



**Cherekweny v Cherekweny (Environment and Land Miscellaneous Application
E003 of 2023) [2024] KEELC 230 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 230 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E003 OF 2023
MC OUNDO, J
JANUARY 25, 2024
IN THE MATTER OF THE JUDGEMENT IN ELC NO. 56 OF 2013
IN THE MATTER OF KERICHO/KIPCHIMCHIM/4420**

BETWEEN

LILIAN CHEMUTAI CHEREKWENY APPLICANT

AND

RUTH CHELANGAT CHEREKWENY RESPONDENT

RULING

1. By a Notice of Motion Application dated June 27, 2023, brought under the provisions of section 152A, 152B and 153F of the *Land Act*, 2012, section 98(4) of the *Land Act* and regulation 65 of the *Land Registration (General) Regulations, 2017*, section 3A of the *Civil Procedure Act* and order 40 rules 1, 2, 3, 4, 5 and 9 of the *Civil Procedure Rules*, the Applicant herein seeks that the Honorable Court confirms the Eviction Notice dated 26th January, 2023 and orders the Respondent to remove herself, her children and/or any other person that she may have placed on all that parcel of land known as Kericho/Kipchimchim/4420 forthwith and in default the Respondent, her children and/or any other person be forcibly evicted and vacant possession be given to the applicant.
2. The Applicant further seeks that Mercy Chelangat Boiyan T/A Razor Sharp Auctioneers effect and execute the said eviction orders wherein the Officer in Charge of Ainamoi Police Post shall offer security to ensure compliance in a peaceful manner. That thereafter, there be a permanent injunction issued against the Respondent, her children, agents, servants, heirs or any other person claiming through her from trespassing into parcel No. Kericho/Kipchimchim/4420. That the court do grant any other order as it deems necessary and costs of the application.
3. The said Application was based on the grounds therein and a Supporting Affidavit of the Applicant sworn on the 27th June, 2023 to the effect that whereas she was the registered owner of parcel number



- Kericho/Kipchimchim/4420, the Respondent who is her co-wife is the beneficial owner of Kericho/Kipchimchim/4421 registered in the name of Raphael Kipkemoi Cherekweny, a husband to both parties.
4. That the above properties were carved out of Kericho/Kipchimchim/1702 which initially belonged to the family's patriarch whereby both the sub-divisions that is Kericho/Kipchimchim/4420 and Kericho/Kipchimchim/4421 were initially registered in the name of the parties' husband and it was the responsibility of each of the wives to initiate transfers to their own respective names.
 5. That she had prompted the registration of her parcel of land Kericho/Kipchimchim/4420 whereby she had been issued with her title deed on 10th October, 2013 (annexure LCC-1). That the Respondent while in occupation of a portion of her land had opted to file a suit against her husband in Kericho ELC No. 56 of 2013 wherein she sought inter alia a restriction of her registration as the owner of Kericho/Kipchimchim/4420. That vide a judgement dated and delivered on May 30, 2018, the court dismissed the said suit.
 6. That subsequently every effort to have the Respondent vacate her portion of land she had been occupying, including intervention by the local administration had not borne any fruits whereby to date, she has refused to vacate.
 7. That vide an Eviction Notice dated January 26, 2023, the Applicant had required the Respondent to vacate her land by April 25, 2023 but the Respondent had refused and/or neglected to vacate the suit land whereby through her children, she had threatened the Applicant with acts of violence. That the Respondent was currently putting up a structure on the suit land and unless the court intervened as a matter of urgency, she (Applicant) would suffer prejudice hence the court should issue eviction orders as prayed with the assistance of officer in charge Ainamoi Police Post.
 8. The Respondent did not file any response to the applicant's Application.

Determination.

9. I have considered the Application herein and the issue that stands out for determination is whether the Applicant is entitled to the orders sought in her application.
10. The Applicant's application dated the 26th June, 2023 is based on the fact that via a judgment delivered on the March 30, 2018 in Kericho ELC Case No. 56 of 2013 herein reported as *RCC v RKC* [2018] eKLR in which the Respondent had sought for the orders against her husband, the Defendant therein, as follows;
 - i. "Cancellation of the title deeds issued fraudulently and illegally in respect of the pieces of land registration numbers Kericho/Kipchimchim/4420 and Kericho/Kipchimchim/4421 and that the same be registered in her names.
 - ii. Order restricting the Defendant from allocating L.R No Kericho/Kipchimchim/4420 to Lillian Cherekweny (Applicant) or any other party without the consent of the Plaintiff."(Respondent herein)
11. The said suit had been dismissed. That thereafter on the 4th May 2012 she had registered himself as proprietor of LR No. Kericho/Kipchimchim/4420 and acquired the title on October 10, 2013. That she had subsequently issued an Eviction Notice dated the 26th January 2023 upon the Respondent who was in occupation of part of her land, requiring her to vacate from therefrom by 25th April, 2023 which Notice had been ignored and the Respondent continues to remain in forceful occupation of the land to the Applicant's detriment and proprietary right.



12. Section 24(a) of the *Land Registration Act* states as follows; -
- “the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto”.
13. The definition of the term “eviction” is captured under section 2 of the *Land Registration Act* (LRA) which defines eviction as,
- ‘the act of depriving or removing a person from the possession of land or property which they hold unlawfully either executed upon a successful law suit or otherwise’.
14. Section 152 E of the *Land Act* is to the effect that;
- ‘if 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’
15. The Applicant has beseeched this Court to grant eviction orders against the Respondent on the basis that there is already judgment in her favour as the registered proprietor of LR No. Kericho/Kipchimchim/4420. Coupled with this and having also noted that there had been an Eviction Notice served upon the Respondent through her postal address, wherein the Respondent has refused to vacate from the suit land, I am satisfied that the process as per the provisions in section 153E of the *Land Act* have been complied with.
16. Service of the application having been effected upon the Respondent as an opportunity to respond but she chose not to respond. I have no reason to decline this application. I thus allow the Application dated the 27th June, 2023 with the following orders;
- i. The Eviction Notice dated January 26, 2023 is herein confirmed. The Respondent shall remove herself, her children and/or any other person that she may have placed on all that parcel of land known as Kericho/Kipchimchim/4420 forthwith and in default she, her children and/or any other person be forcibly evicted therefrom in compliance with the provisions under section 152G of the *Land Act*, and vacant possession be given to the Applicant.
 - ii. Mercy Chelangat Boiyan T/A Razor Sharp Auctioneers shall effect and execute the said eviction orders under the security of the Officer in Charge of Ainamoi Police Post who shall ensure compliance in a peaceful manner. After the removal of the Respondent from the suit land, there is ordered a permanent injunction issued against her, her children, agents, servants, heirs or any other person claiming through her from trespassing into parcel No. Kericho/Kipchimchim/4420.
 - iii. The Respondent shall shoulder the costs of the application dated June 27, 2023 as well as the costs that the Applicant may incur in executing the eviction order.

It is so ordered.

DATED AND DELIVERED AT KERICHO VIA MICROSOFT TEAMS THIS 25TH DAY OF JANUARY 2024.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

