



**Kitsao v Baya & 3 others (Environment and Land Miscellaneous Case E006 of 2025) [2025] KEELC 6532 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6532 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT AND LAND MISCELLANEOUS CASE E006 OF 2025  
FM NJOROGE, J  
SEPTEMBER 30, 2025**

**BETWEEN**

**KAZUNGU KITSAO ..... APPLICANT**

**AND**

**CHARO BAYA ..... 1<sup>ST</sup> RESPONDENT**

**KATANA BAYA ..... 2<sup>ND</sup> RESPONDENT**

**KAHINDI BAYA ..... 3<sup>RD</sup> RESPONDENT**

**KAHINDI KENGA ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. Notice of Motion dated 26/3/2025 brought under Section 3, 3A and 63 (e) of the *Civil Procedure Act*, Order 10 Rule 11, Order 7 Rule 1, Order 50 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules, 2010 seeks the following orders: -
  1. ....Spent;
  2. That this honourable court be pleased issue eviction orders as against the Respondents from parcel land known as Plot Mapotea Group Ranch within Bamba area Kilifi County;
  3. That this honourable court be pleased to issue orders directing the Officer Commanding Bamba Police Station to escort the applicant, his agents or servant and provide security during the eviction and enforcement of this court orders;
  4. That the costs of this application be borne by the Respondents.
2. The application is supported by the grounds set out therein and the affidavit sworn by the Applicant on the same date. In the said affidavit, the Applicant averred that he is the lawful owner of the parcel of land known as Plot Mapotea Group Ranch (the suit property), situated within Bamba Area, Kilifi County,



pursuant to a judgment delivered by Angote J. on 7/10/2016 in Malindi ELC Case No. 42 of 2015. It was the Applicant's contention that despite service of the decree upon the Respondents, they failed and/or refused to vacate the suit property. Consequently, the Applicant served them with a statutory notice of eviction dated 18/9/2024, which lapsed on 11/11/2024. The Respondents have, however, continued to occupy the suit property, thereby prompting the filing of the present application.

3. The Court record confirms that the Respondents were duly served with the present application. An affidavit of service sworn by Valentines Obongoyah on 10/6/2025 has been filed to that effect, indicating that the Respondents declined to accept service. Despite service, the Respondents neither filed a response nor appeared in court to oppose the application. Accordingly, the application remains unopposed.
4. The Applicant filed written submissions dated 16/6/2025 in support of the application. In the said submissions, the sole issue identified for determination was whether the eviction orders sought are merited. The Applicant submitted that he had complied with the requirements of Section 152B and 152C of the *Land Act* by issuing the requisite statutory notices to the Respondents, thereby entitling him to the orders sought. In support of this position, he relied on the decision in *Atik Mohamed Omar Atik & 3 Others v Joseph Katana & another* [2019] KEELC 552 (KLR).

### **Analysis and Determination**

5. I have carefully considered the application, the supporting affidavit, the annexures thereto, and the Applicant's written submissions. It is not in dispute that the Applicant was declared the lawful owner of the suit property by a judgment of this Court (Angote J.) delivered on 7/10/2016 in Malindi ELC Case No. 42 of 2015. The said judgment has not been set aside or stayed and therefore remains valid and binding.
6. The Applicant contends, and it is supported by the affidavit of service on record, that the Respondents were duly served with the present application but declined to accept service. Despite this, they failed to file any response or appear in court to contest the same. Consequently, the court is left with an unopposed application whose merits fall to be determined based on the material presented by the Applicant.
7. In *Kenya Assemblies of God Trustees & another v Obuya & 5 others* (Environment & Land Case E086 of 2023) [2024] KEELC 4368 (KLR) (23 May 2024) (Judgment), the court had an occasion of discussing how eviction should be carried in Kenya: -

“Section 152 (E) & (G) 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. Therefore, whether the Defendants are occupying public land or private land, they are still entitled to three (3) months' notice.

18. 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.



19. This part of the Act was enacted after the observation by Mumbi J (as she then was) in the case of *Mitu-Bell Welfare Society -vs- Attorney General & 2 others* [2013] eKLR that

“.... This country has yet to develop legislation and guidelines for eviction of persons occupying land which they are not legally entitled to occupy. However, as a member of the international community and a signatory to various United Nations treaties and conventions, it is bound by such international guidelines as exist that are intended to safeguard the rights of persons liable to eviction. Articles 2(5) and (6) of *the Constitution* make the general rules of international law and any treaty or convention that Kenya has ratified as part of the law of Kenya. Consequently, the state, state organs and all persons, in carrying out evictions, should do so in accordance with the United Nations Guidelines on Evictions as enunciated by the United Nations Office of the High Commissioner for Human Rights in General Comment No. 7.”

20. The UN guidelines requires appropriate procedural protection and due process as essential aspects of all human rights and, especially in relation to a matter such as forced evictions which directly invoke a large number of rights recognized in the two International Covenants on Human Rights. The procedural protections which should be applied in relation to forced evictions include:

- a. an opportunity for genuine consultation with those affected;
- b. adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
- c. information on the proposed evictions and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
- d. especially where groups of people are involved, government officials or their representatives to be present during an eviction;
- e. all persons carrying out the eviction to be properly identified;
- f. evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;
- g. provision of legal remedies; and
- h. provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.”

8. The steps set by the law appear to have been fulfilled by the Applicant. Be that as it may, I have carefully considered facts and annexures presented. It is not in dispute that the Applicant was declared the lawful owner of a parcel of land by a judgment of this Court (Angote J.) delivered on 7/10/2016 in Malindi ELC Case No. 42 of 2015. However, from the material placed before this Court, it is not immediately



clear whether the parcel referred to in that judgment is the same as the one described in the present application as Plot Mapotea Group Ranch.

9. The said judgment is described generally as referring to land situated within Bamba, Kilifi County, without further particulars or identifiers. In the present application, the parcel is referred to specifically as Plot Mapotea Group Ranch within Bamba area Kilifi County, but no supporting documentation has been availed to conclusively establish that the two descriptions refer to the same property.
10. The Court is mindful that eviction orders are drastic in nature and must be granted with caution. It is incumbent upon an applicant to satisfy the Court not only that they have complied with the procedural requirements under Sections 152 of the *Land Act*, but also that the land from which eviction is sought is legally and factually linked to a valid judgment or decree.
11. In the absence of clear evidence linking Plot Mapotea Group Ranch to the parcel adjudicated in Malindi ELC No. 42 of 2015, the Court is unable to confidently enforce the judgment through the orders sought. The risk of enforcing an eviction on potentially unrelated land is too grave to ignore and would offend the principles of fairness and due process.
12. In the result, I find that the application dated 26/3/2025 is premature and unmerited in its current form. The same is hereby dismissed. However, the Applicant shall have liberty to apply afresh upon placing before the Court sufficient material demonstrating that the parcel of land described as Plot Mapotea Group Ranch is indeed the same property adjudicated upon in Malindi ELC Case No. 42 of 2015. Given the Respondents' failure to participate in these proceedings, I make no order as to costs.

**DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI.**

