



REPUBLIC OF KENYA



**Khang’ati (Suing as Legal Representative of the Estate of the Late David Khang’ati Peter Wafula)
v Wanyonyi (Civil Appeal E025 of 2024) [2024] KEHC 9854 (KLR) (26 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 9854 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL APPEAL E025 OF 2024**

REA OUGO, J

JUNE 26, 2024

BETWEEN

**MONICA OMUKOKO KHANG’ATI (SUING AS LEGAL REPRESENTATIVE
OF THE ESTATE OF THE LATE DAVID KHANG’ATI PETER
WAFULA) APPELLANT**

AND

VINCENT WANYONYI RESPONDENT

RULING

1. Having listened to the counsels on the preliminary objection to the Motion dated 10th June 2024, I find that I lack jurisdiction to handle this matter. From the plaint filed in the lower court in Bungoma MCELC NO.7 of 2019, which was not attached to the supporting affidavit when the matter came under the certificate of urgency and interim orders were given, clearly paragraph 8 of the said plaint indicates that the plaintiff was seeking peaceful occupation and enjoyment of the land parcel that was being interfered with. Occupation in plain English includes the use of the land which is mentioned in Articles 162 (2) of the *Constitution* 2010. The orders given were a result of the plaintiff’s claim in the plaint dated 26.10.2018. This is after the parties were heard.
2. I cannot now acquire jurisdiction as a result of the order on restitution. The issue is not the rights of the applicant. Jurisdiction stems right from the time the plaint was filed in the lower. The matter belongs to the ELC court as correctly submitted by the respondent’s counsel. Had I seen the plaint I would have been guided on what orders to give. It has now been brought to my attention and with the pleadings before I must say to the applicant that this court lacks the jurisdiction to entertain the appeal and the application before it.
3. The application and appeal are therefore struck off. The applicant has an avenue to go before the ELC court. Each party is to bear its costs. The file is closed.



DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 26TH DAY OF JUNE, 2024

R.E OUGO

JUDGE

In the presence;

Miss Chungu for the Appellant/Applicant

Mr. Bwonchiri for the Respondent

Wilkister - C/A

