



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
NAIROBI

ELC MISC E276 OF 2025

ATHANAS ARONYA SAKHA.....
APPLICANT

=VERSUS=

SAMUEL MBATIA MUHOKI.....
RESPONDENT

RULING

1. Before me for determination is the Notice of Motion dated 4th July 2025 brought under Order 40 Rules 2 and 4, Order 51 Rule 1 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the Civil Procedure Act, Sections 152B and 152E of the Land Act and Article 159

of the Constitution of Kenya 2010 in which the Applicant seeks the following orders:

1) Spent.

2) THAT this Honourable Court be pleased to issue orders of eviction against the Respondent from all that parcel of land known as NAIROBI/BLOCK 178/1084 and to deliver vacant possession to the Applicant.

3) THAT an order be issued directing the Nairobi County Commandant, the Officer Commanding Station(OCS) Soweto Police Station, to supervise, provide security during eviction, and enforce order (No. 2) by compelling the Respondent to exit from the suit property.

4) THAT the costs of this application be provided for.

2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Athanas Aronya Sakha, sworn on even date.

THE APPLICANT'S CASE

3. The Applicant averred that on 24th October 1991, he was allocated a temporary Plot No. 3/158 by the office of the District Officer, Embakasi Division, Nairobi. He further averred that on 1st November 2020, he was issued a certificate of lease for the suit property based on the purchase of the leasehold interest from Nairobi City County.
4. The Applicant contends that in 2024, the Respondent invaded the suit property and erected illegal structures. He further contends that the Respondent has refused to vacate the suit property despite having been issued a notice to do so.
5. He argued that the Respondent's actions are intended to defeat his interest in the suit property. In conclusion, he urged the court to allow the application as prayed.

THE RESPONDENT'S CASE

6. The Respondent filed a replying affidavit dated 16th September 2025 in opposition to the application. He averred that the suit property was initially plot No.3/158 located in L.R. No. 11344/R within Soweto Squatter Resettlement Scheme Phase 11, and he was the first person to be allocated. He further averred that after his allocation, he paid the required fees and was issued a plot formalization card as confirmation of his allocation. He asserted that he has been paying the requisite rates and ground rent to the Nairobi City Council up to 2025.
7. He maintained that he has been in possession of the plot since its allocation and has built rental houses. He further maintained that the suit property has never been repossessed from him, nor has he disposed of it. He urged the court to strike out the application with costs.

THE RESPONSE

8. In a further affidavit dated 6th October 2025, the Applicant asserted that the Respondent failed to demonstrate how the suit property diverged from Plot 3/157. He argued that a letter of allotment is a step towards land allocation and does not confer ownership. He maintained that the photos of the rental houses are inadmissible as they lack a certificate of electronic evidence. He maintained that the Respondent has not challenged the ownership documents. He reiterated that he is the bona fide owner of the suit property and urged the court to allow his application as prayed.
9. The application was canvassed by way of written submissions.

THE APPLICANT'S SUBMISSIONS

10. The Applicant filed his submissions dated 23rd October 2025.
11. On behalf of the Applicant, Counsel outlined the following issues for the court's determination:
- a) Whether the Applicant has demonstrated ownership of the suit property?*

b) Whether the Applicant effected due service of eviction notices upon the Respondent?

c) Whether the Applicant is entitled to the orders sought?

12. Regarding the first issue, Counsel submitted that the Applicant is the registered owner of the suit property as evidenced by the certificate of lease and search certificate, which is conclusive evidence of proprietorship. It was submitted that the Respondent has not demonstrated ownership of the suit property or shown that the certificate of lease was acquired illegally, unprocedurally, or through a corrupt scheme. To support this argument, reliance was placed on the case of **Margaret Karwirwa Mwongera v Francis Kofi (2019) eKLR.**

13. Regarding the second issue, Counsel submitted that the Applicant personally served the eviction notice on the Respondent as shown in the affidavit dated 24th September 2024. It was submitted that the eviction

was scheduled for 20th December 2024, but the Respondent has refused to vacate.

14. Regarding the third issue, Counsel submitted that the Applicant is entitled to the orders sought as he has shown that he is the owner of the suit property and that he served eviction notices on the Respondent.

THE RESPONDENT'S SUBMISSIONS

15. The Respondent filed his submissions dated 22nd December 2025.

16. On behalf of the Respondent Counsel outlined the following issues for the court's determination:

a) Whether the Applicant is the owner of Plot no NAIROBI/BLOCK 178/1084

b) Whether the Applicant is entitled to the orders sought.

17. Counsel reiterated the contents of the replying affidavit in support of his submissions.

ANALYSIS AND DETERMINATION

18. 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.

19. The Applicant commenced these proceedings by way of a miscellaneous application seeking to evict the Respondent from the suit property on the grounds that he is a trespasser. The Respondent maintained that he was allocated the suit property.

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

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

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

22. 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.”

23. 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 the 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.

24. Having perused the documents on record, I have not found any Complaint, Originating Summons, or Petition filed by the Applicant.
25. 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.
26. 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.”

27. 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.

28. 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.
29. In the end, I find that the application dated 4th July 2025 is incompetent and the same is hereby struck out with costs to the Respondent.

**RULING DATED, SIGNED AND DELIVERED VIA
MICROSOFT TEAMS THIS 27TH DAY OF JANUARY,
2026.**

.....
T. MURIGI
JUDGE

IN THE PRESENCE OF:-

Absence of the parties
Ahmed - Court Assistant