



**Aduda v Adhiambo (Environment and Land Miscellaneous Case
E008 of 2025) [2025] KEELC 8596 (KLR) (10 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8596 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS CASE E008 OF 2025
CA OCHIENG, J
DECEMBER 10, 2025**

BETWEEN

SILAS ADUDA APPLICANT

AND

AGNES ADHIAMBO RESPONDENT

RULING

1. What is before Court for determination is the Applicant's Notice of Motion application dated 17th January 2025 where he seeks the following Orders:
 - a. The Honourable Court be pleased to issue an order of eviction to the Respondent herein compelling her to vacate Title Number Nairobi/Block 62/280 forthwith.
 - b. This Honourable Court be pleased be issue an order directing the Officer in Charge of Kibera Police Station to ensure compliance with the eviction order.
 - c. Costs of this Application be provided for.
2. The application is premised on grounds on its face and on the Applicant's supporting affidavit. He avers that he purchased the property registered as Title Number Nairobi/Block 62/280 in the year 2001, and that it comprises House No. L-25 and an SQ at the back. Further, that he married the Respondent in the year 2004 but they divorced vide Divorce Cause Number 582 of 2016. He contends that after dissolution of their marriage, he instituted HCFOS E019 of 2019 in which he sought a declaration that the suit property is not matrimonial property and judgement was delivered on 3rd July, 2024 where the Court declared that the said suit property is not matrimonial property as it belongs exclusively to him. Subsequently, a Decree was extracted and he now seeks to procedurally evict the Respondent who is still on the suit property, despite having been served with a notice to vacate dated the 2nd September 2024.



3. The application is opposed by the Respondent. While she acknowledges that judgment was entered against her in HCFOS E019 of 2019, she avers that she has commenced Appeal proceedings. She explains that she filed a Notice of Appeal and requested for typed proceedings. Further, that she currently lives on the suit property with the Applicant's children hence it will be prejudicial for them to be kicked out of a home they have known since they were born.
4. In rejoinder, the Applicant filed a further affidavit in which he avers that the Respondent's Notice of Appeal is dated 17th July 2024 whereas her request for certified copies of proceedings, judgment and decree was made on 3rd April 2025, almost a year later. Further, that it is an indication that she has no intention of pursuing an Appeal but is keen on denying him his property.
5. He explains that service of the eviction notice upon the Respondent and the relevant law enforcement agencies was effected by a Licensed Process Server and that matters of the children of their now dissolved marriage was settled in Children's Cause No. 1024 of 2016. He insists that he is the one who stands to suffer great prejudice by the Respondent's continued stay on the suit property as she has failed to remit to him any income from the property yet she lives there with her new husband.
6. The Respondent also filed a further replying affidavit denying the assertion that she lives on the suit property with a man.
7. The application was canvassed by way of written submissions.

Submissions

8. The Applicant submits that he has complied with Section 152(E)(1), (2) of the Land Laws (Amendment) Act, 2016 thus eviction orders are justified. He reiterates that the Respondent was served with an eviction notice on 2nd September 2024 and copies of the eviction notice were served upon the Deputy County Commissioner -Kibra Sub-County, the Sub-County Police Commander (Lang'ata), and the Sub-County Police Commander (Kilimani) on 3rd and 4th September, 2024 respectively.
9. He submits that the Respondent's continued stay on the suit property in spite of the finding of the Court that it is not matrimonial property continues to infringe upon his right to property as enunciated under Article 40(1) of *the Constitution* of Kenya and Section 24 (a) of the *Land Registration Act*. He also submits that under Order 42 Rule 6(1) of the Civil Procedure Rules, an Appeal does not operate as a stay of execution hence there is no bar to issuance of the orders sought.
10. To buttress his averments, he relied on the following decisions: Lucy Ghata v Alex Wambura John & another [2019] KEELC 5097 (KLR), Gacheri v M'ikinyua; Kagwiria (Intended Interested Party) (Environment & Land Case 201 of 2012) [2024] KEELC 13369 (KLR) (20 November 2024) (Ruling), Joseph Njuguna Kabugua v Peter Njuguna Gikio & another [2022] eKLR and Mayenga & 2 others v Khamis & another (Environment and Land Appeal E024 of 2024) [2024] KEELC 7407 (KLR) (11 November 2024) (Ruling).
11. On her part, the Respondent submits that the application is premature having been brought through a Miscellaneous cause. Further, that in HCFOS E019 of 2019, the family Court did not deal with the issue of eviction.
12. To buttress her averments, she relied on the following decisions: Onyango v Simiyu (Environment and Land Miscellaneous Application E025 of 2023) [2023] KEELC 20634 (KLR) (12 October 2023) (Ruling) and in Golden Century Limited v Josef [2025] KEELC 4397 (KLR)



