



**Munguti v Muange & another (Miscellaneous Application E040 of 2024)
[2025] KEELC 6455 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6455 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
MISCELLANEOUS APPLICATION E040 OF 2024
MD MWANGI, J
SEPTEMBER 25, 2025**

BETWEEN

PETER MUANGE MUNGUTI PLAINTIFF

AND

WILLIAM MBILI MUANGE 1ST DEFENDANT

GRACE MULUKI MUANGE 2ND DEFENDANT

RULING

Introduction

1. The matter before this Court is a Notice of Motion dated 22nd September 2025 brought under the provisions of Article 50(1) of *the Constitution* of Kenya, Section 3A of the *Civil Procedure Act*, Order 51 Rule 1 of the Civil Procedure Rules and all other enabling provisions of the law.
2. The Plaintiff/Applicant, Peter Muange Munguti, seeks the following substantive reliefs:
 - a. That this application be certified urgent, be heard ex parte and service thereof be dispensed with in the first instance.
 - b. That pending the hearing and final disposal of this application, the Honourable Court be pleased to issue a temporary order for the eviction and removal of the Defendants or any person claiming under them from the Plaintiff's/Applicant's property known as Kajiado/kaputiei-central/743 and the house built and standing thereon.
 - c. That pending the hearing and final disposal of the suit herein, the Honourable Court be pleased to issue a permanent order for the eviction and removal of the Defendants or any person claiming under them from the Plaintiff's/Applicant's property known as Kajiado/kaputiei-central/743 and the house built and standing thereon.



- d. That the costs of this application be provided for.
3. The application is premised on the grounds appearing on its face and is further supported by the affidavit sworn by the Plaintiff/Applicant, Peter Muange Munguti. In summary, the Applicant avers that he is the registered proprietor of land parcel Kajiado/kaputiei-central/743, which he purchased and registered in his name on 9th December 1999. He deposes that the property is not ancestral land but his personal acquisition, on which he constructed a three-bedroom permanent house and resided therein peacefully for many years.
 4. According to the Applicant, his quiet possession was disrupted on 14th August 2024 when his daughter, Jennifer Munini Muange, stormed the premises and physically assaulted his nurse, Josephine Mumbua, who was attending to him given his condition of being wheelchair-bound owing to illness. The incident was reported at Salama Police Station and a P3 form issued, though he laments that no substantive police action was taken despite the arrest of the assailant.
 5. The Applicant further avers that following the said assault, he was forcefully ejected from his home after his daughter Jennifer, alongside his other children from his estranged second wife, namely William Mbili Muange and Grace Muluki Muange, took unlawful possession of the property and continue to reside therein to date. He states that his attempts to access the property, including on 16th September 2024, were met with violent threats, particularly from his son William, who allegedly brandished a machete and threatened to kill him. He further reports that the said William vandalized a generator belonging to his contractor, and that despite reports made to the police at Mashuru Police Station and intervention attempts by the local area Chief, the Respondents have remained in unlawful occupation of the suit property.
 6. The Applicant maintains that he is wholly dependent on the suit property for his livelihood, as he has sunk a borehole therein from which he supplies water to the neighbourhood, and has developed an orchard and beekeeping enterprise from which he derives income. He asserts that his unlawful eviction has deprived him of his only source of livelihood and left him at the mercy of relatives, forcing him to relocate to his ancestral land where his first wife resides.
 7. The application is opposed. The 3rd Defendant, Saphina Mueni Munguti, swore a Replying Affidavit on 9th June 2025 on her own behalf and on behalf of the 1st, 2nd and 4th Defendants. She deposes that she is the lawful wife of the Plaintiff, having married him in 1977 under Kamba customary law, and that their union was blessed with six children, among them the 1st, 2nd and 4th Defendants. She acknowledges that the Plaintiff also has another wife, Isabella Munguti, with whom he has one child.
 8. The 3rd Defendant avers that during the subsistence of her marriage with the Plaintiff, the couple acquired several properties, among them the suit property known as Kajiado/kaputiei-central/743, which she describes as their matrimonial home. She asserts that she made substantial contributions, both directly and indirectly, towards the development of the property by putting up buildings, structures, and other improvements thereon after her businesses in Mlolongo were frustrated and shut down by the Plaintiff.
 9. She further contends that although the title of the suit property is in the Plaintiff's name, the property is matrimonial property to which she has a valid claim, and that the Plaintiff cannot lawfully evict her and her children therefrom. She denies that they forcefully evicted the Plaintiff as alleged, and avers instead that he voluntarily left the suit property in the presence of their family pastor and with the knowledge of the area chief after his children raised concerns over his relationship with one Josephine Mumbua, whom he claims to be his nurse.



