



**Cherekweny v Cherekweny (Environment and Land Miscellaneous Application
E003 of 2023) [2025] KEELC 8330 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 8330 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E003 OF 2023
LA OMOLLO, J
NOVEMBER 27, 2025**

BETWEEN

LILIAN CHEMUTAI CHEREKWENY APPLICANT

AND

RUTH CHELANGAT CHEREKWENY RESPONDENT

RULING

Introduction.

1. This ruling is in respect of the Applicant's Notice of Motion application dated 27th June, 2023. It is expressed to be brought under Sections 98(4), 152A, 152B, 152E and 152 F of the *Land Act*, Section 3A of the *Civil Procedure Act*, Order 40 Rules 1, 2, 3, 4, 5 and 9 of the Civil Procedure Rules and Regulation 65 of the Land Registration (General) Regulations, 2017.
2. The Applicant seeks the following orders;
 - a. Spent
 - b. That this Honourable Court be pleased to confirm the eviction notice dated 26th January, 2023 and order the Respondent to remove herself, her children and/or any other person that she may have placed on all that parcel of land known as Kericho/Kipchimchim/4420 forthwith and in default the Respondent, her children and/or any other person/s be forcibly evicted and vacant possession be given to the Applicant.
 - c. That Mercy Chelangat Boiyon T/A Razor Sharp Auctioneers do effect and execute the above eviction orders.
 - d. That a permanent injunction do issue against the Respondent, her children, agents, servants, heirs or any other person claiming through her from trespassing into parcel No. Kericho/Kipchimchim/4420.



- e. That the Officer in charge of Ainamoi Police Post do offer security in ensuring compliance of prayers 2 and 3 above.
 - f. That this Court be pleased to grant any other order as it deems necessary.
 - g. That costs of this application be provided for.
3. The application is based on the grounds on its face and the supporting affidavit of Lilian Chemutai Cherekweny.

Factual Background.

4. The application under consideration first came up for hearing on 31st July, 2023 when the Court directed that it be served upon the Respondent.
5. Subsequently, the application came up for hearing on 18th October, 2023 when the Court reserved it for ruling.
6. On 25th January, 2024 the Court delivered its ruling and allowed the application.
7. On 31st May, 2024 the Respondent filed an application seeking orders that the Court to sets aside its orders issued on 25th January, 2024. The Court delivered a ruling on the said application wherein it set aside the orders issued on 25th January, 2024.
8. Subsequent to the setting aside of the orders of 25th January, 2024, the instant application was fixed for hearing and the Court issued directions that it be canvassed by way of written submissions.
9. On 15th July, 2025, the matter was mentioned to confirm filing of submissions and then reserved for ruling.

The Applicant's Contention.

10. The Applicant contends that she is the registered owner of land parcel No. Kericho/Kipchimchim/4420.
11. The Applicant also contends that the Respondent is the beneficial owner of land parcel No. Kericho/Kipchimchim/4421 which is registered in the name of Raphael Kipkemoi Cherekweny.
12. The Applicant further contends that the Respondent is her co-wife and that they are both wives of Raphael Kipkemoi Cherekweny.
13. It is the Applicant's contention that the aforementioned parcels of land are resultant subdivisions of land parcel No. Kericho/Kipchimchim/1702 that was registered in the name of Raphael Kipkemoi Cherekweny.
14. It is also the Applicant's contention that land parcel No's Kericho/Kipchimchim/4420 and 4421 were initially registered in the name of Raphael Kipkemoi Cherekweny. She goes on to state that it was the responsibility of each of the parties herein to transfer the land to their names.
15. It is further the Applicant's contention that she transferred her parcel of land to her name and was issued with a title deed on 10th October, 2013.
16. The Applicant contends that the Respondent while in occupation of her (Applicant) land, filed Kericho ELC Case No. 58 of 2013 against Raphael Kipkemoi Cherekweny seeking orders to stop the registration of land parcel No. Kericho/Kipchimchim/4420 in her (Applicant) name.



