



REPUBLIC OF KENYA



KENYA LAW
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Kavu & 8 others v Marogo aka Chibwanda (Environment & Land Case E067 of 2022) [2024] KEELC 7146 (KLR) (29 October 2024) (Ruling)

Neutral citation: [2024] KEELC 7146 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE E067 OF 2022
NA MATHEKA, J
OCTOBER 29, 2024**

BETWEEN

**JABALI CHONDO KAVU 1ST PLAINTIFF
DAVID YAMO ADEMBA 2ND PLAINTIFF
DAVID GUDAHI 3RD PLAINTIFF
EVANSON SIMON KINYANJUI 4TH PLAINTIFF
SAIDA OMAR RAJAB 5TH PLAINTIFF
PAUL NZAU KIVUVA 6TH PLAINTIFF
ESHE SALIM AWADH 7TH PLAINTIFF
STEPHEN MUANGE MUTUA 8TH PLAINTIFF
YONAS KARIUJI MOGES 9TH PLAINTIFF**

AND

SULEIMAN OMAR MAROGO AKA CHIBWANDA DEFENDANT

RULING

1. The application dated 17th July 2024 and is brought under Order 40 Rule 3(1)1, Order 51 Article 1 of the Civil Procedure Rules and Sections IA, 1B and 34 of the *Civil Procedure Act* seeking the following orders;
 1. That this application be certified as urgent and heard ex-parte in the first instance and as a matter of urgency
 2. That the Honourable court be pleased to issue orders of eviction of the Defendant/ Respondent, his servants, agents, assigns and/or employee from the property known as Plot



No. 356/11 MN registered in the Mombasa Lands District Registry situated in Utange Mombasa for vacant possession of the property to be delivered to the Plaintiffs/Applicants.

3. That the Honourable court be pleased to issue orders for the demolition of structures erected by the Defendant/Respondent, in the property known as Plot No. 356/11 MN situated in Utange Mombasa at the defendant's costs.
 4. That the officers commanding Bamburi Police Station (OCS) be ordered to assist in the enforcement of the order.
 5. That the costs of this application be provided for.
2. It is based on ground inter alia that on the 28th of February 2024 the Hon. Justice Nelly A. Matheka delivered judgment in the suit herein against the Defendant. That in the said Judgment the Defendant/Respondent was issued with a permanent injunction restraining him from trespassing, encroaching and claiming rights over all that property known as plot no. 356/11 MN in the Mombasa Lands District Registry situated in Utange Mombasa. That the Defendant was further issued with a mandatory injunction compelling him to move out and remove all the construction materials deposited on the said property known as plot no. 356/11 MN situated in Utange Mombasa within 90 days from the date of the said judgment. That the Defendant was served on the 21st of March 2024 with a copy of the decree dated 19th March 2024. That the Defendant is yet to comply with the court orders in which he has remained in occupation of the suit property known as plot no. 356/11 MN situated in Utange Mombasa and has further refused to vacate from there despite being made aware of the existing valid court orders.
3. The court has considered the application and the submissions filed therein. The application was unopposed. The issue for consideration is whether the application has merit or not and who bears the costs?
4. When it comes to unopposed applications the Supreme Court of Kenya in *Gideon Sitelu Konchellah vs. Julius Lekakeny Ole Sunkuli & 2 others* (2018) eKLR held that:
- “...as a court of law, we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the Court will as a matter of course grant the sought orders. It behooves the Court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted. The Court is under a duty to look at the application and without making any inferences on facts point out any points of law, such as any jurisdictional impediment, which might render the application a non-starter. We see no such jurisdictional issue in the application before us. Hence we have proceeded to consider the facts before us as against the jurisprudence for grant of stay orders set by this Court...”
5. The instant application seeks eviction and for demolition of the structures put up by the defendant as well as the escort by the OCS Bamburi Police Station. Evictions are regulated under sections 152B to 152I of the *Land Act* Cap 280. I find that this court has already determined this suit in favour of the plaintiff and gave orders of permanent injunction restraining the Defendant from trespassing and a further order of mandatory injunction for demolition of structures, the Defendant has refused to vacate and offers no explanation. I find that there are procedures to be followed before eviction of the Defendant which is provided in section 152E of the *Land Act* and also in line with the provisions of section 152G. I find this application is merited and I grant the following orders;



1. That the Defendant/Respondent, his servants, agents, assigns and/or employee vacates from the property known as Plot No. 356/11 MN registered in the Mombasa Lands District Registry situated in Utange Mombasa within 60 (sixty) days upon service of this orders in default eviction orders to issue.
2. That the officers commanding Bamburi Police Station (OCS) be ordered to assist in the enforcement of the order.
3. That the costs of this application to be borne by the Defendant/Respondent.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 29TH DAY OF OCTOBER 2024.

N.A. MATHEKA

JUDGE

