

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KAJIADO
ELCL PET/12/2017

(Formerly Machakos High Court Constitutional Petition No. 121 of 2011)

IN THE MATTER OF THE BILLS OF RIGHTS AS ENSHRINED IN ARTICLES
19,20 AND 21 OF THE CONSTITUTION.

AND

IN THE MATTER OF ENFORCEMENT OF FUNDAMENTAL RIGHTS AND
FREEDOMS OF INDIVIDUALS UNDER ARTICLES 22(1) AND 23(1) OF THE
CONSTITUTION

AND

IN THE MATTER OF ALLEGED INFRINGEMENT OF FUNDAMENTAL
RIGHTS AND FREEDOMS UNDER ARTICLES 27 AND 40(1) OF THE
CONSTITUTION

AND

IN THE MATTERS OF ARTICLES 63(1) AND 64(A) OF THE
CONSTITUTION

AND

IN THE MATTER OF LAND ADJUDICATION ACT, CHAPTER 284 , LAWS
OF KENYA

AND

IN THE MATTER OF THE LAND (GROUP REPRESENTATIVES) ACT,
CHAPTER 287 , LAWS OF KENYA

AND

IN THE MATTER OF SECTION 27,28,30 AND 143 OF THE REGISTERED
LAND ACT , CHAPTER 300 LAWS OF KENYA
AND
IN THE MATTER OF ARTICLES 1,10,26,28 OF THE UNITED NATIONS
DECLARATIONS ON THE RIGHTS OF INDIGENOUS PEOPLE {UNDRIP)
AND
IN THE MATTER OF OLKIRAMATIAN LAND REGISTRATION SECTION IN
KAJIADO DISTRICT
AND
IN THE MATTER OF KAJIADO/ OLKIRAMATIAN/6,7,10,11,12,21,22,23,24
AND 25
BETWEEN
PARSALOI OLE MEIKOKI AND 249 OTHERS
PETITIONERS
VERSUS
THE COMMISSIONER OF LANDS.1ST
RESPONDENT
THE HON. ATTORNEY GENERAL.....2ND
RESPONDENT
KAJIADO DISTRICT SURVEYOR.....3RD
RESPONDENT
KAJIADO DISTRICT LAND ADJUDICATION OFFICER.....4TH
RESPONDENT
AND

KAJIADO DISTRICT LAND ADJUDICATION OFFICER.....1ST INTERESTED PARTY

DANIEL NKAYIA OLE MUESENYA.....2ND INTERESTED PARTY

MATIPEI OLE NTEETU.....3RD INTERESTED PARTY

MOSES MOOKE LOONYSATI OLOLOUSA.....4TH INTERESTED PARTY

FRANCIS MANTA SIKINAN.....5TH INTERESTED PARTY

NTUMUNA OLE KOLEI NYOYKO.....6TH INTERESTED PARTY

ADAM WITHEY.....7TH INTERESTED PARTY

LILLIAN WAKIYA MWAURA8TH INTERESTED PARTY

RULING

(In respect of the 4th and 6th Interested Parties Notice of Motion dated 29th January, 2026 seeking eviction orders against the Petitioners and other persons)

Introduction

1. The 4th and 6th Interested Parties moved this court via a Notice of Motion dated 29th January, 2026. Invoking Order 51 of the Civil Procedure Rules, Sections 1A and 3A of the Civil Procedure Act, and

Sections 152A and E of the Land Act (Cap. 280), the Applicants seek the following orders:

- a. *That this Honorable Court be pleased to order the Petitioners to remove themselves and/or any other person that they may have placed on from all that piece of land known as KJD/OLKIRAMATIAN/14 forthwith and in default the Petitioners and/or such person(s) be forcibly evicted and vacant possession be given to the 4th Interested Party/Applicant.*
- b. *That this Honorable Court be pleased to order the Petitioners to remove themselves and/or any other person that that he may have placed from all that piece of land known as KAJIADO/OLKIRAMATIAN/22, 23 and 24 forthwith and in default the Petitioners and/or such person(s) be forcibly evicted and vacant possession be given to Jackson Lapot Ntumana, Patrick Parandai Ntumana, Olontasati Ntumana and Peter Ntaampi Ole Ntumana.*
- c. *That Benwill Auctioneers do effect and execute the above eviction orders.*

d. That the OCS Magadi Police station do offer security in ensuring compliance with the prayers above.

e. That the costs of this application be provided for.