17. The Applicant also contends that the Court delivered judgement on 30th May, 2018 and dismissed the said suit.
18. The Applicant further contends that since the delivery of the judgement, she has tried to have the Respondent vacate the suit parcel to no avail. She goes on to state that she also sought the intervention of the local administration but this did not bear fruit.
19. It is the Applicant's contention that the Respondent was issued with an eviction notice dated 26th January, 2023 which required her (Respondent) to vacate the said parcel of land by 25th April, 2023.
20. It is also the Applicant's contention that despite service of the said eviction order, the Respondent has refused to vacate the suit parcel. She goes on to state that instead the Respondent and her children have threatened her with acts of violence.
21. It is further the Applicant's contention that the Respondent is currently putting up a structure on the suit parcel and adds that unless the Court urgently intervenes, she (Applicant) will suffer prejudice.
22. The Applicant contends that in the said circumstances, the Court should issue orders of eviction.
23. The Applicant also contends that the Officer in Charge of Ainamoi Police Post should assist in the enforcement of the orders of the Court.
24. The Applicant further contends that unless the Court intervenes, the Respondent is unlikely to vacate the suit parcel of land. She adds that this will subject her to further suffering and hardship.
25. The Applicant ends her deposition by stating that it is in the interest of justice that the present application be allowed as prayed.

The Respondent's Response.

26. In response to the application, the Respondent filed a Replying Affidavit sworn on 3rd April, 2025.
27. She deposes that she has been advised by her advocates on record that the application under consideration is frivolous, vexatious and an abuse of the Court process.
28. She also deposes that she has been advised by Advocates on record that the Applicant's application offends the Provisions of Order 3 Rule 1 of the Civil Procedure Rules.
29. She further deposes that an eviction order is a final order which cannot be issued through a miscellaneous application.
30. It is her deposition that the affidavit in support of the application should be struck out as the Applicant is absolutely mean with facts. The Respondent goes on to state that this amounts to perjury.
31. It is also her deposition that she has never received any notice requiring her to vacate the suit parcel. She goes on to state that she only came to learn of the said notice from this application.
32. It is further her deposition that no evidence has been attached by the Applicant to show that she (Respondent) was served with any eviction notice.
33. She deposes that she has lived on the said parcel of land since the year 1979 when she was married.
34. She also deposes that she is advised by her advocates on record that she is entitled to plead adverse possession since she has occupied the suit parcel openly and without any disturbance.



35. She further deposes that the Applicant's averments that she (Respondent) has another parcel of land is not true. She reiterates that she has lived on the suit parcel of land since she was married and deposes that she has no alternative land where she can relocate to.
36. It is her deposition that due to the issues over the said parcel of land, she has been denied the use of an access road which has been fenced off by the Applicant.
37. She ends her deposition by stating that the Court should dismiss the application under consideration as there is no suit anchoring the prayers for permanent injunction and/or eviction orders.

Issues for Determination.

38. The Applicant filed her submissions on 19th May, 2025 while the Respondent filed her submissions on 27th June, 2025.
39. The Applicant submits on the following issues;
 - a. Whether the application has merits and in the premise;
 - b. Whether the Applicant is entitled to the orders sought.
40. On the first issue, the Applicant submits that she is the registered owner of land parcel No. Kericho/ Kipchimchim/4420.
41. The Applicant relies on Section 26 of the *Land Registration Act*, the judicial decision of *Ringera v Muhindi* (Environment and Land Miscellaneous Application E128 of 2021) [2022] KEELC 2481 (KLR) (7 July 2022) (Judgment) and reiterates her averments in the affidavit in support of the application.
42. On whether her application offends Order 3 Rule 1 of the Civil procedure Rules, the Applicant relies on the judicial decision of *Kariuki v Harunani & another; Chief Land Registrar (Interested Party)* (Miscellaneous Application E050 of 2022) [2023] KEELC 16418 (KLR) (9 March 2023) (Ruling) and submits that the said issue is moot as the Court had earlier allowed the application under consideration.
43. On the second issue, the Applicant submits that she has complied with Sections 152A, 152B, 152E and 152F of the *Land Act*.
44. The Applicant also submits that the Respondent was served with an eviction notice as required by law but she has refused to vacate the suit parcel.
45. The Applicant relies on the judicial decision of *Jacob Njeru Karuku v Njugi Njuguna* [2022] eKLR in support of her submissions.
46. It is the Applicant's submissions that she has met the threshold for the issuance of a permanent injunction and she relies on the judicial decision of *Henry Mwangi Wainaina v Stephen Kimani Gachuri & another* [2019] eKLR in support of her submissions.
47. The Respondent submits on the following issues;
 - a. Whether a miscellaneous application is the proper way of initiating a suit as the instant one seeking substantive and final orders (sic).
 - b. Whether the Applicant is deserving of the orders sought.
 - c. Who should bear the costs of this application.



