

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**  
**KAJIADO LAW COURTS**  
**ELCLC NO. E038 OF 2025**

**ALLAN GACHIRI RAGI ..... 1<sup>ST</sup>**  
**PLAINTIFF**  
**NJUGUNA WAHOME ..... 2<sup>ND</sup>**  
**PLAINTIFF**  
**WILSON WAKABA ..... 3<sup>RD</sup>**  
**PLAINTIFF**  
**JAMES MAINA ..... 4<sup>TH</sup>**  
**PLAINTIFF**

**VERSUS**

**FENNY BOSIBORI ..... 1<sup>ST</sup>**  
**DEFENDANT**  
**GESUMWA MAYIEKA ..... 2<sup>ND</sup>**  
**DEFENDANT**  
**NYAGATE MAYIEKA ..... 3<sup>RD</sup>**  
**DEFENDANT**  
**JEREMIAH MWEBI ..... 4<sup>TH</sup>**  
**DEFENDANT**

**RULING**

*(In respect of the 4<sup>th</sup> Defendant's notice of motion dated 3<sup>rd</sup> November 2025, brought pursuant to the provisions of sections 1A, 1B, & 3A of the Civil Procedure Act, Sections 98(4) 152A, 152B, 152E, 152F (2)(a) and (d) and 152G of the Land Act, No. 6 of 2012).*

**RULING KAJIADO ELCLC/E038/2025**

## **Introduction and background**

1. The 4<sup>th</sup> Defendant/Applicant's main prayer in the application under consideration is an order of eviction of the 1<sup>st</sup> Plaintiff from the suit property Ngong/Ngong/35216. He prays that this court confirms his notice of eviction dated 4<sup>th</sup> August, 2025 and an order of eviction from the suit property of the 1<sup>st</sup> Plaintiff, his agents, employees, servants and any other person(s) acting on his instructions who are placed and or in occupation of the suit property and vacant possession thereof be given to him. He further seeks the appointment of a court bailiff/auctioneer to execute the eviction order and that the officer commanding station (OCS), Ongata Rongai Police station, be directed to provide security during the eviction and to maintain law and order.
2. The application is premised on the grounds on the face of it and on the supporting affidavit of the 4<sup>th</sup> Defendant, Jeremiah Mwebi Mayieka. The 4<sup>th</sup> Defendant/Applicant asserts that he is the registered proprietor of Ngong/Ngong/35216 since 11<sup>th</sup> March, 2025 after he purchased it at a public auction

conducted by Garam Investments Auctioneers on 8<sup>th</sup> October 2024 following instructions from the Kenya Women Microfinance Bank PLC in exercise of the statutory power of sale and subsequent to a ruling by the High Court in civil suit No. E593 of 2021(**Allan Ragi vs Kenya Women Microfinance Bank PLC [2024]KEHC 7850 (KLR) (Commercial and Tax, 27<sup>th</sup> June, 2024)( Ruling)**).

3. The Applicant laments that since purchasing the suit property, he has been unable to access, gain entry into or have possession of it as the 1<sup>st</sup> Plaintiff has through his agents, servants and or employees and other person(s) acting on his instructions violently, intimidatingly and threateningly denied him entry, access and possession of the suit property. The 1<sup>st</sup> Plaintiff has therefore continued to occupy and possess the suit property, albeit unlawfully, with the assistance of armed men who have threatened the Defendants with violence and dire consequences. The Applicant asserts that ownership of the suit property is not in contention or in dispute.
4. The Applicant notes that an application by the 1<sup>st</sup> Plaintiff to prevent him from entering and taking possession of the suit

property was dismissed by this court with the court noting that the application was not about preserving justice but about preserving possession while forestalling title enforcement.

- 5.** The Applicant asserts that he has served the 1<sup>st</sup> Plaintiff with the requisite notice of eviction with copies of the same being served upon the relevant sub-county police commander, SCPC Kajiado North Sub-county (formerly officer in charge of police Division) and the Deputy County Commissioner, (DCC), Kajiado North sub-county. In spite of service, the 1<sup>st</sup> Plaintiff has not filed any application for relief against or in objection to the notice of eviction dated 4<sup>th</sup> August 2025, within three (3) months after service as by law required.
- 6.** In his supporting affidavit, the Applicant exhibits copies of his title to the suit property, an official search and green card confirming his ownership of the suit property. The notice of eviction of 4<sup>th</sup> August, 2025 too is exhibited accompanied by an affidavit of service dated 5<sup>th</sup> August 2025 confirming service.

7. The 1<sup>st</sup> Plaintiff's response to the 4<sup>th</sup> Defendant's application is the belated notice of Preliminary Objection dated 2<sup>nd</sup> March, 2026 which the court had occasion to consider in its ruling of 10<sup>th</sup> April, 2026. That ruling was in respect of an application by the 1<sup>st</sup> Plaintiff seeking leave to prosecute the said preliminary Objection. The court found that the 1<sup>st</sup> Plaintiff's application was unmerited and proceeded to dismiss it with costs to the 4<sup>th</sup> Defendant.
8. The 4<sup>th</sup> Defendant's application is therefore unopposed. The 4<sup>th</sup> Defendant/Applicant relies on the grounds on the face of the application and in the supporting affidavit of the 4<sup>th</sup> Defendant, Jeremiah Mwebi Mayieka.

