



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT

NAIROBI

ELC EP MISC E002 OF 2025

JASPER

MOGIRE

BOSIRE

.....PLAINTIFF/APPLICANT

=VERSUS=

JOSEPHINE

SIBIA

ONTWEKA

.....DEFENDANT/RESPONDENT

RULING

1. Before me for determination is the Notice of Motion dated 13th February 2025 brought under Order 51 Rule 1 & 3 of the Civil Procedure Rules, Section 1A, 1B, 3A and 63(e) of the Civil Procedure Act, in which the Applicant seeks the following orders:

a) Spent.

b) Spent.

c) THAT the Applicant be permitted to evict the Respondent from the suit property, being Plot No. 442B situated in Makongeni, Nairobi, at the Respondent's cost.

d) THAT the Officer in Charge, Makongeni Police Station, does provide security and ensure compliance with orders granted by this Court.

e) THAT the cost of this application be borne by the Respondent.

2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Jasper Mogire Bosire sworn on even date.

THE APPLICANT'S CASE

3. The Applicant averred that he is the registered owner of the suit property, having purchased it for Kshs. 300,000/=, and has put up several rental units.

4. He further stated that he had entrusted his brother, Evans Nyamao Bosire, with the responsibility of supervising the construction and collecting rent from

the units. After his brother's death, he allowed his widow (the Respondent herein) to live in one of the units rent-free and assigned her additional units for her support.

5. He stated that he enjoyed peaceful and uninterrupted ownership of the suit property until last year, when his efforts to develop it were blocked by the Respondent, who argued that the Applicant and her late husband jointly purchased the suit property.
6. He argued that unless an injunction is granted, the Respondent will continue trespassing on the suit property, thereby denying the Applicant his right to vacant possession.

THE RESPONDENT'S CASE

7. The Respondent filed a replying affidavit dated 10th March 2025 in opposition to the application. She averred that the Applicant and her late husband jointly purchased Plots Nos. 440B and 442B, each contributing Kshs. 150,000/=.

8. She further averred that the parties engaged an architect who prepared similar plans for constructing rental units on both plots. She explained that the Applicant settled on Plot No. 442B, while her family settled on Plot No. 440B. She asserted that she supervised the construction of the Plots because her late husband was working while the Applicant was residing in South Africa.
9. She went on to state that everything was fine until her husband died in 2016, after which the Applicant started harassing her and threatened to evict her and her children. She insisted that she was legally living on the property because she had been issued letters of administration intestate after her husband's death, who was a bona fide purchaser. She explained that after the Court granted her access to the deceased's bank accounts, she took out a loan, completed the development of the rental units, and paid her children's school fees.

10. The Respondent claimed that the Applicant continued to harass her, and in January 2025, her house was broken into, resulting in the theft of ownership documents and court papers. She clarified that there are two distinct plots and noted that the Applicant has been using false information to acquire Plot No. 440B, even though his actual Plot is No. 442B.

THE RESPONSE

11. The Applicant filed a further affidavit in response to the replying affidavit. He asserted that he is the sole owner of Plot No. 442B and not a joint owner as indicated in the certificate of ownership produced by the Respondent.

12. He also stated that the Respondent produced different ownership certificates: one showing that Plot No. 440B was jointly owned by both parties, and another indicating that the deceased solely owned Plot No. 440B, while Plot No. 442B was jointly owned. He claimed to have financed the entire construction of the rental units, which were completed before his brother's

death. He denied allegations of harassment against the Respondent.

13. The application was canvassed by way of written submissions.

THE APPLICANT'S SUBMISSIONS

14. The Applicant filed his submissions dated 16th May 2025.

15. On his behalf, Counsel submitted that the Applicant is the sole, not joint legal owner of Plot No. 442B, having purchased the same from one Stanley Mwangi Kanyi. It was submitted that the Respondent had not sufficiently challenged the Applicant's claim of ownership.

16. Counsel further submitted that the Applicant exclusively financed the construction of the rental units, which were already completed in 2019 when the Respondent claims to have obtained a loan to finance the same.

17. It was submitted that the Respondent's occupation of the suit property is unlawful and amounts to

trespass, as she has no beneficial ownership in the property.

18. Concluding his submissions, Counsel urged the court to allow the application as prayed.

19. As at the time of writing this ruling, the Respondent had not filed her submissions as directed.

ANALYSIS AND DETERMINATION

20. Having considered the application, the respective affidavits, and the submissions by the Applicant, the only issue for determination is whether the Applicant is entitled to the orders sought.

21. The Applicant commenced these proceedings by way of a miscellaneous application seeking to evict the Respondent from the suit property on the grounds that she is a trespasser. The Respondent maintained that the Applicant and her late husband jointly purchased the suit properties.

22. As a general rule, a suit can only be instituted by way of a Plaint, a Petition, or an Originating Summons.

23. Order 3 of the Civil Procedure Rules provides as follows:-

“Every suit shall be instituted by way of a Complaint. As a general rule, a suit can only be instituted by way of a Complaint, Petition, or an Originating Summons.”

24. 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.”

25. 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.

26. Having perused the documents on record, I have not found any Plaint, Originating Summons, or Petition filed by the Applicant.

27. Eviction orders are serious orders, and they must be anchored in a suit as per the provisions of the Civil Procedure Rules and the Land Act.

28. In the case of **Tatecoh 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 respondentthat 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.”

29. In associating myself with the above decision, I find that the issues relating to eviction are substantive issues which ought to be canvassed in the main suit where the Applicant will furnish the Court with the relevant documents alluded to in his supporting affidavit.

30. It goes without saying that there must be a suit in existence upon which this application can be hinged. A Notice of Motion is not legally recognised as an originating process.

31. In the end, I find that the application dated 13th February 2025 is incompetent and the same is hereby struck out with costs to the Respondent.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 24TH DAY OF OCTOBER, 2025.

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**T. MURIGI
JUDGE**

IN THE PRESENCE OF:-

Onguti for the Plaintiff/Applicant.

Ahmed – Court assistant

ORIGINAL