



**Board of Trustees Full Gospel Churches of Kenya v Commissioner of Lands & 2 others
(Environment & Land Case 74 of 2005) [2025] KEELC 4732 (KLR) (24 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4732 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 74 OF 2005**

NA MATHEKA, J

JUNE 24, 2025

BETWEEN

BOARD OF TRUSTEES FULL GOSPEL CHURCHES OF KENYA PLAINTIFF

AND

COMMISSIONER OF LANDS 1ST DEFENDANT

ATTORNEY GENERAL 2ND DEFENDANT

GOOD NEWS CHURCH OF AFRICA 3RD DEFENDANT

RULING

1. The application is dated 30th October 2024 and brought under Sections 1A, 1B, 3A and 38(f) of the [Civil Procedure Act](#); Order 22 Rule 7, Order 51 of the Civil Procedure Rules 2010; Section 152 of the [Land Act](#) seeking the following orders;
 1. That this application be certified urgent, service dispensed with and heard ex-parte in the first instance.
 2. That in execution of the Judgment dated 29th January, 2021, this Honourable Court be pleased to issue an eviction order against the 3rd Defendant/Respondent herein (Good News Church of Africa) from the suit property known as Land Parcel No. Machakos Town Block 1/297 (previously known as Zone 47 - Machakos Municipality) and measuring approximately 0.175 Hectares and the same be executed by a licenced Court Bailiff.
 3. That the Deputy County Commissioner, Machakos County and the Officer Commanding Station (O.C.S) Machakos Police Station do ensure compliance.
 4. That costs of this application be provided for.



2. It is based on the grounds that vide a Judgment dated and delivered on 29th January, 2021, this Honourable Court declared that the Plaintiff has legally and validly acquired ownership of and title to Plot No. Machakos Town Block 1/297 (previously known as Zone 47 – Machakos Municipality) and measuring approximately 0.175 Hectares and should be registered as such owner and issued with the appropriate title documents. The court issued an order of mandatory injunction directing the Defendants to register the Plaintiff as the owner of Plot No. Machakos Town Block 1/297 (previously known as Zone 47 - Machakos Municipality) and measuring approximately 0.175 Hectares and issue the appropriate title documents to the Plaintiff. That the 3rd Defendant in particular participated in the instant proceedings and is as such aware of the Judgment herein but still remains in occupation and use of the same. Despite being duly entitled to the aforesaid Plot No. Machakos Town Block 1/297 (previously known as Zone 47 - Machakos Municipality) and measuring approximately 0.175 Hectares as per this Court’s Judgment, In the circumstances, the Plaintiff/Applicant is unable to enjoy firstly the benefits of this Honourable Court’s Decree issued in its favour and secondly, the right to use and enjoy its land known as Land Parcel No. Machakos Town Block 1/297 (previously known as Zone 47 - Machakos Municipality) and measuring approximately 0.175 Hectares.
3. The 3rd Defendant submitted that there is a pending application for stay of execution of the said judgement and a pending appeal in the court of appeal in which both judgement and ruling is yet to be delivered. That the eviction procedure has not been followed and he was not served with the eviction notice. Lastly the judgement did not issue an order for permanent injunction and or an eviction order.
4. The Applicant stated that they are the legal owners on Machakos Town Block 1/297 as per a decree of the court issued on the 17th November 2021. That the 3rd Defendant/Respondent remains in occupation of the same to the detriment of the Applicant’s crystallized rights thereto and continues erecting structures therein. Section 152E of the Land Laws (Amendment) [Act No. 28 of 2016](#) provides as follows: -

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.



5. Section 152F of the Land Laws (Amendment) [Act No. 28 of 2016](#) provides as follows: -
- (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 1528, 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.
6. Regulation 65 of [Legal Notice 280 of 2017](#) (Land Regulations) provides as follows:
65. Upon establishing that a particular parcel of private land is unlawfully occupied, the owner of the land shall issue a notice in Form LA 57 set out in the Third Schedule to the unlawful occupiers to vacate the land.
7. The court in the case of *Atik Mohamed Omar Atik & 3 others v Joseph Katana & Another* (2019) eKLR stated as follows on the procedure for eviction of persons unlawfully occupying public, community or public land:
- In this regard, the first step in an eviction is for the lawful owner to serve a notice of eviction in accordance with the law. The essence of serving an adequate and reasonable eviction notice lies in the need to give the persons affected an opportunity to seek relief in court. Under Section 152E of the *land Act*, any person or persons served with such notice may apply to court for relief against the notice.”
8. Section 152E of the Land Laws (Amendment) [Act No. 28 of 2016](#) clearly provides that the notice to vacate must be issued not less than three months before the intended date of eviction.
9. The Respondent alleges that they served the eviction notice as per the affidavit sworn by a process server who undertook the service. Be that as it may I have perused the plaint and the court decree dated 17th November 2021 which reads as follows;
1. A declaration be and is hereby issued that the Plaintiff has legally and validly acquired ownership of and title to Plot No. Machakos Town Block 1/297 (previously known as Zone 47 – Machakos Municipality) and measuring approximately 0.175 Hectares and should be registered as such owner and issued with the appropriate title documents.
 2. An order of mandatory injunction be and is hereby issued directing the Defendants to register the Plaintiff as the owner of Plot No. Machakos Town Block 1/297 (previously known as Zone 47 - Machakos Municipality) and measuring approximately 0.175 Hectares and issue the appropriate title documents to the Plaintiff.
 3. Each party to bear its own costs.
10. There is no permanent injunction or eviction order that was issued by the Judge. It is not even clear whether or not these orders have been complied with. The orders were granted as prayed and the court cannot now issue additional orders. I find that this application lacks merit and is dismissed with costs.
- It is so ordered.



DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 24TH DAY OF JUNE 2025.

N.A. MATHEKA

JUDGE

