



REPUBLIC OF KENYA



**Muruthi v Njuguna & another (Environment and Land Miscellaneous Case E025 of 2025) [2025] KEELC 7688 (KLR) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7688 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND MISCELLANEOUS CASE E025 OF 2025  
A OMBWAYO, J  
NOVEMBER 6, 2025**

**BETWEEN**

**CHARLES GATHARA MURUTHI ..... APPLICANT**

**AND**

**BERNARD NJUGUNA ..... 1<sup>ST</sup> RESPONDENT**

**SUSAN MURUGI WAINAINA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Introduction**

1. This ruling is in respect to the Applicants' Notice of Motion dated 17th March, 2025 seeking the following orders:
  1. Spent.
  2. That this Honourable Court be pleased to issue an eviction order against the Respondents herein from those parcels of land known as Solai/Ndungiri block 9/270 (Ampiva) and Solai/Ndungiri block 9/271 (Ampiva) and for vacant possession to be granted to the Applicant herein.
  3. That the Honourable Court be pleased to order O.C.S Bahati Police Station to supervise and maintain order and provide security to ensure compliance with the court orders.
  4. That the costs of this Application be provided for.
2. The application is based on the grounds on its face and supported by the affidavit sworn by the Applicant on 17th March, 2025. The Applicant stated that he is the registered owner of land parcels Solai/Ndungiri block 9/270 (Ampiva) and Solai/Ndungiri block 9/271 (Ampiva). He further stated that he has been unable to enjoy exclusive possession of the suit properties since the Respondent took



forceful possession. He stated that he reported the Respondents to Bahati Police Station which caused them to be served with an eviction notice dated 2nd May, 2024.

3. The eviction was to take effect on 2nd August, 2024 but the Respondents were yet to move out or file any pleadings opposing the eviction notice. He urged the court to grant them the orders as sought in the application.

### **Respondent's Response**

4. In response to the application, the 1st Respondent filed a replying affidavit sworn on 9th October, 2025 where he averred that the application was defective and incompetent as it sought for substantive orders not anchored in a substantive suit. He further averred that he has been in possession of the suit parcels for more than 20 years before the Applicant was registered as the owner. He added that he has extensively developed the suit land and that he lived with his family.
5. He denied having forcefully taken possession of the suit parcels as alleged since he acquired the suit lands vide an agreement dated 13th February, 2004 as a member of Ampiva squatters. He stated that the veracity of the issues raised by the Applicant needed to be tested in cross examination in a full hearing of substantive suit. He urged the court to strike out the application and allow parties file substantive suits where issues of ownership could be litigated.
6. The 2nd Respondent also filed her replying affidavit sworn on 1st October, 2025 where she averred that she was in possession of her own parcel of land distinct from the suit properties.
7. She further averred that the application was incompetent as it did not disclose any reasonable cause of action against her.

She urged the court to dismiss the application with costs.

### **Analysis And Determination**

8. This court has considered the application and the main issue for determination is whether a party can seek to enforce a right through a miscellaneous application. The Applicant claims that he reported the Respondents to Bahati Police Station which resulted in them being served with a Notice of eviction dated 2nd May, 2024 issued by the firm of Willy Maina & Company Advocates.
9. Order 22 Rule 29 (1) of the Civil Procedure Rules provides that:

Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.”

10. It is not in dispute that the Applicant never instituted a suit against the Respondents seeking eviction orders. It is my view that before any court grants the said orders of eviction, the Applicant ought to have first filed a suit after which the matter is heard substantively. It is trite law that suits ought to be instituted by way of a Plaint unless the rules prescribe otherwise. Order 3 Rule 1 of the Civil Procedure Rules states that: -

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

11. It is this court's view that for an order of eviction to succeed, the Applicant should adhere to the provisions of Section 152 (A) to 152 (H) of the [Land Act](#) which provide that an application for eviction



orders must be anchored in a suit as per the provisions of Order 22 Rule 29 (1) above. It is therefore clear that, for the Applicant to seek for the above orders, there must be in existence a suit upon which this application can be hinged on.

12. In the case of *Tatecoh Housing and Co-op Sacco Ltd V 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.”

Consequently, this court can only grant such orders upon hearing the case on merit.

13. As a general rule a suit can only be instituted by way of a Plaint, Petition or an Originating Summons. It is this court’s view that a Notice of Motion is not legally recognised as an originating process as it can only be within a properly instituted suit.
15. In the upshot, I find that the application before the court is incompetent and I proceed to strike out the same with costs to the Respondents. Orders accordingly.

**SIGNED BY/FOR:**

**HON. JUSTICE ANTONY O. OMBWAYO**

**THE JUDICIARY OF KENYA. NAKURU ENVIRONMENT AND LAND COURT  
ENVIRONMENT AND LAND COURT**

**DATE: 2025-11-06 12:21:49**

