



**Onkeo v Onkeo (Enviromental and Land Originating Summons  
E053 of 2024) [2025] KEELC 7876 (KLR) (13 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 7876 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E053 OF 2024  
CG MBOGO, J  
NOVEMBER 13, 2025**

**BETWEEN**

**ROBERT MOKUA ONKEO ..... PLAINTIFF**

**AND**

**BERNARD OSASO ONKEO ..... DEFENDANT**

**JUDGMENT**

1. The plaintiff filed the chamber summons dated 1<sup>st</sup> August, 2024 expressed to be brought under Section 152A, 152B, 152E and 152F of the Land Act seeking the following orders: -
  1. That the defendant by himself, servants, agents and/or any other person claiming through him be and are hereby restrained from trespassing, managing and or interfering in any way with the plaintiff's property title no. Nairobi Block 154/607 formerly plot no. 619 Kasarani.
  2. That this honourable court be pleased to order the defendant to remove himself and/or any other person that may be placed on Title No. Nairobi Block 154/607 formerly plot no. 619 Kasarani and in default the defendant/ respondent be forcibly evicted and vacant possession be given to the plaintiff.
  3. That the officer commanding Kasarani Police Station be served with the orders above to ensure enforcement and compliance.
  4. That the costs of these proceedings be borne by the defendant.
2. The chamber summons is premised on the grounds inter alia that the plaintiff is the registered owner of the property known as Nairobi Block 154/607 having purchased the same through the defendant as his agent sometime in the year 2002. The application was further supported by the affidavit of the plaintiff sworn on even date. The plaintiff deposed that the issue of ownership of the suit property was determined in Nairobi MCCC No. 30 of 2007(OS) Lawrence Osaso Onkeo v Benard Osaso Onkeo



- & Chieko Housing Co. Ltd, and it was found in his favour. Further, that the defendant was ordered to vacate the suit property within 3 months.
3. The plaintiff deposed that the defendant filed ELC Case No. E022 of 2023 which was dismissed for being sub judice. Further, he deposed that he has developed residential house in the suit property which the defendant is illegally collecting rent and is in occupation of one of the units. The plaintiff deposed that the defendant has refused to vacate the suit property and adhere to the terms of judgment despite service of numerous notices to vacate.
  4. In response to the chamber summons, the defendant filed his replying affidavit sworn on 7<sup>th</sup> October, 2024. He deposed that he is the owner of the suit property, and he has been in occupation of the same and constructed residential houses including his own which he resides. He deposed that he has never transferred ownership of the property to the plaintiff, and that the plaintiff fraudulently acquired the same using a forged acknowledgment. He deposed that it is not true that ownership was determined in MCCC No. 30 of 2007 (OS) and the order dated 15<sup>th</sup> October, 2007 was found to be non-existent. He admitted that the ELC Case No. E022 of 2023 was dismissed for being non-existent and that MCCC No. 30 of 2007 (OS) is still pending determination.
  5. The defendant deposed that he has undertaken the developments on the suit property as the rightful owner. Further, that he has never been served with any notice to vacate as alleged.
  6. The plaintiff filed a further affidavit sworn on 4<sup>th</sup> February, 2025. The plaintiff reiterated the contents of his supporting affidavit and further deposed that in making reference to MCCC No. 30 of 2007, the ELC court had the occasion to peruse the court record, and dismissed the same on those grounds.
  7. The chamber summons was canvassed through written submissions. The defendant filed his written submissions dated 28<sup>th</sup> July, 2025 where he raised four issues for determination as listed below: -
    - i. Whether the plaintiff is entitled to the eviction order sought.
    - ii. Who between the plaintiff and the defendant owns the suit property plot number 619 Chieko Housing Limited.
    - iii. Whether the defendant acted as an agent of the plaintiff while purchasing the subject plot number 619 Cheiko Housing Limited.
    - iv. Who between the plaintiff and the defendant is in possession of the suit property.
  8. On the first issue, the defendant submitted that pursuant to Section 152E of the Land Act, the notice did not specify any terms and conditions for his removal and condition, and that there is no evidence to prove that the subject notice was served upon him. He relied on the case of ELC Case No. E086 of 2023 Kenya Assemblies of God Trustees and Another versus Daniel Obuya and 5 Others, Julius L. Marten v Caleb Arap Rotich [2021] eKLR, and Nyandarua ELC Misc Appl. 3 of 2024 (Formerly Naivasha ELC Misc. Appl, No. 4 of 2024) and) Formerly Nakuru Misc. Appl. No. E009 of 2023) Susan Wairimu Mathai versus Peter Waitara Wathoko and Another.
  9. On the second issue, the defendant submitted that the order dated 15<sup>th</sup> October, 2007 issued by the Magistrates Court was fraudulent and did not confer upon the plaintiff any title with the intention to dispossess the defendant of the suit property. Further reliance was placed in the case John Kamau Munga v Zacharia Nyauncho Nyakoe, Nairobi ELC Suit No. 232 of 2015 (OS).
  10. On the third issue, the defendant submitted that there was no agency agreement between the parties during the purchase of the suit property. On the fourth issue, and while relying on the cases of Henry Muthee Kathurima versus Commissioner of Lands and Another [2018] eKLR, Mwangi & Another v



Mwangi (1986) KLR 328, the defendant submitted that the application by the plaintiff is premature, incompetent, frivolous and an abuse of the court process.

11. The plaintiff did not file his written submissions. Be that as it may, I have considered the application, the replies thereof and the written submissions filed by the defendant. I am of the view that the issue for determination is whether eviction ought to issue against the defendant.

12. Section 152E of the Land Act provides as follows:-

“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 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.”

13. Section 152F of the Act further provides: -

- “(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.”

14. The above cited provisions regulate the procedure where a party is keen to enforce eviction against an unlawful occupant(s) of a suit property. In this case, the plaintiff contended that he is the lawful owner of the suit property, and that the court pronounced itself on the same. He sought to rely on an order dated 15<sup>th</sup> October, 2007. On the other hand, the defendant contended that the order of eviction is a forgery meant to dispossess him of the suit property. He further contended that the matter has not



been concluded by the magistrates court and that the same is pending. From the documents relied on by the parties, it is clear that there is protracted battle over the ownership of the suit property which was also before this court in ELC Case No. E022 of 2023. I have looked at the ruling delivered by the court in this matter. In dismissing this suit, the court noted that there are injunctive orders against the defendant issued on 15<sup>th</sup> October, 2007 and proceeded to strike out the suit for being sub judice.

15. As I understand the term sub judice as described under Section 6 of the *Civil Procedure Act*, it means that a similar suit exists between the parties that is pending hearing and determination or determination. In this case, the plaintiff has not produced a final determination of Nairobi MCCC No. 30 of 2007 (OS). More importantly, one would wonder why the plaintiff is keen on pursuing eviction orders from this court while the same would have been sought from the court which issued the said orders. Besides, the orders if at all they are genuine were injunctive against the defendant, and this court cannot easily discern whether the same were final in nature in the absence of a judgment.
16. Having said the above, I find the chamber summons dated 1<sup>st</sup> August, 2024 not properly before this court. The same is hereby dismissed. Each party to bear their own costs.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY THIS 13<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**HON. MBOGO C.G.**

**JUDGE**

**13/11/2025.**

In the presence of:

Mr. Benson Agunga - Court assistant

Ms. Onchwere holding brief for Mr. Begi for the Plaintiff

Mr. Mageto for the Defendants – absent

