



**Kenya Assemblies of God Trustees & another v Obuya & 5 others (Environment & Land Case E086 of 2023) [2024] KEELC 4368 (KLR) (23 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4368 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E086 OF 2023**

**MD MWANGI, J**

**MAY 23, 2024**

**BETWEEN**

**KENYA ASSEMBLIES OF GOD TRUSTEES ..... 1<sup>ST</sup> PLAINTIFF**

**BISHOP CHARLES OWUOR ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**DANIEL OBUYA ..... 1<sup>ST</sup> DEFENDANT**

**ALLAN OYUGI ..... 2<sup>ND</sup> DEFENDANT**

**TITUS AMUKUNE ..... 3<sup>RD</sup> DEFENDANT**

**JAMES OKOTH ..... 4<sup>TH</sup> DEFENDANT**

**BONFAS OKUMU ..... 5<sup>TH</sup> DEFENDANT**

**LUCY WANGARI NDIRANGU ..... 6<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiffs instituted this suit vide the plaint dated 28th February, 2023 seeking Judgment against the Defendants jointly and severally for;
  - a. A declaration that the Defendants are illegally occupying the parcel of land in front of LR No. NAIROBI BLOCK 77/387 situated at Nairobi Buru Buru that is managed and owned by the Plaintiffs.
  - b. A permanent order of eviction, evicting the Defendants from the said parcel of land and all that is attached to LR No. Nairobi Block 77/387.
  - c. An order directing the O.C.S. Buru Police Station to ensure compliance of order (b) above.



- d. Costs of this suit.
  - e. Interest on (d) above.
  - f. Any other order that this Court deems fit.
2. The Plaintiffs' case is that they are the registered proprietors of the parcel of land known as Nairobi Block 77/387 situated in Nairobi Buru Buru (hereinafter referred to as 'the suit property'). The Plaintiffs aver that they have been in possession of the said parcel for over 10 years and have actually built a place of worship thereon.
  3. The Plaintiffs aver that the Defendants are occupying the frontage of the suit property making it impossible for the Plaintiffs to maintain the foot path and have the gate uplifted at the entrance to their parcel of land and to build a perimeter wall despite having been issued with the necessary approvals by the Nairobi City County government.
  4. The Plaintiffs assert that despite issuing the Defendants with eviction notices which have since lapsed, the Defendants continue to encroach on the frontage of the premises in total disregard to the Plaintiffs' rights. The Notice to Vacate was duly served upon the Defendants on the 29th July, 2022. The Defendants however declined to receive and acknowledge the notice which was pinned and/or attached at their gate.
  5. The Defendants, despite being served with all the summons to enter appearance did not enter appearance and or file a statement of defence. Pursuant to Order 10 Rule 9 of the Civil Procedure Rules, the case was set down for hearing on 19th February, 2024. It proceeded as an undefended case.

### **Evidence**

6. Mr. Elvis Njeru Irungu, a Pastor with the 1st Plaintiff testified as PW1. He was the only witness and testified for both Plaintiffs. He produced the documents on the Plaintiff's List of Documents dated 28th February, 2023. They were marked as exhibits PE 1-3 in the order in which they are listed.
7. PW 1 stated that they wish to build a gate at the entrance of the church. The Defendants have been squatting there and have established a garage thereon. He stated that the Defendants have refused to move to enable them build a gate as well as a perimeter wall and beautify the place. He maintained that the Defendants have been served with a Notice to Vacate but they are defiant.
8. The witness further testified that the Defendants have occupied the area where the Plaintiffs intend to build their gate and obstructed them from freely accessing their property. The Witness contends that despite obtaining approvals from the Nairobi City County Government, the Plaintiffs are unable to build the gate. He averred that the Notice to Vacate was served upon the 1st Defendant, who is the chairperson of the 'squatters'.

### **Court's direction**

9. The court directed the Plaintiffs to file written submissions. They complied. The Plaintiffs submissions are dated 20th March, 2024. The Court has had the chance to peruse the same together with the cited authorities and it shall consider them in its determination.



### **Issues for determination**

10. With the foregoing outline of the pleadings, litigation history, evidence and submissions and of course the relevant law, the issues for determination are;
  - a. Whether the Plaintiffs have complied with the procedural requirements under the law to justify issuance of eviction orders.
  - b. What orders should issue in regard to costs.

### **Analysis and Determination**

11. Although the suit was undefended, the Plaintiffs have a duty to formally prove their case on a balance of probabilities as is required by law. In the case of *Kirugi and Another –vs- Kabiya & 3 Others* (1987) KLR 347, the Court of Appeal held that;

“The burden was always on the Plaintiff to prove his case on a balance of probabilities even if the case was heard as formal proof. Likewise, failure by the Defendant to contest the case does not absolve a plaintiff of the duty to prove the case to the required standard.”
12. Similarly, in the case of *Gichinga Kibutha –vs- Caroline Nduku* (2018) eKLR, the Court held that;

“It is not automatic that (in) instances where the evidence is not controverted the Claimant shall have his way in Court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest.”
13. The Land Laws (Amendment) Act 2016, which came into operation by virtue of the Presidential Assent on 31st August 2016, brought forth radical changes to the eviction regime in this country. One of the novel features of the Act was the introduction of an elaborate procedure that governs evictions of persons deemed to be unlawfully occupying either public, community or private land.
14. 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 court in the case of *Atik Mohamed Omar Atik & 3 Others -vs- Joseph Katana & Another* (2019) eKLR, stated as follows on the procedure for eviction of persons unlawfully occupying public, community or public land:

“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.”
15. The legal provision for an eviction notice from public land provides that any evictees from public land should be notified in writing, by notice in the Gazette and in one newspaper with nationwide circulation and by radio announcement, in a local language, where appropriate, at least three months before the eviction.
16. Eviction from private land is under Section 152E of the Land Laws (Amendment) Act No. 28 of 2016. The said section provides as follows: -

#### ***152E. Eviction Notice to Unlawful Occupiers of Private Land***

SUBPARA 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;
- a. 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
- b. Be served on the Deputy County Commissioner in charge of the area as well as the Officer Commanding the Police Division of the area.