### **Issues for determination**

9. Having considered the application dated 3<sup>rd</sup> November 2025, the supporting affidavit thereto as well as the pleadings before this court, that is to say, the Plaint by the 1<sup>st</sup> Plaintiff and the amended statement of Defence by the Defendants and Counter-claim by the 4<sup>th</sup> Defendant, the sole issue for determination is whether the orders sought by the 4<sup>th</sup>

Defendant/Applicant may lawfully issue at this stage of the proceedings.

### **Analysis and determination**

**10.** It is noteworthy that the 4<sup>th</sup> Defendant/Applicant has a Counter-claim in this case against the 1<sup>st</sup> Plaintiff. In the Defendants' statement of Defence and Counter-claim amended on 22<sup>nd</sup> October 2025, the 4<sup>th</sup> Defendant specifically counter-claims against the 1<sup>st</sup> Plaintiff asserting his ownership of the suit property, Ngong/Ngong/35216. He avers that he bought it for the sum of Kshs. 35,630,000/- at a public auction on 8<sup>th</sup> October, 2024 following an advertisement in the Standard Newspaper of 23<sup>rd</sup> September, 2024.

**11.** The 4<sup>th</sup> Defendant in his Counter-claim prays for;

***(i) The striking out of the Plaintiff's suit;***

***(ii) A declaration that he (4<sup>th</sup> Defendant) is the rightful and lawful owner of the suit property;***

***(iii) A declaration that he (4<sup>th</sup> Defendant) is entitled to exclusive and unimpeded right of possession and occupation of the suit property and that the alleged occupation of the Plaintiffs and or any other persons is illegal and unlawful;***

- (iv) A permanent injunction against the Plaintiffs, their employees, servants, representatives, agents or any other person(s) purporting to act on their behalf/instructions restraining them from occupying, alienating, collecting rent, trespassing and or in any other manner whatsoever dealing or interfering with the 4<sup>th</sup> Defendants ownership control, quiet possession and or title of the suit property;***
- (v) An order for accounts and payment to the 4<sup>th</sup> Defendant of rental income and mesne profits accrued/accruing from the suit property from October 2024, until the hearing and determination of this suit;***
- (vi) General damages for trespass, harassment and defamation; and***
- (vii) Costs and interest.***

**12.** Essentially therefore, in the context of the Counter-claim, the 4<sup>th</sup> Defendant's application is an application for summary judgement of part of his claim against the 1<sup>st</sup> Plaintiff. Such applications for summary judgement are governed by the provisions of **Order 36** of the **Civil Procedure Rules**. The established principle is that an application for summary judgement will not be allowed where the Defendant

demonstrates a reasonable prospect of success or raises bona fide triable issue(s).

13. The Court of Appeal in **Job Kilach vs Nation Media Group Limited, Salaba Agencies Ltd & Michael Rono (2015) eKLR**, stated that;

***“Before the grant of summary judgment, the court must satisfy itself that there are no triable issues raised by the Defendant, either in his statement of defence or in the affidavit of opposition to the application for summary judgment, or in any other manner.”***

***What then is a defence that raises a bona fide triable issue?***

***A bona fide triable issue is any matter raised by the Defendant that would require further interrogation by the court during a full trial. The Black’s law Dictionary defines the term “triable” as, “subject or liable to judicial examination and trial.” It therefore does not need to be an issue***

***that would succeed but just one that warrants further intervention by the court.”***

**14.** In **Giciem Construction Company vs Amalgamated Trade and Services LLR No. 103 CAK** which was quoted with approval in the above cited case by the Court of Appeal, the court held that;

***“A triable issue is said to exist if there is a dispute in the facts, which dispute can only be resolved after ventilation in a full hearing. As a general principle, where a defendant shows that he has a fair case for defence or reasonable grounds for setting up a defence or ever a fair probability that he has a bona fide defence, he ought to have leave to defend.”***

**15.** Considering the pleadings filed in this matter, more so the plaint by the 1<sup>st</sup> Plaintiff, I am not persuaded that this is a proper case for summary judgment. I do not agree with the 4<sup>th</sup> Defendant’s assertion that the issue of ownership was conclusively determined by the High Court in Nairobi Civil Case E593 of 2023. From my reading of the ruling of the

court, which is reported, what was before the High Court, was an interlocutory application seeking a temporary order of injunction to prevent the bank (chargee) from exercising its statutory power of sale. The application was dismissed. The 1<sup>st</sup> Plaintiff filed an application to review the ruling which too was declined by the court. Ownership of the suit property was not an issue for determination in either of the applications.

**16.** More importantly, this court in its ruling of 31<sup>st</sup> July, 2025 determined a similar application by the 4<sup>th</sup> Defendant dated 7<sup>th</sup> April 2025 whereby the 4<sup>th</sup> Defendant was seeking eviction orders; the same orders he seeks in the current application under consideration, rendering the application *res judicata*. This court is therefore statutorily barred under section 7 of the Civil Procedure Act from entertaining the application.

**17.** The upshot is that the 4<sup>th</sup> Defendant's application is dismissed but with no orders as to costs considering that the 1<sup>st</sup> Plaintiff did not participate in the hearing of the application..

It is so ordered.

**Dated, Signed and Delivered Virtually this 23<sup>rd</sup> Day of April, 2026.**

**RULING KAJIADO ELCLC/E038/2025**

**M.D. MWANGI**  
**JUDGE**

**In the virtual presence of:**

Mr. Manani for the 1<sup>st</sup> Plaintiff/Respondent

Mr. Gesumwa for the Defendants/4<sup>th</sup> Defendant/Applicant

Court Assistant: Peninah

**M.D. MWANGI**  
**JUDGE**