

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ELC NO. 371 OF 2017

EDWARD KAVAI NZIOKA.....1ST
PLAINTIFF
THOMAS NZIOKA..... 2ND PLAINTIFF
DICKSON MWANTHI NZIOKA..... 3RD PLAINTIFF
MBUVA NZIOKA..... 4TH
PLAINTIFF
JAMES KIMENGE NZIOKA..... 5TH
PLAINTIFF
KAMUTI NZIOKA.....6TH
PLAINTIFF
JONATHAN MUTUNGA NZIOKA..... 7TH PLAINTIFF
MUTHINI NZIOKA.....8TH PLAINTIFF

-VERSUS-

ELIZABETH MWIKALI KIOKO.....1ST DEFENDANT
KATUTI NZIOKA..... 2ND
DEFENDANT

RULING

1. This is a ruling in respect of a notice of motion dated 26th August, 2024 in which the Defendants/Applicants seek the following orders:
 1. **That an eviction order do issue removing all structures temporal or permanent and all crops on plot No. Nzau/Kawala 472 and Nzau/Kawala 994 belonging to the Defendants/Respondents or their children.**
 2. **The eviction order be enforced by the OCS Emali police station.**
 3. **The costs for eviction or any other ancillary be borne by the Respondents.**
 4. **That the costs of this application be provided for.**
2. The Applicants contend that they obtained a judgment in their favour through a counterclaim which they filed. The court granted them an eviction order but the Respondents are violent people who have refused to vacate voluntarily. During the pendency of the suit, the Respondents planted orange

fruits and put up temporary structures where they are residing. It is on this basis that they are seeking the orders herein.

3. The Plaintiffs/Respondents opposed the Applicants' application based on a replying sworn on 6th May, 2025. They contend that they have not been served with an eviction notice as provided for under Section 152 of the Land Act and that in any case, they have preferred an appeal against the judgment of the court delivered on 5th June, 2024.
4. The Respondents state that they have heavily invested in the suit property and that there is no provision in law where proceedings can be originated through a notice of motion.
5. The parties were directed to file written submissions but as at 28th December, 2025 when writing this ruling, no party had filed submissions despite directions to do so having been given on 7th October, 2025. On 13th November, 2025 the Respondents prayed for 3 days to file submissions which they did not comply with.
6. I have considered the Applicants' application as well as the opposition to the same by the Respondents. The only issue for determination is whether the application ought to be allowed in the manner sought.
7. There is no doubt that there is a judgment in favour of the Applicants which was given on 5th June, 2024. The Respondents have preferred an appeal against the judgement. There are no orders of stay of execution.
8. There is no requirement to give notice of eviction under Section 152 of the Land Act where the court has granted an eviction notice. What the Applicants are seeking is execution which can only be done seamlessly if there is police assistance. What the Applicants have done does not amount to a fresh suit. I therefore find that the application dated 26th August, 2024 is well merited. The same I allowed as prayed in its entirety.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT
TEAMS THIS 19TH DAY OF FEBRUARY, 2026.**

In the absence of parties who were aware of the date and time of delivery of ruling.

Court assistant – Steve Musyoki