



Kuguru & another v Charo & another (Environment and Land Case Civil Suit 33 of 2016) [2023] KEELC 16214 (KLR) (8 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16214 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE CIVIL SUIT 33 OF 2016
EK MAKORI, J
MARCH 8, 2023**

BETWEEN

EDWARD MARENYE KUGURU 1ST PLAINTIFF

LILIAN MUTHEU TIMOTHY 2ND PLAINTIFF

AND

KAVUE KILANGO AKA KAVUMBI KILINGO CHARO 1ST DEFENDANT

NYEVU KILANGO CHARO 2ND DEFENDANT

RULING

1. Notice of Motion dated October 24, 2022 seeks the eviction of the Respondent herein.
2. This arises from the Judgment of this Court (Hon. Olola J) dated March 28, 2019 in which the Court declared that the Applicant herein acquired a legal and/or beneficial interest in all that land known as Kilifi/Mtwapa/3414 and any subdivision emanating therefrom.
3. The application was served. There is a return of service dated February 14, 2023. I am satisfied with the service.
4. The procedure for eviction is as provided in Section 152(G) of the *Land Law Amendment Act, 2016* which is coached in mandatory terms:
 - i. Proper identification of those taking part in the eviction or demolition.
 - ii. Preceded by the presentation of the formal authorization for action.
 - iii. Where a group of people are involved government officials or their representatives to be present during the eviction.



- iv. To be carried out in a manner that respects human dignity, right to life and security of those affected.
 - v. Special measures to be undertaken to protect vulnerable groups like children, the elderly and persons with disability.
 - vi. Measures to ensure no deprivation of property or possession as a result of the eviction.
 - vii. Mechanisms to protect property and possessions left behind involuntarily from destruction.
 - viii. Respect the principles of necessity and proportionality during use of force.
 - ix. Affected persons be granted priority to demolish and salvage their property.
5. Pursuant to Section 152(E) of the [Land Law Amendment Act, 2016](#):
- “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.”
6. In this particular matter there are orders and decree emanating from the decision of this court (Hon. Olola J) which requires implementation.
7. The eviction will be allowed but to be carried out in the manner provided in both Section 152(E) and 152(F) of the [Land Law Amendment Act 2016](#) that is: -
- i. This Order for eviction be extracted and served on the Respondents.
 - ii. 90 days notice be granted from today for the Respondent to voluntarily vacate.
 - iii. Failure forcible eviction to be undertaken as provided in Section 152(f) of the [Land Law Amendment Act, 2016](#).
 - iv. Service of this eviction orders be undertaken by the Court Bailiff who shall file an appropriate return within 14 days hereof.
 - v. Costs to the Applicant.

Orders accordingly.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY IN OPEN COURT ON THIS 8TH DAY OF MARCH 2023.

E. K. MAKORI

Judge

In the Presence of: -

M/s Kedeki for the Applicant

Court Clerk: Happy

In the Absence of

Respondents.