48. On the first issue, the Respondent submits that orders of eviction and orders of a permanent injunction cannot be issued in a miscellaneous application.
49. The Respondent also submits that such prayers invite the Court to scrutinize documents which scrutiny cannot be done in an application of this nature.
50. The Respondent relies on Order 3 Rule 1 of the Civil Procedure Rules, the judicial decisions of Kenya Assemblies of God Trustees & another v Obuya & 4 others [2023] KEELC 15817 (KLR), Witmore Investment Ltd vs County Government of Kirinyaga & 3 Others [2016] eKLR, Nairobi West Hospital Ltd vs Joseph Karina & another [2018] eKLR, Scope Telematics International Sales Ltd vs Stoic Company Ltd & another [2017] eKLR in support of her submissions.
51. The Respondent also submits that the Applicant seeks to evict her from the suit parcel of land. The Respondent submits that the Applicant has not complied with Section 152E of the Land Act.
52. The Respondent further submits that a miscellaneous application does not afford the parties an opportunity to canvass those issues.
53. The Respondent relies on the judicial decision of Witmore Investment Limited vs County Government of Kirinyaga & 3 Others [2016] eKLR in support of her submissions.
54. The Respondent concludes her submissions by urging the Court to dismiss the Applicant's application.

Analysis and Determination.

55. I have considered the Applicant's application, the response thereto and the rival submissions. It is my view that the following issues arise for determination;
 - a. Whether the application dated 27th June, 2023 contravenes Order 3 Rule 1 of the Civil procedure Rules.
 - b. Whether the Applicant's application dated 27th June, 2023 has merit.
 - c. Who should bear costs.

A. Whether the application dated 27th June, 2023 contravenes Order 3 Rule 1 of the Civil procedure Rules.

56. The Respondent contends that the Applicant's application contravenes Order 3 Rule 1 of the Civil Procedure Rules.
57. The Respondent also contends that the application under consideration seeks orders of eviction and a permanent injunction which orders cannot be granted in a miscellaneous application as they need to be anchored in a Plaintiff.
58. The Applicant submits that the issue of whether or not the application under consideration offends Order 3 Rule 1 of Civil Procedure Rules is moot as the Court in its earlier ruling allowed the application.
59. It is important to note that the ruling the Applicant is referring to was delivered on 25th January, 2024 and was set aside on 20th March, 2025.



60. Order 3 Rule 1 of the Civil Procedure Rules provides as follows;

- “(1) Every suit shall be instituted by presenting a plaint to the Court, or in such other manner as may be prescribed.
- (2) The claim shall indicate at the heading the choice of track; namely “small claims”, “fast track” or “multi-track”.
- (3) For purposes of this rule—
 - (a) “small claim” refers to a simple claim whose monetary value does not exceed two hundred thousand shillings.
 - (b) “Fast track” refers to a case with undisputed facts and legal issues; relatively few parties; and would likely be concluded within one hundred and eighty days after the pre-trial directions under Order 11.
 - (c) “Multi-track” refers to a case with complex facts and legal issues; or several parties and which would likely be concluded within two hundred and forty days from the date of the pre-trial directions under Order 11.
- (4) In choosing a case track, the plaintiff shall have regard to all relevant considerations including the following—
 - (a) the complexity of the issues of fact, law or evidence;
 - (b) the financial value of the claim;
 - (c) the likely expense to the parties;
 - (d) the importance of issues of law or fact to the public;
 - (e) the nature of the remedy sought;
 - (f) the number of parties or prospective parties; and
 - (g) the time required for pre-trial disclosures and for preparation for trial or hearing;

61. Under prayer (2) of the application under consideration, the Applicant seeks for eviction orders while prayer (4) seeks for a permanent injunction.

