



Hussein v Odhiambo & 2 others (Environment and Land Miscellaneous Application E016 of 2021) [2025] KEELC 3815 (KLR) (13 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3815 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E016 OF 2021**

AK BOR, J

MAY 13, 2025

BETWEEN

MOHAMED HASSAN HUSSEIN APPLICANT

AND

FREDRICK AYARO ODHIAMBO 1ST RESPONDENT

**FRANCIS MWINGIRWA M'RIMBERE T/A GATEWAY MOTOR
SPARES 2ND RESPONDENT**

NAKIN GLASS MAKING 3RD RESPONDENT

RULING

1. The Applicant, Mohamed Hassan Hussein, filed the application dated 3/11/2021 seeking to have the Respondents ordered to deposit with the Applicant or the Applicant's advocate the sum of Kshs. 300,000/= each per month. He also sought an order directed at the Respondents to vacate his premises failing which he would be at liberty to evict them from the land known as Embu/Municipality/1XX0 (the suit land). He sought to have the Officer Commanding the Embu Police Station provide security and enforce compliance with the court orders.
2. The application was made on the grounds that the Applicant is the registered owner of the suit land which is located in Embu, having purchased it from Mary Njeri Mohamed. He stated that after the purchase, he took possession of the suit land and constructed a petrol station known as Ilade Oil on part of the land with another part having a structure and open space which he intended to use as a garage and other amenities. Before he could do much, several cases were filed in court by Mohamed Ali Abdalla, the husband of Mary Njeri Mohammed. He gave details of the cases and explained that both the seller and her husband have since died. He stated that he has run the petrol station and the amenities on the suit land from the time he purchased the suit land despite the matters being in court.



3. He contended that the Respondents had invaded part of the suit land where they have established their businesses and are drawing income from the suit land without paying him rent. Further, that the Respondents have failed to maintain the suit land and it is now in a deplorable condition and has become a general hazard to the general public. He expressed the intention to repair the suit land and maintain it and that it was therefore necessary to remove the Respondents from the land. The Applicant swore the affidavit in support of the application and attached a copy of the certificate of title over the suit land and a copy of the sale agreement.
4. The 1st Respondent, Fredrick Ayaro Odhiambo, filed a replying affidavit in opposition to the application. He deposed that he had been on the land by virtue of the late Mohamed Ali Abdalla whom he had religiously paid rent to until his demise in 2018. That upon the death of Mohamed Ali Abdalla, he has been paying rent to the administrator of his estate, Mohamed's son, who advised him and the other tenants to be channeling rent through him. He stated that he was aware that prior to Mohamed's death, there were disputes in court between the Applicant and the late Mohamed. He contended that the application was incompetent and should be struck out on the basis that it offended Sections 6 and 7 of the Civil Procedure Act by dint of the existence of the other suits. He raised the same issue in the preliminary objection dated 28/2/2022. He argued that the Applicant had instituted the suit in disregard of the other suits and conveniently did not sue the late Mohamed Ali or his administrator which move is aimed at frustrating him as a lawful tenant. He denied that he invaded the suit land and contended that he was on the suit land by virtue of the late Mohamed Ali renting it out to him. He denied that the property was in a deplorable condition as depicted by the Applicant.
5. The 1st Respondent expressed the opinion that the courts are yet to establish the proprietorship of the suit land hence it is untenable for him to be evicted yet he pays rent to the Mohamed Ali's administrator. Further, that he has never received any notice from the Applicant to vacate the land, which would be illegal and invalid without a determination that he is the lawful owner of the suit land. He contended that he had invested heavily on the space rented out to him and that eviction would occasion him substantial loss. He annexed a copy of the grant of letters of administration and a letter from the deceased's son notifying him that rent should be channeled through him.
6. The court directed parties to file and exchange written submissions which it has considered. The Applicant submitted that he had demonstrated ownership of the suit land by producing a copy of the lease document and therefore, he was entitled to exclusive possession of the suit land by virtue of Section 26(1) of the Land Registration Act. He submitted that having admitted occupying the suit land and operating a business there, the 1st Respondent had not produced any evidence to dispute the Applicant's ownership of the land or proved that the individuals who he has been paying rent to had the legal capacity to collect the rent. He contended that in any event, if those individuals are indeed receiving rent from the 1st Respondent, such actions are not only unlawful but also fraudulent, given that the Applicant is the registered proprietor of the suit land. He expressed the view that since the 2nd and 3rd Respondents did not respond to the application despite being duly served the court should allow the application as prayed against them.
7. The Respondents on their part submitted that they had been wrongly joined in this application and were not the proper parties to the suit. They submitted that the Estate of Mohamed Ali Abdalla was the proper party to be joined in the suit, as it had been managing the suit land and collecting rent. They maintained that they were lawful tenants of the late Mohamed Ali Abdalla, and were paying rent to him until his death in 2018 and thereafter to his son and Estate administrator, Faud Mohamed Ali. They contended that the Applicant had no legal basis to evict them or demand rent, especially given the existence of multiple ongoing court cases challenging the Applicant's ownership of the suit land. Further, the Respondents argued that the Applicant had neither justified the claim for rent of Kshs.



300,000/= per month nor had they been served with a notice to vacate the suit land as required by law. They urged the court to stay their intended eviction pending determination of ownership of the suit land, and in the alternative, to direct them on where to deposit rent if necessary.

8. The issue for determination is whether the Applicant has established a basis for the reliefs sought. The primary relief sought is an order for the eviction of the Respondents from the suit land on the strength of the Applicant's proprietorship. In this court's view, the nature of the reliefs sought are incapable of being granted within a miscellaneous application.
9. It is evident that the question of ownership of the suit property is contested. In such circumstances, ownership must first be determined before any party can seek to evict a person from their land in accordance with Section 152E of the Land Act, 2012. Such a determination can only be made in a substantive suit instituted properly and not in a miscellaneous application.
10. Order 3 Rule 1(1) of the Civil Procedure Rules provides that every suit shall be instituted through a plaint or in such other manner as may be prescribed. The other prescribed means of commencing a suit include judicial review, originating summons, petition, or memorandum of appeal. A miscellaneous application is not one of the prescribed modes of instituting a substantive claim capable of determining rights over land or granting final reliefs such as eviction.
11. The court notes that a ruling was already delivered by the court on 30/6/2022 on the Respondent's claim that this application offended Sections 6 and 7 of the Civil Procedure Act. The Respondents had raised a preliminary objection on similar grounds which was dismissed by the court on 30/6/2022.
12. In this court's view, the Applicant should have pursued the suits which the late Mohammed Ali Abdalla filed against him in relation to the ownership of the suit land. He can still pursue his claim against the administrator of the estate of Mohammed Ali Abdalla. Mohammed Ali Abdalla died on 18/12/2018 and this application was filed on 3/11/2021.
13. The court notes that it has taken an inordinately long time for the application dated 3/11/2021 to be heard and determined.
14. The substantive orders sought by the Applicant cannot be granted through an application. The application lacks a proper foundation and is incompetent.
15. The court declines to grant the orders sought in the application dated 3/11/2021. Each party will bear its costs.

DELIVERED VIRTUALLY AT EMBU THIS 13TH DAY OF MAY 2025.

K. BOR

JUDGE

