



REPUBLIC OF KENYA



KENYA LAW
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**Ringera v M’Muga (Miscellaneous Application E003 of 2024)
[2025] KEELC 601 (KLR) (11 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 601 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
MISCELLANEOUS APPLICATION E003 OF 2024**

JO MBOYA, J

FEBRUARY 11, 2025

BETWEEN

SIMON KAMENCHU RINGERA APPLICANT

AND

ELIAS KIRIMI M’MUGA RESPONDENT

RULING

1. The Applicant beforehand has filed the application dated the 16th of July 2024 and wherein the Applicant seeks for various orders/reliefs, whose details have been highlighted and captured at the foot thereof.
2. Upon being served with the Application beforehand, namely, the Application dated the 16th day of July 2024; the Respondent filed a Replying affidavit and wherein the Respondent has opposed the same.
3. The Application herein came up for hearing on the 21st of January 2025 and wherein the advocate for the parties agreed to canvass and dispose of the application by way of written submissions. In this regard, the court proceeded to and indeed directed that the written submissions be filed and exchanged by the parties. For coherence, the parties have since filed and exchanged their written submissions.
4. Moreover, the court has since perused and read the written submissions filed by and on behalf of the parties.
5. Having read the application and the written submissions and upon consideration of the law, I come to the conclusion that the determination of the application herein, turns on only one salutary and/or singular issue namely; whether the applicant herein can approach the court by way of miscellaneous application for the purposes of procuring an order for the giving/taking of additional evidence over and in respect of an appeal matter which was heard and concluded.



6. Suffice it to state that the manner and mode of approaching the court is critical and the same goes to the root of the jurisdiction of the court. In this regard, where a party invokes the wrong mode/vehicle of approaching the jurisdiction of the court, the party cannot be heard to contend that such a mishap is a procedural and technical matter. [See the decision of the Court of Appeal in the case of *Scope Telematics Sales International PLC vs Stoic Ltd and another* [2017] eKLR.
7. Pertinently, the Court of Appeal underscored that a miscellaneous application cannot be relied upon and or deployed to commence a suit and/or proceedings unless the same is expressly provided for in the law.
8. Furthermore, the manner and mode of commencing a suit/civil proceedings of whatsoever nature, are well provided for by the provisions of Order 3 Rule (1) of the *Civil Procedure Rules*, 2010 as read together with the provisions of Section 19 of the *Civil Procedure Act* Chapter 21 laws of Kenya.
9. Moreover, it is important to underscore that the question of how to approach the jurisdiction of the court cannot be termed as peripheral and/or technical. Furthermore, I hold the view that the provisions of the *Constitution* 2010 cannot be relied upon herein to remedy the defect, which is substantive in nature. In any event, there is no gainsaying that the defect under reference goes to the substance of the matter and thus same is not a procedural or technical issue that is remediable vide Article 159 [2][d] of the *Constitution* 2010.
10. For coherence, the requirement to abide by and adhere to the provisions of the law has been held to be critical and the same cannot be wished away. [See the decision of the Supreme Court in the case of *Moses Mwicigi and others vs IEBC and others* [2016] eKLR paragraphs 65, 66 and 67 thereof. See also *Fred Otieno Outa vs Jared Odoyo Okello* [2017] eKLR.
11. Other than the Supreme Court, the Court of Appeal of Kenya has also had an occasion to underscore the need to abide by and comply with the established procedure and in particular, provisions of the law. [See the decision in *Mumo Matemu vs Trusted Society of Human Rights Alliance* [2013] eKLR where the 5-judge bench underscored the importance of rules of procedure. [See also the decision in the case of Honorable *Jared Opiyo and others vs County Government of Migori and others* [2024] KECA; where the court underscored that parties and their legal counsel, the applicant not excepted, cannot ignore procedure with licentious abandon.
12. I beg to state that the current application ought and should have been filed in the existing appeal file and not otherwise. In any event, it is the court vide the appeal file, which can engage with and determine whether the requisite conditions to warrant the grant of an order for taking of additional evidence have been satisfied in the manner provided for in the law. [See the provisions of Section 78 of the *Civil Procedure Act* Chapter 21 Laws of Kenya] that underpins the rights to apply for leave to tender additional evidence.
13. Furthermore, it is important to highlight and elaborate that the import and tenor of Section 78 of the *Civil Procedure Act*, Chapter 21, Laws of Kenya; has also been elaborated upon vide the provisions of Order 42 Rules 16 and 27 of the *Civil Procedure Rules*, 2010; which references the court before which the appeal is pending.
14. In this regard, there is no way the current application can be sustained vide a miscellaneous file during the pendency/lifetime of the main appeal file. Instructively, it is immaterial that the appeal file has since been closed and or archived. Simply put, subject to the filing of the requisite application, the court file shall be retrieved and availed in accordance with the law.



15. Lastly, I beg to state that the filing of the current application constitutes an abuse of the due process of the court. [See the decision of the Court of Appeal in *Muchanga Investments Ltd vs Safaris Africa (Unlimited) Ltd* [2009] eKLR; See also the decision of the Supreme Court in the case of *Rutogot Farm Ltd vs Kenya Forest Services* [2018] eKLR.
16. Finally, it is apposite to reference the decision in this case of *Satya Bharna vs Director of Public Prosecution* [2019] eKLR, particularly paragraphs 24, 25 and 26 thereof, where the Court [Justice Mativo, Judge as he then was] highlighted various nuances/ perspectives that amount to abuse of the Court process. Instructively, the filing of a Miscellaneous Application on the face of an existing Appeal file is certainly one of the aspects that constitute abuse of the process of the Law.
17. In short, I come to the conclusion that the Application beforehand is not only premature and misconceived, but the same constitutes an abuse of the due process of the court.
18. Consequently, and in the premises, same be and is hereby struck out with costs to the Respondent.
19. It is so ordered.

DATED SIGNED AND DELIVERED ON THE 11TH DAY OF FEBRUARY, 2025

OGUTTU MBOYA

JUDGE

In the presence of

Mr. Mutuma – Court Assistant

Mr. Obuli for the Applicant

Mr. Ken Muriuki for the Respondent