62. The Respondent contends that the said prayers cannot be sought for and/or granted in a miscellaneous application.

63. Among the provisions of the law that the Applicant has relied on in filing the application under consideration are Sections 152 A, 152B, 152E and 152F of the [Land Act](#).

64. Section 152 A of the [Land Act](#) provides as follows;

“A person shall not unlawfully occupy private, community or public land.”



65. Section 152 B of the [Land Act](#) provides as follows;

“An unlawful occupant of private, community or public land shall be evicted in accordance with this Act.”

66. Section 152E of the [Land Act](#) provides as follows;

“(1) If, with respect to private land the owner or the person in charge is of the opinion that a person is in occupation of his or her land without consent, the owner or the person in charge may serve on that person a notice, of not less than three months before the date of the intended eviction.

(2) The notice under subsection (1) shall—

- (a) be in writing and in a national and official language;
- (b) in the case of a large group of persons, be published in at least two daily newspapers of nationwide circulation and be displayed in not less than five strategic locations within the occupied land;
- (c) specify any terms and conditions as to the removal of buildings, the reaping of growing crops and any other matters as the case may require; and
- (d) be served on the deputy county commissioner in charge of the area as well as the officer commanding the police division of the area.”

67. Section 152 F of the [Land Act](#) provides as follows;

“(1) Any person or persons served with a notice in terms of sections 152C, 152D and 152E may apply to Court for relief against the notice.

(2) The Court, after considering the matters set out in sections 152C, 152D and 152E may-

- (a) confirm the notice and order the person to vacate;
- (b) cancel, vary, alter or make additions to the notice on such terms as it deems equitable and just;
- (c) suspend the operation of the notice for any period which the Court shall determine; or
- (d) order for compensation.”

68. In the judicial decision of Julius L Marten v Caleb Arap Rotich [2021] KEELC 195 (KLR) the Court held as follows;

“15. From a reading of sections 152C, 152D and 152E of the [Land Act, 2012](#) it is not clear how a party ought to approach the Court for relief under section 152F. Is it by way of a formal suit and/or miscellaneous application as in the instant suit? Any eviction order has far reaching implications as it entails the removal forcefully of a party from land that he/she has been in



occupation/possession of for some time. Before such an order is given the Court must be satisfied on its merits which means any person who stands to be affected by any order the Court may make is entitled to be heard. Section 152E relating to private land envisages that there is no dispute on ownership and the occupation is unlawful. What is the situation where there is no dispute on ownership and the occupation is unlawful? What is the situation where there is disputed ownership of the property? In my view where the ownership is disputed the summary procedure that section 152F appears to contemplate would not be suitable and a formal suit would be advisable.” (Emphasis mine)

69. In the judicial decision of *Kagembe v Kamwara* [2023] KEELC 18958 (KLR) the Court held as follows;

“While I do not wish to go into the application herein at this stage so as not to preempt the trial, it is my considered view that as long as the Applicant has complied with the provisions of sections 152A to 152 H of the *Land Act*, the Applicant would be entitled to make an application for eviction where he has demonstrated ownership of the suit land. This is more so because the said provisions do not expressly provide a different mode in which one should approach the Court for an order of eviction. In addition, section 152F of the said Act provides for relief against a notice of eviction.”

(Emphasis mine)

70. In *Julius L Marten v Caleb Arap Rotich* (supra) cited above, the Court held that Section 152E of the *Land Act* applies to private land where there is no ownership dispute and in instances where there is an ownership dispute, a normal suit ought to be filed.

71. It is therefore evident that depending on the circumstances of a suit, a party has the option of either filing a Complaint or filing a miscellaneous application when seeking for orders of eviction under the said provisions of the law.

