Competing Occupier Defence and Counterclaim Unproved Source Position

Educational sample 464 | Machakos

Educational reconstruction from a reported Kenyan decision. Newly drafted wording, not an original court filing or a matter handled by our team. Specimen identities are bracketed. Adapt to genuine facts, current law, jurisdiction and court directions before signing, swearing or filing.

Reconstructed formal document

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ENVIRONMENT AND LAND CASE NO [reference]

[CLAIMANT] v [RESPONDENT]

RESPONSE AND COUNTERCLAIM

1. The second Defendant denies the Plaintiffs asserted right to the occupied portions and claims [alternative parcel description]. The exact source of acquisition, predecessor and transfer instrument are [truthfully completed]. A title copy is not pleaded as a substitute for that root.

2. The second Defendant admits [identified developments and occupation] but disputes that they constitute trespass. The location of those works relative to the Plaintiffs plots must be established through admissible survey evidence.

3. The alleged irregularity or fraud in the Plaintiffs transactions is particularised as [specific acts, actors and documents]. Unsupported suspicion and a general reference to limitation are insufficient; the actual legal and factual basis is [set out].

4. By counterclaim the second Defendant seeks [precisely identified ownership or possession relief] against [proper parties]. Any cancellation prayer must identify an existing registered instrument, the statutory ground and persons affected.

5. The counterclaim is supported by [genuine acquisition, survey and occupation documents] and [available witnesses]. If these cannot be proved, a pleaded assertion will not cure the evidential failure. Any third-party buyer interests must be disclosed and properly addressed.

6. The second Defendant seeks dismissal of the Plaintiffs claim and the counterclaim relief only to the extent lawfully established, with costs. This reconstruction reflects a position that failed in the source case when no evidence was presented; it supplies no missing title or testimony.

DATED at [place] on [date]. Signed [party or advocate]. DRAWN AND FILED BY [name and address for service]. TO BE SERVED UPON [each affected person and address].

Use and evidence notes

Use ordinary ELC civil defence and counterclaim procedure: complete jurisdiction, precise admissions and denials, affirmative relief, fees, proper parties, genuine witness and document evidence and lawful service. This is substantive wording, not the complete filing pack. Use ordinary ELC civil defence and counterclaim procedure, not a lease-specific or Small Claims form. The source counterclaim was dismissed for want of prosecution.

Supporting material: [date]; [author or custodian]; [description]; [bundle page]; [authenticating witness]; [admission or permission]. Attach genuine records only. This public specimen contains no exhibits, signatures, personal identifiers or sworn declaration.

Source and procedural limits

Fifty-seven plot purchasers relied on agreements, fresh allotment letters and payment receipts issued through the registered co-operative proprietor. A competing occupier claimed a different parcel subdivision, developed the land and counterclaimed. A survey officer could find no records for the asserted subdivision. The co-operative supported the buyers; the competitor called no evidence.

The Court ordered permanent protection, vacation by the competitor within 90 days and transfer by the co-operative within 30 days, with authorised execution of documents on default. The non-existent-title cancellation prayer and unexplained general damages were refused. The competitor counterclaim was dismissed and it bore costs; the registrar and Attorney General claims were dismissed without costs.

Each purchaser must connect a genuine transaction to an identified plot. An allotment or title copy cannot replace proof of lawful acquisition. Co-operative jurisdiction had been determined on the particular dispute; no blanket rule bypassing section 76 follows. Police assistance and enforcement periods require the actual order.

[2025] KEELC 195 (KLR) - 22 January 2025. Source decision: https://new.kenyalaw.org/akn/ke/judgment/keelc/2025/195/eng@2025-01-22

Reproduced primary text checked: https://sheriahub.com/cases/ke/caselaw/mungaru-56-others-v-kamulu-housing-cooperative-society-3-others-2025-keelc-195-klr

The original decision may identify participants. The specimen brackets identifying details. A source judgment does not prove this reconstruction was filed, an allegation succeeded, a later order remains unchanged or the same result will follow in another case.