application E041 of 2021) [2023] KEELC 16241 (KLR) (9 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16241 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E041 OF 2021**  
**EK WABWOTO, J**  
**MARCH 9, 2023**

**BETWEEN**

**CONPAK INDUSTRIES LIMITED ..... APPLICANT**

**AND**

**SAMUEL NDEBE MUTURI ..... RESPONDENT**

**RULING**

1. This ruling is in respect to the applicant's Amended Notice of Motion dated 27<sup>th</sup> April 2021 wherein the applicant sought for eviction orders against the respondent.
2. The application was based premised on the grounds that; It had been more than three (3) months by the time of filing this application since the Applicant issued the Respondent with a Notice to vacate from its premises and despite several reminders the Respondent has refused and/or neglected to vacate from the Applicant's property the subject of this suit and that the Respondent has without the consent of the Applicant used the property known as LR No 209/7214 located on Isiolo Road in Nairobi as his personal dwelling house in utter disregard of the Applicant's rights to enjoy its rights over the property.
3. The application was opposed by the Respondent vide a Replying Affidavit sworn on 4<sup>th</sup> May 2021 and further affidavit sworn on 8<sup>th</sup> November 2021.
4. Pursuant to the directions issued by this court, it was directed that the application be canvassed by way of written submissions. The applicant filed its written submission dated 4<sup>th</sup> November 2022 while the Respondent filed his written submissions dated 20<sup>th</sup> December 2022.
5. It was the Applicant case that it is the registered proprietor of LR Number 209/7214 located in Isiolo Road, Nairobi County which is comprised in the Grant No IR 35661. It was averred that on or about 1<sup>st</sup> July 2020, the Applicant discovered that the Respondent had trespassed into the suit property an action which prompted the Applicant to report the matter to Industrial Area Police Station on 13<sup>th</sup> July 2020 for having trespassed onto the suit property and the same was recorded under OB Number



63/13/07/2020 but the Criminal Case has never taken off after the Police Advised that the Respondent had disappeared after being granted bail.

6. It was contented that the applicant requested the police to assist in lawfully evicting the Respondent from the suit property and was advised to seek an eviction order from the court upon which the police would be willing to execute. Accordingly, the applicant proceeded to instruct its advocates on record to issue an eviction notice dated 14<sup>th</sup> September 2020 which was also copied to the Deputy County Commissioner and the Officer Commanding Police Division (OCPD) in Nairobi. There was no compliance with the said notice which necessitated the filing of the instant application.
7. In its submissions, Counsel for the applicant outlined two issues for determination by the court. These were: -
  - a. Whether the applicant has the locus standi to institute the suit.
  - b. Whether the applicant should be granted the eviction orders sought.
8. On locus standi, it was submitted that the applicant had demonstrated that he is the registered owner of the suit property and pursuant to Article 40 of the *Constitution*, Sections 25 (1), Section 26 and Section 24 of the *Land Registration Act* No 3 of 2012, it was within its rights to seek the reliefs sought from the court.
9. On whether or not the applicant should be granted the eviction orders and other reliefs sought therein, Counsel submitted that the applicant had duly complied with the provisions of Section 152E and 152F of the Act. The requisite notice had been served upon the Respondent who had refused to comply. Reliance was made to the cases of *Park Towers Ltd v John Mithamo Njika & 7 others* (2014) eKLR, *Joseph Kipchirchir Koeh v Philip Cheruiyot Sang* (2018) eKLR in support of this position.
10. In opposing the application, the Respondent averred that the applicant had no authority to institute the proceedings for want of a resolution from the company. It was also averred that there was no evidence of the existence of the company and a resolution to that effect. The Respondent also disputed being served with the eviction notice and that no return of service was filed demonstrating that indeed the notice dated 9<sup>th</sup> September 2020 was personally served on the Respondent.
11. The court has considered the application as well as the parties affidavits and submissions made for and against the application. The main issue for determination is whether the application is merited to warrant the grant of the orders sought herein.
12. The *Land Laws (Amendment) Act* No 26 of 2016 amended the *Land Act* by introducing sections 152A to 152H which deals with issues of unlawful occupation of land and eviction. Eviction arise when a person unlawfully occupies private, public or community land. Section 152 A explicitly prohibits unlawful occupation of land.
13. Section 152 (B) of *Land Act* as amended by the Land Laws (Amendment) Act of 2016 prohibits unlawful occupation of private, community or public land. However, the section provides that any person who seeks to carry out any eviction must do so in strict compliance with the law. Section 152B, 152C, 152D and 152E of the Act address the issue of eviction notice to unlawfully occupied land.
14. Section 152 (E) provides: -
  - “ 1) If, with respect to private land the owner or the person in charge is of the opinion that a person is in occupation of his or her land without consent, the



owner or the person in charge may serve on that person a notice, of not less than three months before the date of the intended eviction.

2. The Notice under subsection (1) shall: -
  - a) be in writing and in a national and official language.
  - b) In the case of a large group of persons, be published in at least two daily newspapers of nationwide circulation and be displayed in not less than five strategic locations within the occupied land.
  - c. Specify any terms and conditions as to the removal of buildings, the mandatory procedures during eviction, 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.”

15. From the foregoing provisions, it is apparent that the Land owner who seeks to procure and or obtain an order of eviction is obliged to issue and serve an eviction notice giving to and in favour of the unlawful occupant a period of 3 months from the date of service of the eviction notice to vacate and move out of the concerned property. On the other hand, it is also a requirement of the law that eviction notice to be served upon the unlawful occupant of the Land in question, must also be served upon the Deputy County commissioner in charge of the sub-county and area where the concerned parcel of land is located. Similarly, it is also a requirement of the law that the same eviction notice must also be served upon the Officer Commanding Police Division of the area in question.
16. In the instant case, the court has painstakingly perused the said notice and the affidavits filed in support of the application and it is indeed evident that there was no sufficient evidence to demonstrate service upon the Respondent.
17. In view of the foregoing, the court finds that there was no compliance with Section 152E of the [Land Laws \(Amendment\) Act](#) No 28 of 2016 which requires that an eviction notice must be served upon the person in illegal occupation of the land. Accordingly, the Amended Notice of Motion dated 21<sup>st</sup> April 2021 is unmerited and the same is hereby dismissed with costs to the Respondent.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 9<sup>TH</sup> DAY OF MARCH 2023**

**E.K. WABWOTO**

**JUDGE**

In the Virtual Presence of:-

Mr. Githiomi Mungai for the Applicant

Ms. Vuchocho for the Respondent.

Court Assistant: Caroline Nafuna.

