



THE JUDICIARY



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELCOS NO. 401 OF 2017

PAUL LANGAT **PLAINTIFF/
APPLICANT**

VERSUS

**RACHAEL
CHEPYOSET.....DEFENDANT/RESPONDENT**

RULING

1. The matter for determination is the Plaintiff/Applicant's ***Notice of Motion Application*** dated ***31st October 2025***, brought under ***Order 51 Rule 1*** of the ***Civil Procedure Rules 2010*** and ***Sections 1A, 1B, 3A, 34*** and ***68(e) and 98*** of the ***Civil Procedure Act Cap 21*** of the Laws of Kenya, Article 159 of the Constitution of Kenya wherein he sought for the following orders;

- i. That this court be pleased to order and/or direct the Defendant/Respondent whether by himself, his agents, employees, servants, family members and/or any assigns or representatives be immediately evicted from land parcel No. Transmara/Ololmasani/923 measuring 1.34ha.***

ii. That this court be pleased to direct the OCS Emwrua Dikirr Police Station to provide security during the said eviction.

iii. That the costs occasioned by this application be borne by the Defendant/Respondent

2. The application is premised on the grounds set out on the face of the application. Among these grounds are; that a Judgment was delivered on **2nd March 2018**, in favour of the Plaintiff/Applicant; that despite the said Judgment of the court being delivered **7 years** ago, the Defendant/Respondent has **neglected refused** and/or **omitted** to give **vacant possession** to the Plaintiff/Applicant.
3. The application is also supported by the Plaintiff/Applicant's Affidavit sworn on **31st October 2025**, wherein he averred that this Court delivered its judgment on **2nd March 2018**, and declared the Plaintiff/Applicant as the lawful owner of the suit land, and ordered the Defendant/Respondent to vacate the land within **45 days**.
4. The Plaintiff/Applicant further averred that despite being served with the **Judgment** and **decree** of the court, the Defendant/Respondent has **refused to comply**, continued to **trespass, cultivate, lease, rent, sell**, and **construct** on the land.

5. The Plaintiff/Applicant further averred that the Defendant/Respondent's actions are in contravention of the court's orders and have deprived him of the **use, occupation, and enjoyment** of the suit land. Further, he contended that the Defendant/Respondent is unlikely to vacate the suit land unless **compelled** by the court and therefore, he has resorted to this court for orders to **enforce** the Judgment, and **prevent** the orders from being rendered ineffective. It was his contention that the granting of the orders sought is in the interest of justice, and will not prejudice the Defendant/Respondent herein.

6. The application is opposed by the Defendant/Respondent **Rachael Chepyoset**, through her Replying Affidavit dated **10th February 2026**, wherein she averred that the instant Application is **premature and fails to meet** the legal threshold for issuance of eviction orders. She deponed that **Section 152E of the Land Act** requires that a **Notice of eviction** be issued for a period of not less than **90 days**, which she has not been served with.

7. The Defendant/Respondent further claimed that the Judgment delivered on **2nd March 2018**, by **Hon. Justice Mohammed N. Kullow**, did not confirm the parties present during its delivery, and she was unaware of the Judgment and its decree until **January 2026**. It was her further contention that there was a mistake apparent on the face of the judgment and she had instructed her advocates to file an application for review of the judgment.

8. The Defendant/Respondent argued that the Plaintiff/Applicant has not demonstrated the prejudice he would suffer if the orders sought are not granted, and that the application is based on **false and misleading** depositions. The deponent further argued that the instant application lacks merit and should be dismissed with costs.
9. The Application herein was canvassed by way of written submissions. The Plaintiff/ Applicant filed his written submissions **dated 3rd February 2026** through **Moerwa Omwoyo & Co Advocates**, and submitted that his Notice of Motion Application dated **31st October 2025**, seeking eviction orders against Defendant/Respondent is pursuant to a law as there is a subsisting Judgment delivered on **2nd March 2018**. The Plaintiff/Applicant identified the following issues for determination;
- i. Whether the Judgment of this honourable court is final, valid and executable.**
 - ii. Whether the Applicant is entitled to eviction orders.**
 - iii. Whether the Respondent's continued occupation of the suit land is unlawful.**
 - iv. Who should bear the costs of the application.**
10. **On whether the Judgment of this honourable court is final, valid and executable**, the Plaintiff/Applicant submitted that the Judgment of **2nd March 2018**, remains

valid, final, binding and enforceable. He cited the cases of ***Kenya Shell Ltd vs Benjamin Karuga Kibiru & another [1986] eklr*** and ***National Bank of Kenya Ltd vs Juja Coffee Exporters Ltd [2014] eklr***, which affirm that a decree must be obeyed unless set aside or stayed.

