



**Gacheri v M'ikinyua; Kagwiria (Intended Interested Party) (Environment & Land Case 201 of 2012) [2024] KEELC 13369 (KLR) (20 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13369 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE 201 OF 2012  
CK NZILI, J  
NOVEMBER 20, 2024**

**BETWEEN**

**ROSE GACHERI ..... PLAINTIFF**

**AND**

**GEDION M'IKINYUA ..... DEFENDANT**

**AND**

**TRIPOSA KAGWIRIA ..... INTENDED INTERESTED PARTY**

**RULING**

1. The applicant has brought this application dated 9.10.2024 premised under Order 51 of the Civil Procedure Rules, Sections 1A and 3A of the *Civil Procedure Act* and Sections 152 A & E of the *Land Act*. She is seeking an eviction order against the intended interested party, whom this court, in two rulings dated 19.6.2024 and 18.9.2024, declined to join as a party to this suit, from L.R No. Nthimbiri/Igoki/668 (the suit land); vacant possession and for the OCS Meru Police Station to provide security.
2. The grounds on the application and in the applicant's affidavit of 9.10.2024 are that the applicant is the absolute proprietor of the suit land; the court, in its judgment dated 18.12.2017, canceled the title deed in the name of John Gachau Ikinyua and ordered it to be registered in the applicant's name. The applicant avers that the interested party has continued to occupy the suit land in defiance of the court orders for over 8 years, despite her demand for peaceful transfer and occupation of the suit land.
3. The applicant also avers that she has not been able to access or develop the suit land, and thus, the acts of the interested party are an infringement of her constitutional right to own property. She annexed and marked the judgment and the decree as R.G. 1& 2.
4. The interested party opposed the application through a replying affidavit sworn on 24.10.2024. She avers that the application is misconceived and is an abuse of the court process; she is out to scuttle the



pending appeal Nyeri Civil Application No. E099 of 2024, against this court's ruling of 18.9.2024, where directions have already been issued. She annexed and marked the directions of the Court of Appeal as T.K. "1".

5. Similarly, the intended interested party that the applicant is out to extinguish the substratum of the appeal annexed as T.K. "2". She also avers that there has not been any order issued or served against her, which she has defied as she only came to learn about the judgment when an eviction letter dated 6.2.2024, was served upon her, and such eviction has to be in accordance with the law, by issuance of a 3 months' notice which has not been done.
6. The Land Laws (Amendment) Act 2016, which came into operation by virtue of the Presidential Assent on 31 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.
7. Eviction from private land is governed by 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. " If with respect to private land, the owner or the person in charge is of the opinion that a person is in occupation of their 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 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".
8. 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 respondents are occupying public land or private land, they are still entitled to three (3) months' notice.
9. Regulation 65 of [Legal Notice No. 280 of 2017](#) (Land Regulations) provides as follows:

" 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..."
10. The law came in after the judgment in *Mitu-Bell Welfare Society vs Attorney General & 2 others* [2013] eKLR, where the court had held 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. Articles 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."
11. The U.N. guidelines require appropriate procedural protection and due process as essential aspects of all human rights, 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 that should be applied in relation to forced evictions include: an opportunity for genuine consultation with those affected; adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; 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; 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 identified appropriately; evictions not to take place in particularly bad weather or at night unless the affected person consent otherwise; provision of legal remedies; and provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts, as held in Kenya Assemblies of God Trustees & another vs Obuya & 5 others (Environment & Land Case E086 of 2023) [2024] KEELC 4368 (KLR) (23 May 2024) (Judgment)

12. In this application, the guidelines now part of our land law have not been met by the applicant in efforts to evict the interested party. Only a 14 days' notice letter is said to have been issued. That notice falls short of the standards to be adhered to as set out in the laws and cases above cited.
13. The order for eviction is denied. It follows, therefore, that the other subsequent orders sought cannot be issued. The application is, therefore dismissed for want of merits with no order as to costs.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 20TH NOVEMBER, 2024**

In presence of

C.A Kananu

Parties

Riungu for the plaintiff

Ng'entu for interested party

**HON. C K NZILI**

**JUDGE**

