



**Mburu v Kimani & 5 others (Environment & Land Miscellaneous Case 5 of 2023) [2023] KEELC 20145 (KLR) (22 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20145 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND MISCELLANEOUS CASE 5 OF 2023  
A OMBWAYO, J  
SEPTEMBER 22, 2023**

**BETWEEN**

**LUCY NJERI MBURU ..... APPLICANT**

**AND**

**DAVID WARUI KIMANI ..... 1<sup>ST</sup> RESPONDENT**

**JAMES KIMANI KARANJA ..... 2<sup>ND</sup> RESPONDENT**

**SAMUEL KAMAU KARANJA ..... 3<sup>RD</sup> RESPONDENT**

**MARY WAMBUI MAINA & 2 OTHERS ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. Lucy Njeri Mburu (hereafter referred to as the applicant) has come to court against the defendants for final orders of eviction from the parcel of land number Nakuru Municipality Block 27/547. She further prays for an order of permanent injunction restraining the defendants from entering, interfering with the said parcel of land. The applicant alleges that the respondent trespassed on the suit land despite the fact that the applicant is the registered owner. The respondents appear to be in possession of the suit parcel of land from the year 2007. The applicant does not tell the court when they trespassed.
2. This court will not go into the details of the application because the application is defective as it is not premised on any suit brought by form of plaint, originating Summons, originating notice of motion or petition. This court cannot issue an order of eviction on a notice of motion without hearing the parties viva voce and the only way it can hear parties is through a suit. Articles 40 of the [Constitution of Kenya 2010](#) does not allow a party to apply for eviction by way of a Notice of Motion.



3. The issue for determination is whether a party can seek to enforce a right through a miscellaneous application. The Applicant has sought for a permanent injunction and eviction orders against the Respondents herein.

4. As a general rule, suits are instituted by way of a Plaint unless the rules prescribe any other manner. Order 3 Rule 1 of the [Civil Procedure Rules](#) stipulates that: -

“Every suit shall be instituted by presenting a plaint to the court or in such other manner as may be prescribed.”

Similarly, Section 19 of the [Civil Procedure Act](#) provides that: -

“Every suit shall be instituted in such manner as may be prescribed by the rules.”

5. For an action for permanent injunction to succeed, there must be in existence a suit which should be heard and determined.

6. In the case of *Joseph Kibowen Chemor Vs William C Kasera* (2013) eKLR the court defined the filing of suits as follows;

“The word “suit” has several meanings. Black’s Law Dictionary defines “suit” as any proceedings by a party or parties against another in a court of law. Suit of a civil nature is defined to be a civil action.

A civil action is an action brought to enforce, redress, or protect a private or civil right.

Rules means rules and forms made by the Rules Committee to regulate the procedure of courts.

Pleadings include a petition or summons and the statements in writing of the claim or demand of any Plaintiff and of the defence of any Defendant thereto, and of the reply of the Plaintiff any defence or counter claim of a Defendant.

Section 2 of the Civil Procedure Act defines “suit” as all civil proceedings commenced in any manner prescribed under section 2 means prescribed rules.

Under section 19 of the Civil Procedure Act, every suit shall be instituted in such manner as may be prescribed by the rules. It will be observed that section 19 does not pretend that the Civil Procedure Rules have a monopoly on how suits may be instituted. It provides that suits may be instituted in the manner prescribed by the rules. There could be rules in other statutes on how proceedings may be commenced. For example, Probate & Administration Rules under the Succession Act prescribe how matters touching on succession of estates of deceased persons need to be instituted.

It means therefore that where a person is commencing a civil suit to enforce a civil action he needs to follow the prescribed rules.”

7. As regards an order for eviction, these permanent and final orders that must be anchored in a suit as per the provisions of the [Civil Procedure Rules](#) and the [Land Act](#).



8. In so finding, In *Tatecob Housing and Co-op Sacco Ltd Vs Qwetu Sacco Ltd* (2021) eKLR the court held that;

“Without much ado, I will agree with the position of the respondent .....that the appellant cannot seek the orders sought in the miscellaneous application without going through the process of filing suit. It will be observed that among the orders sought are orders of eviction.one will ordinarily only obtain an order of eviction after a full hearing of the case. What the appellant needed to do was therefore to file a substantive suit for eviction through a plaint. It is upon the hearing of such suit and If successful, that an order of eviction would issue.”

9. It is therefore clear that the court can only grant such orders upon hearing the case on merit.

10. As a general rule a suit can only be instituted by way of a Plaint, Petition or an Originating Summons. A Notice of Motion is not legally recognized as an originating process. A Notice of Motion can only be within a properly instituted suit. I do find that the application is defective and lacks merit and the same is dismissed costs. Orders accordingly.

**RULING, DATED SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 22<sup>ND</sup> DAY OF SEPTEMBER 2023.**

**A. O. OMBWAYO**

**JUDGE**