11. ***On whether the Applicant is entitled to eviction orders***, the Plaintiff/Applicant submitted that eviction orders are lawful under ***Order 22 Rules 29 and 30*** of the ***Civil Procedure Rules and Section 152E of the Land Act No.6 of 2012***. It was his claim that denying such orders would sanction illegality as held in the case of ***Machira t/a Machira & Co. Advocates vs East African Standard (No.2) [2002]eklr***.

12. ***On whether the Respondent's continued occupation of the suit land is unlawful***, the Plaintiff/Applicant contended and submitted that the Defendant/Respondent's continued occupation is ***unlawful, amounting to trespass*** and ***contempt of court***. Reliance was sought in the cases of ***Justus Kariuki Mate & Another vs Martin Nyaga Wambora & Another [2017] eklr*** and ***Teachers Service Commission vs Kenya Union of Teachers & 2 Others [2013]eklr***

13. The Plaintiff/Applicant ultimately submitted that the Defendant/Respondent should bear the costs of the application, eviction, and all attendant expenses. Reliance was sought in ***Section 27(1) of the Civil Procedure Act, Cap 21 Laws of Kenya***.

14. Further, the Plaintiff/ Applicant submitted that the Respondent's refusal to comply with the lawful decree necessitated the filing of the instant application, and relied on the case of ***Hussein Jan Mohamed & Sons v Twentsche Overseas Trading Co. Ltd [1967] EA 287***, which held that costs should be awarded to the successful party unless the court has good reason to decide otherwise.
15. In conclusion, the Plaintiff/Applicant submitted that the instant application is ***meritorious*** and ***warrants allowance*** in its entirety, as the Defendant/Respondent has neither appealed nor obtained a stay of execution of the Judgment of this court, and has no lawful justification for continued occupation.
16. Consequently, the Plaintiff/ Applicant prayed for orders of eviction against the Defendant/Respondent and her agents from Land Parcel No. ***TRANSMARA/OLOLMASANI/923***, and for the said Defendant/Respondent to bear all costs related to the application and eviction.
17. The Defendant/Respondent filed her written submissions dated ***11th February 2026***, in opposition to the instant Application through ***Kiprotich Roberts & Co Advocates*** and raised the following issues for determination;
- i. Whether the application dated 10.02.2026 (31st October 2025) is merited***
 - ii. Who bears the costs***

18. **On whether the application is merited**, the Defendant/Respondent submitted that the Judgment delivered by **Hon. Justice Mohammed N. Kullow** declared that the Plaintiff had acquired title to land parcel No. **Transmara/Ololmasani/923**, measuring approximately **1.342 hectares**, and issued an injunction restraining the Defendant/ Respondent from evicting, entering or interfering with the **Plaintiff's occupation and possession** of the suit land. It was her submissions that the said Judgment suggests that the Plaintiff/Applicant is the one in occupation of the suit land and none of the orders issued required the Defendant/Respondent to yield vacant possession of the land.
19. The Defendant/Respondent further submitted that if she is deemed to be an unlawful occupier, the provisions of **Section 152E** of the **Land Act** must apply, which require the lawful owner to issue a written **eviction notice** of not less than three months before the intended eviction.
20. For the above submissions, the Defendant/Respondent relied on **Section 152E** of the **Land Act** and the case of **Grace Wangari Mureithi v David Njoroge [2021] KEELC 28 (KLR)** to argue that the first step in eviction is service of **a Notice** of not less than **ninety days**.
21. The Defendant/Respondent further submitted that the application is **premature since no eviction notice** was served as required under **Section 152E** of the **Land Act**. She referred to **Section 152F** of the **Land Act**, which

provides for an application to court for relief after service of such notice.

