



**Ringera v Muhindi (Environment and Land Miscellaneous Application
E128 of 2021) [2022] KEELC 2481 (KLR) (7 July 2022) (Judgment)**

Neutral citation: [2022] KEELC 2481 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E128 OF 2021**

SO OKONG'O, J

JULY 7, 2022

BETWEEN

JULIUS K.M. RINGERA APPLICANT

AND

CHARLES HARRISON MWANGI MUHINDI RESPONDENT

JUDGMENT

1. What is before me is a Notice of Motion application dated 5th July 2021 brought by the Applicant under Sections 152A, 152B, 152E and 152 F of the Land Act, 2012(as amended) and Sections 3 and 3A of the *Civil Procedure Rules* seeking the following orders;
 1. That the honourable court be pleased to issue orders of eviction of the Respondent from all that parcel of land known as L.R No. 209/10898/20 (hereinafter referred to as “the suit property”) and for vacant possession of the property to be delivered to the Applicant.
 2. That the OCS Pangani Police Station does supervise the eviction.
 3. That the costs of the suit be provided for.
2. The application which is supported by the affidavit of the Applicant is brought on several grounds. The Applicant has averred that he is the proprietor of the suit property and that the Respondent has illegally entered the same and put tenants thereon. The Applicant has averred that he reported the Respondent’s acts of trespass to the Police. The Applicant has averred that the Respondent was arrested and charged with the offence of forcible detainer in Criminal Case No. 4906 of 2008 of which he was found guilty and sentenced on 10th June 2010. The Applicant has averred that despite the said conviction, the Respondent has without any lawful justification continued to trespass on the suit property. The Applicant has averred that he has been unable to access the suit property because the Respondent has employed goons to keep him off the property. The Applicant has averred that it would serve the interest of justice for the orders sought to be granted.



3 In his affidavit in support of the application, the Applicant has stated that prior to filing the present application, he served the Respondent with a notice to vacate the suit property which the Respondent ignored. The Applicant has annexed to his affidavit among others, a letter of allotment of the suit property in his favour, receipts for the payments that he has made for processing of a title for the property, the proceedings of the criminal case and the eviction notice.

4 As mentioned earlier, the Applicant's application has been brought principally under Sections 152A, 152B, 152E and 152 F of the Land Act, 2012 (as amended) which provide as follows:

152A. Prohibition of unlawful occupation of land.

A person shall not unlawfully occupy private, community or public land.

152B. Evictions to be undertaken in accordance with the Act.

An unlawful occupant of private, community or public land shall be evicted in accordance with this Act.

152E. Eviction Notice to unlawful occupiers of private land.

(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 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.

152F. Application to Court for relief.

(1) Any person or persons served with a notice in terms of sections 152C, 152D and 152E may apply to Court for relief against the notice.

(2) The Court, after considering the matters set out in sections 152C, 152D and 152E may-

- (a) confirm the notice and order the person to vacate;
- (b) cancel, vary, alter or make additions to the notice on such terms as it deems equitable and just;



- (c) suspend the operation of the notice for any period which the court shall determine; or
- (d) order for compensation.

152G. Mandatory procedures during eviction.

- (1) Notwithstanding any provisions to the contrary in this Act or in any other written law, all evictions shall be carried out in strict compliance with the following procedures-
 - (a) be preceded by the proper identification of those taking part in the eviction or demolitions;
 - (b) be preceded by the presentation of the formal authorizations for the action;
 - (c) where groups of people are involved, government officials or their representatives to be present during an eviction;
 - (d) be carried out in a manner that respects the dignity, right to life and security of those affected;
 - (e) include special measures to ensure effective protection to groups and people who are vulnerable such as women, children, the elderly, and persons with disabilities;
 - (f) include special measures to ensure that there is no arbitrary deprivation of property or possessions as a result of the eviction;
 - (g) include mechanisms to protect property and possessions left behind involuntarily from destruction;
 - (h) respect the principles of necessity and proportionality during the use of force; and
 - (i) give the affected persons the first priority to demolish and salvage their property.

5 The foregoing provisions of the *Land Act* 2012 provide for the evictions of persons occupying land unlawfully. Section 152A of the *Land Act* 2012 (the Act) prohibits unlawful occupation of land be it private, public or community land. Section 152E of the Act provides that a person unlawfully occupying private land may be served with a notice to vacate. Section 152F provides for relief against a notice of eviction. It gives the person served with notice a right to apply to court for whatever relief deemed appropriate in the circumstances. The court upon considering the application may give appropriate relief. Among the reliefs the court can give are; cancellation, variation or suspension of the notice. The court can also order compensation to be paid. In addition to the said reliefs, the court also has power to confirm the notice and order the eviction of those in illegal occupation of land.



- 6 In the case before the court, I am satisfied that the Respondent was served with a notice to vacate the suit property in accordance with the terms of Section 152E of the Act. The Respondent did not move the court for relief as provided for under Section 152F of the Act. I am of the view that since Section 152F of the Act empowers the court grant relief to the person served with an eviction notice and also to confirm the notice and order eviction, it is not inconsistent with the Act for the person issuing the notice to apply to court for confirmation of the notice and an eviction order where the person served with the notice has failed to seek relief from the court.
- 7 The Applicant's application is in the circumstances properly before the court. I am of the view that the provisions of Sections 152E to 152 I of the Act were enacted not only to provide a humane manner of carrying out evictions in line with the internationally acceptable standards but also a summary procedure for determining disputes over trespass to land where there is no contestation over title to land. I am satisfied from the material before me that the Applicant is the lawful owner of the suit property. The Applicant has placed evidence before the court showing that the suit property was allocated to him by the Commissioner of Lands and that he complied with the terms of allotment.
- 8 The Applicant has also proved that the Respondent is occupying the suit property unlawfully. The Applicant has proved that the Respondent was charged at Makadara Law Court with the offence of unlawful detainer of the suit property in Chief Magistrates Court Criminal Case No. 4906 of 2008. The Respondent was convicted of the offence on 10th June 2010 and sentenced to pay a fine of Kshs. 20,000/- in default of which he was to serve 6 months imprisonment. The criminal court found that the suit property belonged to the Applicant and that the Respondent was unlawfully occupying the same. The Respondent told the criminal court that he was duped into purchasing the suit property from the person who sold it to him. There is no evidence before the court showing that the Respondent appealed against the said decision of the criminal court. I am also satisfied that the Respondent was served with an eviction notice under Section 152E of the Act and that the notice complied with the requirements of the Act. I am also satisfied that the Respondent has refused to comply with the said notice without any lawful cause.
- 9 Due to the foregoing, it is my finding that a case has been made out for confirming the eviction notice dated February 25, 2021 that was served upon the Respondent by the Applicant. The Respondent shall vacate and handover vacant possession of all that parcel of land known as L.R No. 209/10898/20 to the Applicant within 60 days from the date hereof in default of which a warrant of eviction shall issue for the forceful eviction of the Respondent from the suit property under the supervision of the Officer Commanding Embakasi Police Station. Since the eviction of the Respondent from the suit property shall involve the removal of several people who are in occupation of the suit property as tenants of the Respondent, the Applicant shall comply strictly with Section 152G of the Act in the event that forceful eviction of the Respondent becomes necessary. The Applicant shall have the costs of the application.

DELIVERED AND DATED AT NAIROBI THIS 7TH DAY OF JULY 2022

S. OKONG'O

JUDGE

Judgment delivered through Microsoft Teams Video Conferencing platform in the presence of;

N/A for the Applicant

N/A for the Respondent

Ms. C.Nyokabi-Court Assistant

