



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELC LAND MISC. CASE NO. E089 OF 2025

KAMENE **MWANIA.....**
.....**APPLICANT**

VERSUS

MICHAEL **MUASA.....1ST**
RESPONDENT

FRANCISCA **SYOMBUA** **MUTUNGA.....2ND**
RESPONDENT

JOSEPH **MAINGI.....3RD**
RESPONDENT

HOSEAH **MUTHIWA.....4TH**
RESPONDENT

KYULE **HOSEA** **.....5TH**
RESPONDENT

RAEL **MAKAU.....6TH**
RESPONDENT

RULING

1. Before this court for determination is the applicant's notice of motion dated 3 September 2025, moved pursuant to the provisions of **Sections 152A, 152B, 152E and 152F** of the **Land Act, Section 3A** of the **Civil Procedure Act**, and all enabling provisions of the law. The applicant seeks the following orders from this court:

a) Spent.

b) THAT the honourable court be pleased to order the eviction of the respondents from all that parcel of land known as KITHYOKO/KITHYOKO/4517 and to order the delivery of vacant possession of the property to the applicant.

c) THAT FAITH AGENCIES AUCTIONEERS do effect and execute the above eviction orders.

d) THAT the Officer Commanding Station (O.C.S) Kithyoko Police Station, together with their officers, provide escort and/or security during the execution of the orders sought hereinabove and ensure compliance with the said orders.

e) THAT the costs of this application be provided for.

2. The motion is based on the grounds listed on its face and the applicant's supporting affidavit, sworn on the instant date. A summary of the grounds supporting the motion is that the applicant is the registered owner of land parcel number **KITHYOKO/KITHYOKO/4517 ("suit property")**, held under freehold tenure. Despite serving the respondents with an eviction notice in accordance with the law, they have refused to vacate the suit property and have continued erecting permanent structures. The applicant has involved the local authorities and complied with all legal requirements, including notifying the police and the Deputy County Commissioner for Masinga Sub-County.
3. Further, the statutory 90-day notice period has expired, and the respondents have not challenged the eviction in court. As a result, the applicant's right to evict the illegal occupiers is now established, and the court's intervention is sought to authorise and supervise the eviction to protect the applicant's constitutional right to property. Despite the service of documents, the respondents did not oppose the motion.
4. When the matter was brought before this court for hearing on 11 December 2025, **Mr. Mathoka**, counsel for the applicant,

made oral submissions and urged the court to grant the motion. Accordingly, after hearing counsel and thoroughly examining the motion, including its grounds, affidavit and annexures, the sole issue for determination is **whether the motion meets the legal threshold to warrant issuance of eviction orders.**

5. Regarding the eviction process as moved by the applicant, the **Land Laws (Amendment) Act 2016**, which became law following the Presidential Assent on 31 August 2016, introduced significant reforms to the country's eviction policies. Notably, the **Act** established a detailed procedure for evicting individuals found to be unlawfully occupying public, community, or private land. This law was enacted following the decision of **Mitu-Bell Welfare Society v Attorney General & 2 others [2013] KEHC 6337 (KLR)** where the learned Judge **Mumbi Ngugi J** (*as she then was*) stated as follows: -

“This country has yet to develop legislation and guidelines for eviction of persons occupying land which they are not legally entitled to occupy. However, as a member of the international community and a signatory to various United Nations treaties and conventions, it is bound by such international guidelines as exist that are intended to safeguard the rights of persons liable

to eviction. Article 2(5) and (6) of the Constitution make the general rules of international law and any treaty or convention that Kenya has ratified part of the law of Kenya. Consequently, the state, state organs and all persons, in carrying out evictions, should do so in accordance with the United Nations Guidelines on Evictions as enunciated by The United Nations Office of the High Commissioner for Human Rights in General Comment No. 7 “The right to adequate housing (Art.11.1): forced evictions: (20/05/97) CESCR General comment 7. (General Comments).”

6. Having outlined the genesis of our laws on eviction and since the applicant is contending that the suit property is private land as affirmed by the copy of the title document, the green card and certificate of official search, the pertinent law is found in our **Section 152E** of the **Land Act** which provides for the following extensive legal process in seeking an eviction of a trespasser occupying 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.”

7. Additionally, as to the format of such a notice to vacate, **Regulation 65 of Legal Notice No. 280 of 2017 (Land Regulations)** provides as follows:

“Upon establishing that a particular parcel of private land is unlawfully occupied, the owner of the land shall issue a notice in Form LA 57 set out in the Third Schedule to the unlawful occupiers to vacate the land.”

8. By it, the notice duly lists the names of the individual allegedly occupying the land unlawfully, along with their national identity card details, postal and physical addresses, and particulars of the land in question. It warrants that the individual refrain from any further activities on the land, requires the removal of structures, crops, and animals, and mandates that the individual vacate the premises within three months. Failure to comply will result in eviction proceedings. The landowner signs the notice, and a copy is forwarded to the Deputy County Commissioner and the Officer Commanding Police Station (OCPD) of the area where the land is located.

9. Courts have consistently affirmed that these legal procedures must be adhered to without circumvention. In a recent decision with which this court aligns itself, the Court of Appeal in **Kenya Railways Corporation v Birah & 14 others [2025] KECA 545 (KLR)** underscored this position when it stated: -

“In any eviction, forcible or otherwise, adequate and reasonable notice should be given. Respect for human rights, fairness, and dignity in carrying out the eviction should be observed, and the constitutional and statutory provisions on fair administrative action must be adhered to.”

10. This court has analysed the documents submitted in support of the motion for eviction. Although the applicant holds a judgment in her favour issued on 3 November in **Machakos ELC, CASE NO. 230 OF 2017**, whereby the majority of the respondents were deemed trespassers on the suit property, which evidently belongs to the applicant, and permanent injunctive orders were granted against them, there is no evidence indicating that any notice was issued in accordance with **Section 152E** of the **Land Act**.

11. What she submitted was a peculiar document addressed to the respondents, referencing a “NOTICE TO VACATE LAND AFFIDAVIT OF SERVICE,” with the contents evidently constituting a return of service by Watson Kiso. However, as previously stated, these notices have not been tendered as evidence to demonstrate that the respondents and relevant government officials received them. Importantly, even if the notices were served, an issue this court has found they were

not- Mr Kiso'i's return of service remains deficient and does not satisfy the legal criteria.

12. Accordingly, in the present matter, the court finds that the applicants have not satisfied the requirements of the law governing this suit, as there was no adequate and reasonable notice given to affected persons and relevant government officers. The court further finds that the motion is not merited. Accordingly, the court declines to grant the sought eviction orders and dismisses the motion. Since the respondents did not participate in these proceedings, the applicant shall bear her own costs. In the upshot, the court issues the following final orders: -

a) The notice of motion dated 3 September 2025 is hereby dismissed with the applicant bearing her own costs.

b) This file is hereby effectively marked as closed.

Orders accordingly.

Delivered and Dated at Machakos this 24th day of March, 2026.

**HON. A. Y. KOROSS
JUDGE
24.03.2026**

**Ruling delivered virtually through Microsoft Teams Video
Conferencing Platform**

In the presence of;

Ms. Kanja Court Assistant

Mr. Mathoka for Applicant.

No appearance for Respondent.

ORIGINAL