22. The Defendant/Respondent further submitted that the annexure marked **PL 1a** being the judgment delivered on **02.03.2018**, does not indicate the parties present when it was delivered, and that she was not aware of the said **Judgment or the Decree** arising from it. Although the Plaintiff/Applicant annexed an Affidavit of Service **marked PL 1c**, indicating that the Defendant/Respondent was served with copies of the **Judgment and decree**, she maintained that the said **Judgment and Decree** cannot be construed as a **Notice of eviction**.
23. Consequently, the Defendant/Respondent contended and submitted that **no eviction notice** was ever served upon her, and that the application is based on false and misleading depositions intended to mislead the court into issuing eviction orders arbitrarily.
24. On the second issue for determination, namely who should bear the costs of the application, the Defendant/Respondent submitted that the instant Application is **devoid of merit** and she urged the court to dismiss it with costs to the Defendant/Respondent.
25. The above are pleadings herein on the **Notice of Motion Application** dated **31st October 2025**, wherein the Plaintiff/Applicant has sought for eviction of the Defendant/Respondent. The applicant averred and

submitted that a judgement was entered in his favour on **2nd March 2018**, wherein he was declared the owner of the suit land **Transmara/Ololmasani/932**, and the Defendant was ordered to transfer the said land to the Plaintiff within a period of **45 days** from the date of the said Judgment, with a permanent injunction to restrain her from interfering with the Plaintiff's occupation and possession of the suit land.

26. This Judgment was entered on **2nd March 2018**, which is about **8 years ago**. There is no evidence to suggest that the Defendant appealed against it, nor whether the same has been set aside. Having not been set aside or varied, this Judgment of **2nd March 2018**, is a valid and final Judgment that should be adhered to. See the case of ***Hadkinson v Hadkinson [1952] 2 All ER 567 (CA) at 569.***

27. The Defendant/Respondent had averred that she was not notified of the said Judgment, and has not been aware of it until **January 2026**. However, the court has gone through the court record and has noted that the Defendant was represented, in court by an advocate, she was a party in the suit, and had a duty to follow up for the outcome of her case.

28. In the case of ***Rajeshi Rughani vs Fifty Investment Ltd & Another (2016) eklr***, the Court held;

"in Habo Agencies Ltd vs Wilfred Odhiambo Musingo (2015) eklr, this court stated that it is

not enough for a party in litigation to simply blame the advocate on record for all manner of transgressions in the conduct of litigation. Courts have always emphasized that parties have a responsibility to show interest in and to follow up their cases even when they are represented by counsel. In Mwangi vs Kariuki(1999) LLR 2632(CAK) Shah JA, ruled that mere inaction by a counsel should only support a refusal to exercise discretion if coupled with a litigant's careless attitude"

29. The Defendant/Respondent herein had a responsibility to follow up and show interest in her case, instead of alleging that she was not aware of the Judgment that was entered by the court on **2nd March 2018**. There is a judgement on record, which has not been appealed against, stayed or set aside. The court will be persuaded by the holding of the court in the case of ***Kenya Shell Ltd vs Benjamin Karuga Kibiru & Another(supra)***, where the court held that; *where there is no stay, the successful litigant is entitled to the fruits of his judgment"*
30. Further, the court will concur with the holding in the case of ***Machira t/a Machira & Co Advocates vs East African Standard (No 2) (2002) eklr.*** As cited by the applicant where the court held; *A successful litigant is entitled to the fruits of his judgment, and it would be unjust to deny him that right without lawful cause.*

31. The Plaintiff/Applicant was the successful litigant vide the Judgment of the court issued on **2nd March 2018**. The Defendant/Respondent did not bother to appeal against it and /or find out what transpired in court on the material. After she was served with this application, she filed an Application dated **9th February 2026**, alongside her Replying Affidavit for **review** and/or **setting aside** of the said Judgment of the court **dated 2nd March 2018**, which is sought to be executed through the instant application.
32. This Application is an afterthought, brought in **bad faith** to deny the Plaintiff/Applicant herein the fruits of his Judgment. The Defendant/Respondent alleged that she was not served with **Notice of Eviction** as stipulated by **Section 152 E** of the **Land Act**.
33. It is evident that the Defendant /Respondent was served with the instant Application, which application made her aware of the prayer for eviction. The application for eviction is not an *ex parte* application, and the Defendant/Respondent is now aware of intention to have the Judgment of **2nd March 2018**, executed. She cannot hide under the provisions of **Section 152E** of the **Land Act**. Further, it is evident that the application herein is made pursuant to a valid Judgment of the court, and the Plaintiff/Applicant can only enjoy the fruits of his judgment if he is given vacant possession through eviction of the Defendant/Respondent.

