

EVICTON OF SQUATTERS IN ILLEGAL OCCUPATION OF PRIVATE LAND

1. Eviction of squatters

“Squatter” is defined in the Black’s Law Dictionary, 9th Edition as; “a person who settles on property without any legal claim or title”. The same was reiterated in **Salome Mwihaki Njenga & Others (Suing as Chairlady, Treasurer And Secretary Of Twiga Estate Squatters Society) versus Hon. Attorney General Of Kenya & Others [2016] eKLR.**

“Squatter” defined by **Section 2 of the Land Act, 2012** means a person who occupies land that legally belongs to another person without that person’s consent.

The procedure for conducting eviction of unlawful occupants/squatters of land is governed by **Sections 152A to 152I of the Land Act, 2012** and is set out as follows:

1.1. Notice

A person/entity that wishes to evict unlawful occupants from their land must first issue a notice of not less than three months before the date of the intended eviction to the said occupants stating the intention to evict. In a case involving private land, such notice must be issued by the owner or the person in charge. This notice which relates to private land as provided for under **Section 152E of the Land Act, 2012** must: -

- a) Be in writing and in a national and official language;
- b) 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 since this case involves a large group of persons;
- 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.

1.2. Application for Relief

Once the notice is served, the recipient has the right to apply to the court for relief. If such an application is made the Court may, upon consideration: -

- a) confirm the notice and order the person to vacate;
- b) cancel, vary, alter or make additions to the notice on such terms as it deems equitable and just;
- c) suspend the operation of the notice for any period which the court shall determine; or
- d) order for compensation.

1.3. Eviction

Once the notice is confirmed by the court, and the period lapses, the person that issued the notice may thereafter proceed with the eviction. However, pursuant to **Section 152G of the Land Act, 2012** all evictions must be carried out in strict accordance with the following procedures: -

- a) be preceded by the proper identification of those taking part in the eviction or demolitions;
- b) be preceded by the presentation of the formal authorizations for the action;
- c) where groups of people are involved, government officials or their representatives to be present;
- d) be carried out in a manner that respects the dignity, right to life and security of those affected;
- e) Include special measures to ensure effective protection to groups and people who are vulnerable such as women, children, the elderly, and persons with disabilities;
- f) include special measures to ensure that there is no arbitrary deprivation of property or possessions as a result of the eviction;
- g) include mechanisms to protect property and possessions left behind involuntarily from destruction;
- h) respect the principles of necessity and proportionality during the use of force; and
- i) give the affected persons the first priority to demolish and salvage their property.

In addition, in order to prevent any violation of the human rights of squatters, the evictions must be conducted 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 “The right to adequate housing (Art.11.1): forced evictions: (20/05/97) CESCR General comment 7. (General Comments).”** Paragraphs 15 and 16 provide that eviction procedures must also include:

- a) an opportunity for genuine consultation with those affected;
- b) 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;
- c) all persons carrying out the eviction to be properly identified; and
- d) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;

Failure to adhere to the right eviction procedure could lead to the registered proprietors of the land being held liable for human rights violations. This may result in payment of compensation.

Prepared by: Racheal Wambui, Advocate.

Email: rwambui@mumakanjama.com



Should you need further advice or an introductory meeting with us, contact us on:

Email: info@mumakanjama.com Tel: [+254-20-2216889/221143](tel:+254-20-2216889/221143)

Muma & Kanjama Advocates

I & M Bank House, 4th Floor, 2nd Ngong' Avenue

P.O. Box 528 - 00100 Nairobi, Kenya

Wireless: +254 20 2716548

Direct Line: +254 712 849 233 | **Website:** www.mumakanjama.com

Our offices: 4th Floor, I&M Bank House, along 2nd Ngong' Avenue (opposite National Library)