

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 504 OF 2017

(FORMERLY MACHAKOS ELC CASE NO. 12 OF 2014)

MAILUA ESTATES LIMITEDPLAINTIFF/APPLICANT

VERSUS

PUSHAN MIATO1ST DEFENDANT

SELEYIAN MIATO2ND DEFENDANT

KETUKEI MIATO3RD DEFENDANT

REUBEN OLE NAKUO4TH DEFENDANT

RULING

*(In respect of the Notice of Motion application dated 30th October 2025
seeking eviction orders against the Defendants)*

Introduction

1. The matter for determination before this Court is the Notice of Motion Application dated 30th October 2025, brought under Article 40 of the Constitution of Kenya 2010, Section 3A and 63 of the Civil Procedure Act (Cap 21), and Order 51 Rule 1 of the Civil Procedure Rules.

2. The Applicant, Mailua Estates Limited, seeks the following principal orders against the 1st, 2nd, and 3rd Defendants:
- a) That an order of eviction be issued against the 1st, 2nd, and 3rd Defendants from **L.R. NUMBER KAJIADO/MAILUA 684** and/or any subdivisions thereof.
 - b) That the Officer Commanding Bisil Police Station, Kajiado County be ordered and directed to provide security during the eviction exercise.
 - c) That the costs of this application be provided for.
3. The Application is supported by the Affidavit of Stephen Waigwa Murage, the Managing Director of the Applicant company, sworn on 30th October 2025. The Applicant's case is premised on the grounds that the legal ownership of the suit property has been settled with finality by the Court of Appeal.
4. On 26th February 2019, this Honourable Court initially delivered a judgment declaring that the 1st, 2nd, and 3rd Defendants had acquired 200 acres of the suit land (Kajiado/Mailua/684) by way of adverse possession. On 9th December 2021, following the dismissal of a stay application pending appeal, the land was transferred to the Defendants. On 17th February 2023, the Plaintiff challenged the decision at the Court of Appeal

in Nairobi **Civil Appeal No. 112 of 2017**, wherein the appeal was allowed, effectively setting aside the judgement of this court in favour of the Defendants and substituting it with a judgement in favour of the Plaintiff. Consequently on 20th June 2024, this Court ordered the cancellation of the titles held by the Defendants, which was implemented by the Registrar of Lands, reverting the property to the Plaintiff.

5. The Applicant contends that despite the cancellation of their titles and the judgment of the Court of Appeal, the 1st, 2nd, and 3rd Defendants have refused to vacate the suit property. The Applicant further alleges that the Defendants are actively attempting to defraud unsuspecting members of the public by purporting to sell portions of the suit land, necessitating this application for eviction orders.
6. The Application is undefended as the Respondents failed to file any response thereto despite service.

Determination

7. Having carefully considered the Notice of Motion dated 30th October 2025, the Supporting Affidavit sworn by Stephen Waigwa Murage, and the annexures thereto, this court finds that the central issue that arises for

determination is whether the Plaintiff/Applicant is entitled to the orders of eviction against the Defendants as sought.

8. It is common ground that the question of ownership regarding **L.R. NUMBER KAJIADO/MAILUA 684** has been settled with finality. By the Judgment delivered on 17th February 2023 in **Civil Appeal No. 112 of 2017**, the Court of Appeal allowed the Applicant's appeal, effectively defeating the Defendants' claim to the land by adverse possession. Consequently, this Court, via a ruling on 20th June 2024, ordered the cancellation of the Defendants' titles, restoring the Plaintiff/Applicant as the absolute proprietor.
9. It is an established principle of law that possession follows title. Once the superior court determined that the suit property belongs to the Plaintiff/Applicant, the Defendants' continued occupation became legally untenable. They effectively mutated into trespassers the moment their titles were cancelled and the property reverted to the Plaintiff.
10. **Halsbury's Laws of England, 4th Edition, Vol. 27** at paragraph 243, defines eviction as follows:

“Eviction is the recovery of land from a tenant or other occupier by legal proceedings... It is the expulsion of a tenant or other occupier from land which he holds or occupies.”

11. This Court is of the opinion that an order of eviction is a necessary and automatic consequence where the rights of the parties regarding ownership have been fully determined by a competent court. The Court cannot declare a party to be the lawful owner of a property and yet deny them the fruit of that judgment, which is exclusive possession.

12. The foregoing position is anchored in **Article 40 of the Constitution of Kenya, 2010**, which protects the right to property. **Sections 24 and 25 of the Land Registration Act** further confer upon the registered owner the indefeasible right to the use, possession, and occupation of the land to the exclusion of all others.

13. In the case of *Gatimu Kinguru vs. Muya Gathangi [1976] eKLR*, the Court of Appeal held that:

“The pattern of registration under the Registered Land Act is that the registered proprietor is the absolute owner of the land and his title is indefeasible... A person who is not the registered proprietor has no right to remain on the land against the wishes of the registered proprietor.”

14. Similarly, dealing with the concept of eviction as a remedy for trespass following the determination of title, the Court in Mbuthia vs. Jimba Credit Corporation Ltd [1997] eKLR stated that:

“A trespasser is one who enters upon land without the consent of the owner... Once it is established that the defendant is a trespasser, the plaintiff is entitled to an order for eviction ex debito justitiae (as of right).”

15. On the question of eviction, the law is clear that a proprietor is entitled to exclusive possession and may lawfully seek to recover land from trespassers. The Court of Appeal in Muthiora v Muthiora [1982] KLR 1 held that once a registered owner demonstrates his title and the defendant is shown to be in unlawful possession, an order for eviction follows as of right. Accordingly, the 1st Defendant has established his entitlement to eviction orders against the Plaintiffs. To hold otherwise would be to render the right of ownership nugatory.

16. The Defendants herein, having had their titles cancelled pursuant to the Court of Appeal judgment, currently occupy the suit land without any colour of right. Their continued stay and alleged attempts to sell the land amount to a flagrant disregard for the rule of law and the sanctity of the

judicial process. The Plaintiff having been declared the owner of the suit property... is entitled to the quiet possession and enjoyment of the same. The Defendants have no right to continue staying on the Plaintiff's land. An order of eviction is therefore merited to enable the Plaintiff to enjoy the fruits of its judgment.

17. Accordingly, this Court finds that the Applicant has satisfied the conditions for the grant of eviction orders. There is no legal justification for the Defendants to remain on the land, and the Applicant is entitled to vacant possession forthwith. The Defendants have had adequate notice since the delivery of the judgement of the court of appeal and the subsequent order of this court cancelling their titles.

18. On the issue of security during the eviction, given the history of the matter and the Defendants' alleged conduct in purporting to subdivide and sell the land despite court orders, it is prudent to direct the police to ensure the enforcement of this Court's orders is carried out peacefully.

19. Consequently, the Notice of Motion dated 30th October 2025 is allowed in the following terms:

A. An order of eviction is hereby issued against the 1st, 2nd, and 3rd Defendants, their agents, servants, or anyone claiming under them

from L.R. NUMBER KAJIADO/MAILUA 684 and/or any subdivisions thereof.

B. The Officer Commanding Bisil Police Station, Kajiado County, be and is hereby ordered to provide security to the Applicant and/or their agents during the execution of the eviction order to ensure the maintenance of law and order.

C. The costs of this Application be borne by the 1st, 2nd, and 3rd Defendants.

It is so ordered.

Dated Signed and Delivered at Kajiado Virtually this 11th Day of December 2025.

M.D. MWANGI
JUDGE

In the virtual presence of:

Ms. Beatrice Kariuki for the Plaintiff/Applicant

N/A by the Defendants/Respondent

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

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