10. The 3rd Defendant also denies that the Plaintiff has lost his livelihood as alleged, contending that he is a man of immense wealth and this suit is only intended to frustrate her and her children and to deny them access to the matrimonial home. She further accuses the Plaintiff of being violent and temperamental, asserting that the reports made to the police were false and found to be baseless upon investigation, hence the lack of action by the authorities.
11. She further challenges the competence of the application, terming it misconceived, incompetent, and an abuse of the court process. It is her position that the Plaintiff has not demonstrated a sufficient basis to warrant the grant of the orders sought, and she prays that the application be dismissed with costs.

Directions

12. The court directed that the application be canvassed by way of oral submissions. The record of the proceedings during the oral submissions form part of the record of this court. The court has considered the submissions in the writing of this ruling.

Analysis and Determination

13. Having carefully considered the Plaintiff/Applicant's Notice of Motion dated 22nd September 2025, the grounds upon which it is founded, the supporting affidavit together with annexures, as well as the Replying Affidavit by the 3rd Defendant; this court finds that the substantive question presented for determination at this stage is whether the Plaintiff has made out a sufficient case to warrant the grant of permanent eviction orders against the Defendants pending the hearing and determination of the main suit.
14. The Plaintiff prays, inter alia, for permanent eviction orders against the Defendants from the suit property known as Kajiado/kaputiei-central/743. At the very outset, it is evident that the orders sought are in the nature of a mandatory injunction, for they do not merely seek to restrain the Defendants from engaging in a particular course of conduct, but rather to compel their eviction and removal from the suit property.
15. The law on mandatory injunctions is settled. A mandatory/permanent injunction is ordinarily granted after a full hearing and when all the evidence has been adduced and all facts have been established. In the case of *Kenya Power & Lighting Co. Limited vs Sheriff Molana Habib* (2018) eKLR, it was held inter alia as follows;

...A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected. A permanent injunction is different from a temporary/interim injunction since a temporary injunction is only meant to be in force for a specified time or until the issuance of further orders from the court. Interim injunctions are normally meant to protect the subject matter of the suit as the court hears the parties..."



16. Courts have been hesitant to grant mandatory injunctions at the interlocutory stage, save in clear-cut cases. Such was the reasoning of the court in *Lucy Wangui Gachara vs Minudi Okemba Lore (2015) eKLR*, when it rendered itself thus;

...the court will not grant a mandatory injunction if the damage feared by the plaintiff is trivial, or where the detriment that the mandatory injunction would inflict is disproportionate to the benefit it would confer. We would also add that, save in the clearest of cases, the right of the parties to a fair and proper hearing of their dispute, entailing calling and cross-examination of witnesses must not be sacrificed or substituted by a summary hearing.

17. An eviction order at an interim stage is essentially a mandatory order: it does more than restrain a person from doing something (prohibitory); it compels removal or delivery of vacant possession. Such orders are recognized as drastic and exceptional remedies. They inevitably affect the right of possession, which is the central issue in the main suit, and may amount to determining contested rights before a full hearing.
18. A fundamental issue raised in this matter is the 3rd Defendant's assertion that the suit property constitutes matrimonial property acquired and developed during the subsistence of her marriage with the Plaintiff. This raises a substantive question touching on ownership rights under the *Matrimonial Property Act*, 2013. Section 6(1) of the Act provides:

“For the purposes of this Act, matrimonial property means— (a) the matrimonial home or homes; (b) household goods and effects in the matrimonial home or homes; or (c) any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.”

19. This Court takes the view that the question of whether the suit property constitutes matrimonial property, and the extent of the Defendants' beneficial interest therein, is a substantive issue that can only be determined upon a full hearing where parties will adduce evidence and be cross-examined on the same.
20. To grant the orders sought at this stage would not only amount to issuing a final order without the benefit of a trial but would also risk prejudging the very core issues in dispute.
21. Consequently, the Plaintiff's notice of motion application is hereby dismissed but with no orders as to costs considering the nature of the relationship between the parties herein.

It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 25TH DAY OF SEPTEMBER 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Irura h/b for Mr. Gathaara for the Plaintiff/Applicant

N/A by the Defendants/Respondents

Court Assistant: MPoye

