



**Kalama v Soso & 5 others (Miscellaneous Civil Application
15 of 2023) [2023] KEELC 21480 (KLR) (8 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21480 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
MISCELLANEOUS CIVIL APPLICATION 15 OF 2023
EK MAKORI, J
NOVEMBER 8, 2023**

BETWEEN

ANDERSON SHEHE KALAMA APPLICANT

AND

CHANGAWA MOLE SOSO 1ST RESPONDENT

KADZO CHARO SOSO 2ND RESPONDENT

KAZUNGU RANDU KAMBIO 3RD RESPONDENT

KAHINDI RANDU KAMBI 4TH RESPONDENT

KALUME RANDU KAMBIO 5TH RESPONDENT

KADENGE RANDU KAMBIO 6TH RESPONDENT

RULING

1. The application dated March 6, 2023 significantly seeks the eviction of the respondent, their servants, employees, agents, or other persons acting under their instructions or interests from all that land parcel known as Malindi/Marafa/78 and for vacant possession of the property to be delivered to the applicant. The OCS Marafa provides security during this period. Moreover, the court provides for costs.
2. It is the applicant's averment that the respondents have been utilizing the land in question for over 20 years. The land was allotted to the applicant sometime in the year 2001 under the Government Settlement Fund Trustees arrangement. He paid the requisite fees after being issued with a letter of offer. The title deed was issued in 2007. The land measures 13.6 hectares.
3. The applicant contends that the respondents have encroached on the property, cultivated, and erected permanent structures on the suit property.



4. The department of lands adjudication and settlement has issued notice to quit on the respondents who have failed to move out of the land in question that is why a notice of eviction as required under section 152(a-f) was issued according to the provisions of the [Land Law Amendments Act 2016](#).
5. The respondents on the other hand contend that eviction cannot be issued as envisaged by the application since the respondents have been on the suit property since 2001. That the land ought to have been allocated to them. Unfortunately, that did not happen. Whereas the applicant has title the issue of ownership has to be settled first before eviction.
6. The issue to settle is whether eviction should be issued.
7. Before 2016, evictions used to be inhumane and brutal - see Angote J. on [Evictions in Kenya: Which way under The New Constitution and the Land Laws \(Amendment\) Act 2016?](#) (2018) Journal of CMSD Vol 2(2):

“Forced evictions in Kenya has not only attracted domestic condemnation, the international community has expressed its concern in the manner in which the forced evictions are carried out in an inhumane manner.³ Evictions in Kenya are largely caused by: conflicts over land; non-payment of land and house rents; and urban development or redevelopment.⁴ Forced evictions are normally caused by various and often complex but interconnected factors such as a) Tenure insecurity; b) development and infrastructural projects; c) environmental concerns; d) large international events, e.g. olympic games or world cup or international conferences; e) urban redevelopment and beautification initiatives; f) property market forces and gentrification; g) absence of state support for the poor; h) political conflict, ethnic cleansing and war; or i) planning initiatives; discovery and extraction of natural resources, amongst others. ⁵”

8. That is why an elaborate procedure was enacted and inserted under section 152 (a-f) of the [Land Law \(Amendment\) Act, 2016](#). The provisions provide for mandatory guidelines and timelines to be achieved before eviction can be issued.
9. The land here is private. Section 15(e) of the Act comes into play. The applicant has fulfilled the provisions enunciated in that Section. Three months' notice, service on the area security team. The applicant has annexed the title to the land. The respondents have not.
10. However, the respondents allege they have been on the suit land since 2001 and claim “ownership” too. They also say the land was improperly adjudicated in favour of the applicant. There are various methods of land acquisition in Kenya see section 7 of the [Land Act](#):

Methods of acquisition of title to land Title to land may be acquired through—

- (a) allocation;
- (b) land adjudication process;
- (c) compulsory acquisition;
- (d) prescription;
- (e) settlement programs;
- (f) transmissions;
- (g) transfers;



- (h) long term leases exceeding twenty-one years created out of private land; or
- (i) any other manner prescribed in an Act of Parliament.

11. If one pleads to have acquired land through prescription or one remains on another's land for over 12 years, one can plead adverse possession. Eviction then cannot take effect unless that issue is determined. In this case, the respondents claim they have been on the land since 2001. The current application cannot resolve that issue. The applicant also concedes the respondents have been staying there utilizing the land and building permanent structures thereon. The applicant also says that he got the title in 2007. A question then arises about what the applicant has been waiting for since 2007 before ejecting the respondents.
12. It is my humble view that eviction in this matter has not crystallized. I think the applicant should have sued for ejectment, a trial conducted, and the issue of ownership or trespass determined by the court fully, and finally, the eviction sought in this matter in my view would be a shortcut.
13. The Notice of Motion dated March 6, 2023 is hereby dismissed. No order to costs.

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

E. K. MAKORI

JUDGE

In the presence of;

Ms Otieno for the Applicants

Ms Mwanja for the Respondents

Court Clerk: Happy