17. Section 152 (E) & (G) of the Land Laws (Amendment) Act No. 28 of 2016 clearly provides that the notice to vacate must be issued not less than three months before the intended date of eviction. Therefore, whether the Defendants are occupying public land or private land they are still entitled to three (3) months' notice.

18. Regulation 65 of Legal Notice 280 of 2017 (Land Regulations) provides as follows:

65. Upon establishing that a particular parcel of private land is unlawfully occupied, the owner of the land shall issue a notice in Form LA 57 set out in the Third Schedule to the unlawful occupiers to vacate the land.

19. This part of the Act was enacted after the observation by Mumbi J (as she then was) in the case of *Mitu-Bell Welfare Society -vs- Attorney General & 2 others* [2013] eKLR, that,

“.... This country has yet to develop legislation and guidelines for eviction of persons occupying land which they are not legally entitled to occupy. However, as a member of the international community and a signatory to various United Nations treaties and conventions, it is bound by such international guidelines as exist that are intended to safeguard the rights of persons liable to eviction. Article 2(5) and (6) of *the Constitution* make the general rules of international law and any treaty or convention that Kenya has ratified part of the law of Kenya. Consequently, the state, state organs and all persons, in carrying out evictions, should do so in accordance with the United Nations Guidelines on Evictions as enunciated by the United Nations Office of the High Commissioner for Human Rights in General Comment No. 7.”

20. The UN guidelines requires appropriate procedural protection and due process as essential aspects of all human rights and especially in relation to a matter such as forced evictions which directly invoke a large number of rights recognized in the two International Covenants on Human Rights. The procedural protections which should be applied in relation to forced evictions include:

- a. an opportunity for genuine consultation with those affected;



- b. adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
  - c. information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
  - d. especially where groups of people are involved, government officials or their representatives to be present during an eviction;
  - e. all persons carrying out the eviction to be properly identified;
  - f. evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;
  - g. provision of legal remedies; and
  - h. provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.
21. In the matter before me, the Plaintiffs contend that the Defendants were served with an Eviction Notice on 29th July, 2022 and that, in spite of the notice, they have failed, refused and/or neglected to vacate thereby necessitating this suit.
  22. I have perused and considered the Notice adduced herein. First and foremost, the Notice served upon the 1st Defendant is dated 29th August, 2022 and not 29th July, 2022 as alleged by the Plaintiffs. Other than the Notice itself, there is no proof of service upon the Defendants. There is no Affidavit of Service sworn by a Process Server confirming the assertions. It was further stated the notice was served on the chairman of the squatters. Section 152 E requires personal service on each of the intended evictee.
  23. I further note that the Plaintiffs have not complied with the provisions of Section 152E (2) which requires that the Notice should specify any terms and conditions on the removal of buildings moreso, since the Defendants are operating a garage at the impugned space. In addition, the Plaintiffs have not served the Deputy County Commissioner in charge of the area as well as the Officer Commanding the Police Division of the area.
  24. Given the obvious repercussions of such an Eviction Notice wherein the persons may be evicted in the absence of a formal Court order, this Court is reluctant to endorse such an eviction in the absence of the clearest of indications that the would-be evictees were duly served and granted adequate notice to remove themselves from the concerned parcel of land. More fundamentally, the mandatory procedures have not been complied with.
  25. I too note from the Plaint that the Plaintiffs intend to evict the Defendants from the frontage of their land. The frontage does not and cannot form part of the Plaintiffs' land. It is certainly public land; a road reserve. The eviction notice to the alleged illegal occupiers, in case of public land, should be issued by the National Land Commission which is required to cause a notice relating to an eviction from public land to be issued to all persons concerned, in writing by notice in the gazette and in one newspaper with nationwide circulation and by radio announcement (where appropriate) at least three (3) months before the eviction.
  26. The import of the above statutory provision is that the Plaintiff should have started by making a complaint to the National Land Commission which in turn would have investigated the complaint and made a decision before issuance of the notice in accordance with the above cited section of the [Land Act](#).



27. In the circumstances, I am not satisfied that the Plaintiffs complied with the Law before filing the suit. There was no adequate and reasonable notice to all affected persons. All the Defendants have not individually been served as by law required. Accordingly, I decline to grant the orders of eviction sought herein and proceed to strike out the Plaintiffs' suit.

28. Since the Defendants' have not participated in this suit, I will not condemn the Plaintiffs to any costs..

**Conclusion**

29. The upshot is that the Plaintiffs suit is struck-out but with no orders as to costs.

It is so ordered.

JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23<sup>RD</sup> DAY OF MAY, 2024.

**M.D. MWANGI**

**JUDGE**

**In the virtual presence of:**

Mr. Odhiambo for the Plaintiffs

N/A for the Defendants

Yvette: Court Assistant.

**M.D. MWANGI**

**JUDGE**

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