34. In the case of ***Mary Wangui Karanja & another v Rhoda Wairimu Karanja & another [2021] eKLR***; the court held that where there is court judgment that directs that a party gives up vacant possession, it would be ***"inimical to justice"*** to force a successful party to undergo further, separate notice procedures, as it would cause unnecessary delay in enjoying the ***"fruits of judgment"***
35. Further, in the case of ***Gathoni v Njoroge & 3 others (Environment & Land Case 21 of 2018) [2023] KEELC 18013 (KLR) (15 June 2023) (Ruling)***; the court held as follows; ***"On the application of sections 152 F and 152G of the Land Amendment Act 2016, I do disagree with the argument by Mr Ndolo, learned counsel for the respondent that the provisions should be complied with where there is a judgment. My view is that since the judgment is self-explanatory and gives the timelines of compliance there is no need to comply with those sections of law"***.
36. In the case of ***Muthithi Investments Limited v Andrew S Kyendo & 22 others [2020] eKLR***, the court held:
- "Secondly, the applicant's reliance on section 152E of the Land Act are misplaced because that framework does not relate to evictions carried out in execution of court decrees. Thirdly, there is no evidential material***

presented to the court to demonstrate that the decree holder has or is about to violate the eviction procedure spelt out in section 152E of the Land Act or any other section of the Land Act.”

37. This court will further concur with the holding of the court in the case of ***Sabai & 4 others v District Land Adjudication & Settlement Office, Trans- Nzoia & 11 others (Environment & Land Case 107 of 2012) [2022] KEELC 4874 (KLR) (20 September 2022) (Ruling)***, where the court held;

“I agree with the analysis of the courts in the foregoing paragraphs. sections 152E to 152G of the Land Act remain applicable to eviction on persons unlawfully occupying private land without a court order. In that regard, it is a mandatory requirement for the person seeking eviction to apply within the precincts of the law strictu sensu. However, my understanding of the provisions is that they remain inapplicable to court decrees unless the court has expressly directed mandatory compliance with those provisions of the law. court decrees are the end result of a process that both parties or a successful one for that matter becomes entitled to move the judgment debtor into compliance through

lawful means. However, even when doing so, care should be taken to execute the decree of eviction in a humane manner. That notwithstanding, extending the olive branch of being humane should not be abused by the judgment debtor to the extent and manner of unreasonably impeding the court process and resisting eviction if it has to be carried out. The taking advantage of the humane procedures by parties should be abhorred in toto.”

38. Further, the Defendant/Respondent submitted that the Plaintiff/applicant during the trial had testified that he was the one in occupation and cannot seek for eviction if he is in occupation. However, the court has gone through the court’s proceedings, and it is evident the Plaintiff/Applicant filed these proceedings on allegations that the Defendant/Respondent had invaded and trespassed on the suit land since 2012. The Defendant cannot claim that the Plaintiff is the one in occupation, and that he cannot seek for eviction order, whereas the genesis of this suit is the Defendant’s alleged trespass over the suit land.

39. It is not in doubt that **Section 38** of the **Civil Procedure Act** empowers the court to enforce the execution of its decrees upon an application by a decree holder. **Order 22**

Rule 7 (2) of the Civil Procedure Rules provides for the mode of applying for execution of a decree as follows; -

(2) Save as otherwise provided by subrule (1) or by any other enactment or rule, every application for the execution of a decree shall be in writing, signed by the applicant or his advocate or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars—

40. Having found that there is a valid judgment of the court that **has not been complied** with by the Defendant/Respondent, and having found that for execution of a court's Decree, **Notice of Eviction** under **section 152E** of the **Land Act**, was not mandatory, this court finds that instant **Notice of Motion Application** dated **31st October 2025**, is **merited**, and the same is **allowed** in terms of **prayer No 2**, with costs to the Applicant.

41. The Defendant /Respondent to **give vacant possession** of the suit land, within a period of **30 Days** from the date hereof. In default, the Plaintiff/Applicant to carry on the **eviction exercise** as prayed in **Prayer No 2** of the instant application, and **OCS EMURIA DIKIRR Police Station** to provide security during the exercise as sought in **prayer No.3**, which exercise should be carried out within the prescribed hours.

42. The costs of this application is awarded to the Plaintiff/Applicant

It is so ordered.

Dated, Signed and Delivered Virtually at Narok this 19th Day of March 2026.

***L. Gacheru
Judge***

Delivered online in the presence of

Elijah Meyoki - Court Assistant

Mr. Kimaiyo holding brief for Mr. Omwoyo for the Plaintiff/Applicant

Mr. Kiprotich for Defendant/Respondent

***L. Gacheru
Judge***