72. I will now address the issue of whether a permanent injunction can issue in a miscellaneous application.

73. In the judicial decision of *Kenya Power & Lighting Co. Limited v Sheriff Molana Habib* [2018] KEHC 5027 (KLR) the Court held 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.” (Emphasis mine)

74. In *SM v MNM* [2025] KEHC 12052 (KLR) the Court held as follows;

“47. There is ample case law that an injunction cannot issue in a vacuum when there is no suit before the Court – see the authorities cited above - Mbugua & another v Mbugua & 4 others, Chacha & another v Orbit Chemicals Industries Limited and Geoffrey Ndungu Theuri v Law Society of Kenya



[1988] KECA 81 [KLR]. They all point to the fact that an application for injunction filed without a substantive suit is incompetent.” (Emphasis mine)

75. Consequently, I find that an order of permanent injunction cannot issue in a miscellaneous application.
76. To conclude, my finding on this question is that depending on the circumstances of each case, eviction proceedings under Sections 152C, 152D and 152E of the Land Act may be commenced by way of a miscellaneous application but orders of permanent injunction cannot.

B. Whether the Applicant’s application dated 27th June, 2023 has merit.

77. Having found under issue (a) above that orders of eviction can issue by way of a miscellaneous application, I will now proceed to determine whether the application dated 27th June, 2023 is merited.
78. The Applicant contends that she and the Respondent are co-wives.
79. The Applicant also contends that their husband subdivided his parcel of land i.e. Kericho/Kipchimchim/1702 into land parcel No’s Kericho/Kipchimchim/4420 and 4421.
80. The Applicant further contends that they were to transfer the resultant subdivisions into their respective names.
81. It is the Applicant’s contention that she transferred land parcel No. Kericho/Kipchimchim/4420 to her name while the Respondent is yet to transfer land parcel No. Kericho/Kipchimchim/4421 to her name.
82. It is also the Applicant’s contention that the Respondent is in occupation of land parcel No. Kericho/Kipchimchim/4420 and has refused to vacate from it.
83. The Respondent on the other hand admits that she is in occupation of the suit parcel.
84. The Respondent contends that she has been in occupation of the suit parcel since the year 1979 when she got married by Raphael Kipkemoi Cherekweny.
85. The Respondent denies that she has any other land she can move to and contends that since she has been in occupation of the suit parcel of land for over fifty years, she is entitled to plead adverse possession.
86. In the judicial decision of Child Welfare Society of Kenya Registered Trustees v Njubi [2022] KEELC 15489 (KLR) the Court held as follows;

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“13. A glean of the application before Court reveals that the applicant wishes to enforce its rights as a registered owner of the suit property. In my view whilst the above provision do not specify the manner in which an applicant should move the Court in seeking eviction orders, I am of the view that that the applicant ought to have filed a plaint so that the matter can be heard on its merits. I say so because the respondent in opposing the motion has sworn that he has acquired prescriptive rights of ownership over the suit land. The question to be answered is whether the claim of eviction vis a vis adverse possession can be determined in a miscellaneous application...



There being issues of controversy on the suit lands as to its ownership I find that this is the inappropriate method adopted by the applicant and the right route is to file a normal suit.” (Emphasis mine)

87. In the above cited judicial decision, the Court while considering the provisions of Sections 152A, 152B, 152E, 152G and 152F of the *Land Act*, held that the Applicant ought to have filed a Plaint for the matter to be heard on merit as there was an ownership dispute.
88. Similarly, in the present matter, the Applicant is seeking orders of eviction while contending that she is the registered owner of the suit parcel of land.
89. On the other hand, the Respondent contends that she has been in occupation of the suit parcel for a period of over fifty years and she is therefore entitled to plead adverse possession.
90. It is my view that this issue cannot be resolved in these proceedings. The Applicant should proceed by way of a plaint.

C. Who should bear costs.

91. The general rule is that costs shall follow the event. This is in accordance with the provisions of Section 27 of the *Civil Procedure Act* (Cap. 21). A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.

Disposition.

92. Taking the foregoing into consideration, I find that the Applicant’s application dated 27th June, 2023 lacks merit and it is hereby dismissed with costs.
93. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 27TH DAY OF NOVEMBER, 2025.

L. A. OMOLLO

JUDGE.

In the presence of: -

Miss Cheronon for Langat for the Applicant.

Mr. Okok for the Respondent

Court Assistant; Mr. Joseph Makori.

