



**Machariah & another v Noble Star Academy & another (Environment and Land Miscellaneous Case E061 of 2025) [2025] KEELC 5964 (KLR) (29 August 2025) (Ruling)**

Neutral citation: [2025] KEELC 5964 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND MISCELLANEOUS CASE E061 OF 2025**

**CG MBOGO, J  
AUGUST 29, 2025**

**BETWEEN**

**JOSIAH MACHARIAH ..... 1<sup>ST</sup> APPLICANT**

**LANDAN MBOTE HUTHU ..... 2<sup>ND</sup> APPLICANT**

**AND**

**NOBLE STAR ACADEMY ..... 1<sup>ST</sup> RESPONDENT**

**MAURICE INGOI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before this court is the notice of motion dated 20<sup>th</sup> March, 2025 filed by the applicants and it is expressed to be brought under Section 3 and 3A of the [Civil Procedure Act](#) and Sections 9(1) and (2) of the Auctioneer Rules seeking the following orders:-
  1. Spent.
  2. That this honourable court be pleased to issue an Eviction Order against the respondents, directing them to vacate Plot No. 68 Komarock Shopping Center forthwith.
  3. That in default of compliance by the respondents, the Officer Commanding Kayole Police Station do provide assistance in enforcing the eviction orders.
  4. That, the costs of this application be in the cause.
2. The application is premised on the grounds on its face. It is further supported by the affidavit of the 1<sup>st</sup> applicant sworn on even date. The applicants deposed that the 2<sup>nd</sup> respondent sought to file an appeal out of time and their application was dismissed. He deposed that they sought for lifting of the stay orders which was granted through a ruling delivered on 23<sup>rd</sup> January, 2025 and that despite the orders, the respondents continue to occupy the suit property unlawfully. Further, that they have served them



with the notice to vacate, and it is necessary for this court to issue eviction orders and direct the OCS Kayole Police Station to assist in executing the eviction.

3. Julius Njoroge, the director of the 1<sup>st</sup> respondent filed his replying affidavit supposedly sworn on 25<sup>th</sup> April, 2025 in opposition to the application. He deposed that upon conducting due diligence, he entered into a sale agreement with the 2<sup>nd</sup> respondent for the sale and purchase of the suit property. That as from 4<sup>th</sup> March, 2020, he began construction of a school, and in January, 2025, they opened their school to learners until March, 2025 when he was served with the instant application. He deposed that upon further enquiry, he learnt that the suit had been heard and he was condemned unheard.
4. The 1<sup>st</sup> respondent deposed that he is not a servant or agent of the 2<sup>nd</sup> respondent, and that the orders that were issued were directed towards the 2<sup>nd</sup> respondent, and it does not apply to him. He urged the court to stay these proceedings pending the outcome of his application in ELC No. 618 of 2025.
5. The 1<sup>st</sup> applicant filed his supplementary affidavit in response thereto sworn on 9<sup>th</sup> May, 2025. The 1<sup>st</sup> applicant deposed that the 1<sup>st</sup> respondent attempts to distance himself yet his involvement with the suit property began during the pendency of the suit. Further, that he claims the court's decision does not affect him, yet he has no ownership documents. With reference to the application seeking stay of proceedings, he deposed that the same has not been served upon him which is a delay tactic. He maintained that the application seeks eviction of the 1<sup>st</sup> respondent who is unlawfully occupying the suit property.
6. The application was canvassed by way of written submissions. The applicants filed their written submissions dated 15<sup>th</sup> May, 2025 where they raised three issues for determination as follows:-
  - a. Whether the respondents have any lawful right or interest in plot no. 68 Komarock Shopping Centre.
  - b. Whether the continued occupation of the property by the respondents is unlawful.
  - c. Whether the applicants are entitled to eviction orders.
7. On all the three issues, the applicants submitted that the respondents have no lawful claim on the suit property, and that the 1<sup>st</sup> respondent had notice of the litigation and undertook development at his own risk. Further, they submitted that the principle of finality must be respected, and that the continued unlawful occupation of the suit property violates their rights as they have a final judgment and decree. The applicants relied on the cases of *E.T v Attorney General & Another* [2012] eKLR and *Kiptum v Birir & Another (Civil Appeal 66 of 2020)* [2023] KECA 482 (KLR).
8. The 1<sup>st</sup> respondent filed his written submissions dated 13<sup>th</sup> June, 2025 where he raised four issues for determination as listed below:-
  - a. Whether the 1<sup>st</sup> respondent has capacity to sue and be sued in the current form.
  - b. Whether there was proper notice of eviction served upon the 1<sup>st</sup> respondent.
  - c. Whether the current application has any merit.
  - d. Who bears the cost of this application.
9. On the first issue, the 1<sup>st</sup> respondent submitted that suing the business without the owner in a sole proprietorship makes the entire application incompetent. Reliance was placed in the cases of *Isaac Otieno Oduor v Mpaka holding Ltd* [2019] eKLR, and *Juliana Akinyi Owino v Kiarie Shoe Stores* [2014] eKLR. On the second and third issues, the 1<sup>st</sup> respondent submitted that the notice purported