Analysis and Determination

13. I have considered the instant Miscellaneous Cause including the respective affidavits and rivaling submissions, and the only issue for determination is whether eviction orders should issue against the Respondent over Title Number Nairobi/Block 62/280.
14. The Applicant seeks eviction orders as against the Respondent over Title Number Nairobi/Block 62/280. He contends that following a decision of the Court in HCFOS E019 of 2019, the court held that the suit premises was not matrimonial property. The Respondent contends that eviction orders being substantive and final orders cannot be issued in a Miscellaneous application as sought.
15. Section 152E of the [Land Act](#) provides;

“ 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.”
16. Once issued with a notice, a party may seek reliefs as provided for under Section 152F of the [Land Act](#), which provides thus:

“ 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.”
17. In *Ringera v Muhindi* [2022] KEELC 2481 (KLR), this Court (Okong’o J) opined that in circumstances as in the instant suit where an eviction order is sought, a Court is to satisfy itself that the law on eviction as set out in the [Land Act](#) has been adhered to. Further, that where there is no contestation as to the title, then an eviction order can issue in an application. He stated thus:

“ 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.”
18. Further, in *Dzimba v Hassan* [2025] KEELC 4283 (KLR); the Court stated as follows while issuing an eviction order sought vide an application:

“ There is no contest that the applicant has a decree in his favour which was passed on 02.02.2016. There is no dispute that the said decree has never been overturned on appeal or



review. There is no contest that the respondent was found guilty of contempt of court for failing to comply with the terms of the decree. It is also evident from the material on record that the respondent has no pending appeal either against the decree or the order holding him in contempt of court. The court is thus satisfied that the applicant is entitled to enjoy the fruits of his judgment and that he is entitled to succeed in his application. The court is not satisfied that the respondent has demonstrated any legitimate reason to keep the applicant out of the suit property.”

19. In this instance, I note there is a Decree which was issued in favour of the Applicant in in HCFOS E019 of 2019 where Title Number Nairobi/Block 62/280 was declared to be sole his property. The Respondent despite the Decree has declined to move therefrom. Further, she claims she is in the process of lodging an Appeal but except for the Notice of Appeal, there is no substantive Appeal filed so far. I further note that she did not seek for stay pending Appeal. It is trite that where a party seeks eviction orders, he or she has to adhere to the provisions of section 152 E and 152F of the Land Act. I note the Applicant has demonstrated that the Respondent has been indeed served with eviction notices in accordance to the aforementioned legal provisions but she has declined to move from the suit premises.
20. In her submissions the Respondent has insisted that the Court cannot issue eviction orders in a miscellaneous cause and relied on an aforementioned decision which is distinguishable from the circumstances herein as there is a valid Court Decree by the family court in HCFOS E019 of 2019, which was not the case in the authority she relied on.
21. Based on the facts as presented while relying on the legal provisions cited and decisions quoted, I find that the Applicant is indeed entitled to evict the Respondent from the suit property.
22. In the circumstances, I find the instant application merited and will allow it in the following terms:
 - a. An order of eviction be and is hereby issued against the Respondent herein compelling her to vacate Title Number Nairobi/Block 62/280 within ninety (90) days from the date hereof.
 - b. The Officer in Charge of Kibera Police Station to ensure compliance with the eviction order.
 - c. The costs will be in the cause

DATED SIGNED AND DELIVERED AT NAIROBI THIS 10TH DAY OF DECEMBER, 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Nyakundi for Achieng for Applicant

Court assistant: Vena