2. The Motion relies on the supporting affidavit of Moses Mooke Loontasati, sworn on 29th January, 2025. The Applicants acknowledge that while the Petitioners originally challenged the ownership of the suit properties, their Petition was dismissed on 28th November, 2023. That dismissal followed a Preliminary Objection regarding this court's jurisdiction.

3. Despite the 6th Interested Party transferring parcels 22, 23, and 24 to new owners on 3rd October, 2024, the Applicants claim they are unable to utilize the land due to the "continued presence of the petitioners and other persons". They assert that vacation notices were served on 23rd September and 16th October, 2025, but were ignored. The Petitioners did not file a response, leaving the application unopposed.

Issues for determination

4. Considering that this petition was Petition was dismissed on 28th November, 2023, the critical issue that begs an answer is whether the

Applicants can then file an application as they have purported to in a non-existent matter.

Determination

5. The court's power to intervene in this matter was definitively extinguished on 28th November, 2023, when this court delivered a Ruling upholding a Preliminary Objection and dismissing the Petition with costs. By determining that it lacked the jurisdiction to entertain the suit, the court "downed its tools" and effectively terminated the proceedings. The proceedings were closed, the petition came to an end and ceased to exist.
6. Once a court makes a final determination on its jurisdiction and dismisses or strikes out a cause, it becomes functus officio. This doctrine, as articulated in *Telkom Kenya Limited v John Ochanda [2014] eKLR*, dictates that once a court has performed its duty and delivered a final decision, it has no power to re-examine or provide further orders in the same matter, save for clerical errors or specific statutory exceptions. As this court is now legally incapacitated regarding this suit, it cannot entertain a fresh application for eviction. The proceedings are closed. You cannot put something on nothing.

7. The court declines to consider the merits of the eviction request, as the jurisdictional barrier is absolute.
8. Furthermore, ownership of the parcels of land, the subject matters of the petition remain contested and the Applicants have not demonstrated that the Petitioners' claims were resolved in the appropriate forum. Where evictions orders are sought concerning a land whose title and ownership is contested, the dictum in *Julius L Marten v Caleb Arap Rotich [2021] KEELC 195 (KLR)* is instructive.

The court held as follows;

“From a reading of sections 152C, 152D and 152E of the Land Act, 2012 it is not clear how a party ought to approach the court for relief under section 152F. Is it by way of a formal suit and/or miscellaneous application as in the instant suit? Any eviction order has far reaching implications as it entails the removal forcefully of a party from land that he/she has been in occupation/possession of for some time. Before such an order is given the court must be satisfied on its merits which means any person who stands to be affected by any order the court may make is entitled to be heard. Section 152E relating to private land envisages that there is no dispute on ownership and the occupation is unlawful. What is the situation where there is no dispute on ownership and the occupation is unlawful? What is the situation where there is disputed ownership of the property?

In my view where the ownership is disputed the summary procedure that section 152F appears to contemplate would not be suitable and a formal suit would be advisable.

9. Consequently, I hereby strike out the 4th and 6th Interested Parties' Notice of Motion dated 29 January, 2026 but with no orders as to costs.

Orders accordingly.

Dated Signed and Delivered at Kajiado Virtually this 16th Day of April 2026.

M.D. MWANGI
JUDGE

In the virtual presence of:

N/A by Parties

Court Assistant: Alex

M.D. MWANGI
JUDGE