



**Umar v Elema & 23 others (Environment & Land Case
29 of 2019) [2024] KEELC 58 (KLR) (17 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 58 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 29 OF 2019**

**CK NZILI, J
JANUARY 17, 2024**

BETWEEN

ABDI NOOR UMAR PLAINTIFF

AND

ADAN MAMO ELEMA & 23 OTHERS DEFENDANT

RULING

1. By an application dated 5.10.2023, the court is asked by the plaintiff/applicant to;-declare that the defendants continued occupation of LR No. 11 Checheles Isiolo Township is unlawful, issue eviction and repossession of the suit premises and the OCS Isiolo Police Station to enforce the said orders.
2. The application is supported by the grounds on the face of the application, supporting and supplementary affidavits sworn by Abdi Noor Umar on 4.10.2023 and 25.10.2023, respectively. Further, the applicant relies on affidavits of service sworn by Ashaba Mark and Benson M. Murangiri on 15.6.2023 and 31.10.2023 respectively.
3. Briefly, the applicant avers an eviction notice under Section 152 E of the *Land Act* 2012 dated 15.6.2023 was served on 15.6.2023 upon the respondents, namely Samson Namdang Abdikadir Ali, Koricha Abdullahi Guyo, Abdi Rassa Cloto Edome and Nura Diba Bolla who accepted service and expressed intent to vacate but have remained on the land. The applicant avers that out of the 22 defendants, only the 6 respondents have refused to honor the decree or judgment delivered on 28.9.2022, and since there was no stay of the decree, it was only fair that the orders sought be granted.
4. This court's terms of the decree dated 21.10.2022 were that a permanent injunction was issued against the defendants for interfering with LR No. 11 at Checheles Isiolo Township. The plaintiff was also declared a bonafide owner entitled to vacant possession. The defendants were directed to surrender vacant possession and payment of Kenya shillings Ten million as general damages for trespass. This court has not seen a notice of appeal or stay from a superior court against the decree.



5. Further to that, the respondents were served with this application and notice to vacate, going by the affidavit of service by Mr. Ashaba Mark, advocate, sworn on 18.10.2023. No replying affidavit was filed to justify non-compliance with the decree or the notice. There is no dispute that the decree-holder is the registered owner of LR No. Isiolo/Block 2/11 situated in Isiolo Township as per the certificate of lease marked as annexure ANN "3" to the supporting affidavit.
6. The eviction process statutorily requires issuing a notice of 3 months to the illegal occupants who, under Section 152 of the Land Act, may move the court for relief. Once such an application is made, the court may confirm, vary or suspend or make additions to the notice as it deems equitable and just. Section 152A of the Land Act makes it illegal to unlawfully occupy private, community or public land. In carrying out an eviction, under Section 152 G (a) to (i) of the Land Act, there are mandatory requirements, including identification of those carrying out the eviction, presentation of an eviction order, respect for the dignity and the right to life and security of those affected, and the presence of government officials.
7. In this matter, the court found the defendants as illegal occupiers of the suit land. As per Regulation 65 of Legal Notice No. 289 of 2017, Form No. LA 57, in the 3rd Schedule the applicant, has issued a notice dated 15.6.2022. The notice was copied to the DCC Isiolo County, OCS Isiolo Police Station and the area chief.
8. In Atik Mohammed Omar Atik & others v. Joseph Katana & another (2019) eKLR, the court said the first step is to give a mandatory notice of not less than three months before the intended eviction day. In Julius Marten v Caleb Arap Rotich (2021) eKLR, the court said before issuance of an eviction notice, the court must be satisfied on its merits that there is no dispute as to whether ownership of the occupation is illegal and that there is an order capable of execution. See Muthithi Investments Ltd v. Andrews s. Kyendo & others (2020) eKLR, Benjamin Kimeli Tanui v Omari Salim Nasib & another (2020) eKLR, Salome Naliaka Wabwile v Alfred Okumu Musinaka (2020) eKLR and Mary Wangui Karanja & another v Rhoda Wairimu Karanja & another (2021) eKLR.
9. Having looked at the judgment and the events following its delivery, I think the respondents have shown no justification for not complying with the court's decree. I find the application with merit guided by the reasoning in the cited case law. The decree was issued over a year ago. Notice of three months has been effected. Court decrees are not made in vain. The issue of ownership of the suit was finally determined. Vacant possession was decreed to the plaintiff.
10. An eviction order is now issued against the six defendants still occupying the land to be supervised by the OCS Isiolo police station. Costs of the same are to be borne by the six defendants.

Orders accordingly.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 17TH DAY OF JANUARY 2024

In presence of:-

C.A Kananu/Mukami

Plaintiff

Ashava for applicant

HON. CK NZILI

JUDGE