to have been served upon the 1<sup>st</sup> respondent falls short of the requirement of Section 152E of the Land Act, and there is no proof that the deputy county commissioner and the officer commanding police division of the area were served. He relied on the case of *Opande v Opondo* (Environment and Land Miscellaneous Application 16 of 2023) [2024] KEELC 1702 (KLR)(4 April 2024)(Ruling). In conclusion, the 1<sup>st</sup> respondent deposed that the application ought to be dismissed with costs.

10. Before I delve further, there is need to point out a fundamental error as committed by the 1<sup>st</sup> respondent. He filed the replying affidavit sworn on 25<sup>th</sup> April, 2025 in opposition to the application. The same is stamped as received by the same firm that has drawn it. The affidavit has not been attested to by an advocate who is a commissioner for oaths, and it thus fails the test for admission as a document forming part of the pleadings in this application. The replying affidavit is hereby struck out.
11. With the above in mind, it is not difficult to find that the application is unopposed. However, it is necessary for the court to ascertain that which forms the issue for determination; whether the application is merited to warrant eviction orders.
12. Pursuant to the judgment delivered on 9<sup>th</sup> June, 2023 which was found in favour of the applicants, the court granted the following orders:-
  - a. The defendants are the legal joint owners of Plot No. 68 Komarock Shopping Centre.
  - b. A permanent injunction is hereby issued restraining the plaintiff either by himself, his servants, employees and/or agents from interfering with the defendants' possession, title and interest in Plot No. 68 Komarock Shopping Centre.
  - c. The plaintiff shall forthwith pay the defendants the sum of Kshs.690,170/- being the balance of the consideration for the contract between them for the services offered to Total Kenya Limited.
  - d. Interest on (c) above from the date of this judgment at court rates until payment is made in full.
  - e. The defendants are awarded the costs of the suit.
13. This judgment culminated from litigation conducted in ELC Case No. 648 of 2015 which was between the 2<sup>nd</sup> respondent and the applicants. The 1<sup>st</sup> respondent was not a party in this suit, and therefore did not participate in the proceedings. Secondly and as can be seen from the above, the court did not grant the orders of eviction and this prayer has been sought in the instant application to enable the applicants realize the judgment. While it is not disputed that the applicants are holders of a valid judgment, their procedure in attempting to execute eviction is wanting.
14. Section 152E of the Land Act, Cap 280 provides as follows:-
  - “(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.”

15. In the case of Atik Mohamed Omar Atik & 3 others v Joseph Katana & Another (2019) eKLR, it was held as follows:-

“In this regard, the first step in an eviction is for the lawful owner to serve a notice of eviction in accordance with the law. The essence of serving an adequate and reasonable eviction notice lies in the need to give the persons affected an opportunity to seek relief in court. Under Section 152E of the *Land Act*, any person or persons served with such notice may apply to court for relief against the notice.”

16. The applicants herein allege that they served the notice of eviction dated 25<sup>th</sup> February, 2025 and that the respondents have refused to vacate thus necessitating seeking these orders. However, and as it is clear, the procedure followed by the applicants falls short of all the requirements stipulated under Section 152E of the *Land Act*. It follows therefore that this court cannot issue the said orders. As earlier stated, the 1<sup>st</sup> respondent’s replying affidavit dated 25<sup>th</sup> April, 2025 is hereby struck out. The notice of motion dated 20<sup>th</sup> March, 2025 has no merit and it is dismissed with no orders as to costs.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY THIS 29<sup>TH</sup> DAY OF AUGUST, 2025.**

**HON. MBOGO C.G.**

**JUDGE**

**29/08/2025.**

In the presence of:

Mr. Benson Agunga - Court assistant

No appearance for the Applicants

No appearance for the Respondents

