

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT THIKA**

**ELC MISC CASE NO. E006 OF 2025**

**CHRISTINE KIRINGA KABAKA**

**ROBERT WILLIS NDEGWA KABAKA**

**KENNEDY KIGO KABAKA**

**JULIET WANJIRU KABAKA KIPLAGAT ..... APPLICANT**

**VERSUS**

**RAPHAEL NGIGI ..... 1<sup>ST</sup>**

**RESPONDENT**

**JOHN MACHARIA ..... 2<sup>ND</sup>**

**RESPONDENT**

**PETER NYOIKE ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

**Introduction**

1. The matter for before this Court is a Notice of Motion application dated 14<sup>th</sup> January 2025 seeking the following Orders:

1. *Spent...*
2. *THAT the Applicants are the Bona Fide and Registered owners of all that property known as THIKA MUNICIPALITY BLOCK 10/444. (hereinafter referred to as "the suit property").*
3. *THAT the Honourable Court be pleased to issued orders of eviction of the Respondents from all that parcel of land known as THIKA MUNICIPALITY BLOCK 10/444 and for vacant possession of the property to be delivered to the Applicants.*

4. *THAT pending the hearing of this application, this Honourable Court be pleased to issue a Permanent Injunctive Order restraining the Respondents by themselves, servants, employees, agents or any other persons acting under their instructions or their interests from entering, remaining, trespassing or in any other manner interfering with all that parcel of land known as THIKA MUNICIPALITY BLOCK 10/444.*
5. *THAT pending the hearing of this suit, this Honourable Court be pleased to issue an injunctive order restraining the Respondents by themselves, servants, employees, agents or any other persons acting under their instructions or their interests from entering, remaining, trespassing or in any other manner interfering with all that parcel of land known as THIKA MUNICIPALITY BLOCK 10/444.*
6. *THAT pending the hearing and determination of this suit, this Honourable Court be pleased to issue an order of status quo against the Respondent that they should not trespass nor benefit from the suit property.*
7. *THAT the Applicant be allowed to access the land for the purposes of surveying and demarcating the land in accordance with their needs.*
8. *THAT an order be issued directing the that the Thika County Commissioner, The Officer Commanding Police Division Thika and the Officer Commanding the Station Thika Police Station to supervise, provide security and enforce the order (3,4,5,6&7) by compelling the Defendants to exit from the suit property.*
9. *THAT the costs of the suit be provided for.*

2. The application is premised on the grounds on the face of it and the supporting affidavits of Robert Willis Ndegwa Kabaka, Juliet Wanjiru Kabaka Kiplagat and Kennedy Kigo Kabaka sworn on even date.
3. In essence, the Applicants submit that they are the registered proprietors of  
  
*THIKA MUNICIPALITY BLOCK 10/444* (hereinafter “the suit property”) which they inherited from their deceased parents after finalizing the succession process and obtaining grants. They also assert that they have been diligently paying the land rent and rates for the suit property.
4. The Applicants contend that the Respondent’s unlawful occupation of the suit property has materially impeded and continues to impede their ability to dispose of the property, thereby occasioning financial loss and exposing them to ongoing prejudice.
5. The Applicants further state that, having been rebuffed in their efforts to reclaim possession, they reported the matter to the police, obtaining OB Number 28/15/06/17. They also sought the intervention of the Assistant County Commissioner and the local Chief, in a sincere attempt to resolve the dispute through mediation. These efforts, however, proved fruitless. The Applicants contend that the Respondents’ continued occupation has inflicted financial loss upon them. They submit that, in the interest of justice and to prevent further harm, the relief sought in this application ought to be granted.

6. In opposition, the Respondents filed Grounds of Opposition dated 1<sup>st</sup> April 2025 contending that the Application is fatally defective having been brought as a miscellaneous cause while purporting to seek substantive and final reliefs such as eviction, declarations and permanent injunctions.
7. The Respondents further assert that, in the absence of a substantive suit, the Applicants cannot properly invoke the Court's jurisdiction to seek "an injunction pending the hearing and determination of the suit."
8. The Respondents characterise the reliefs sought as untenable, submitting that the Application conflates interlocutory and final remedies in a manner that is procedurally and legally impermissible.
9. The application was canvassed by way of written submissions.

#### **Issues for Determination**

10. Having considered the Application, the affidavits in support, the Grounds of Opposition, the rival submissions of the parties, and the relevant authorities, the Court is called upon to determine the following issues:
  - i. ***Whether the Application is procedurally competent***
  - ii. ***Whether the Applicants have satisfied the threshold requirements to warrant the grant of the injunctive relief sought.***

#### **Analysis and Determination**

11. Having laid bare the contours of the Application and the opposition thereto, the Court must first confront the question of procedural propriety.
12. The Respondents contend that the Application is fatally defective, having been brought as a miscellaneous cause while purporting to seek substantive and final reliefs, including eviction, declarations, and a permanent injunction.
13. At the heart of this objection lies a challenge to the very foundation of the Applicants' approach: can a miscellaneous application serve as a vessel for what are essentially final remedies, or does such a course transgress the boundaries of procedural law?
14. The answer lies in the clear dictates of the Civil Procedure Rules.
15. It is a fundamental principle of civil procedure that a suit is ordinarily instituted by way of a plaint, unless the rules of court expressly provide otherwise.
16. Section 19 of the Civil Procedure Act enjoins that

*“every suit shall be instituted in such manner as may be prescribed by the rules.”*
17. In turn, Order 3 Rule 1 of the Civil Procedure Rules echoes this prescription, stipulating that:

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

18. These provisions reflect the enduring wisdom of the law: the form of a proceeding is not a mere technicality, but the very vessel through which substantive rights are brought before the Court. Compliance with these procedural requirements is indispensable, for the Court's jurisdiction and the orderly administration of justice hinge upon the proper invocation of its processes.
19. Under Order 40, relief in the nature of a temporary or interlocutory injunction may only be sought within the context of a substantive suit.
20. Similarly, Order 51 prescribes the form and procedure for all applications, requiring that the nature of the relief sought be properly anchored in law. The Rules do not permit the conferral of final reliefs, such as eviction or declarations, through a miscellaneous application unconnected to an extant cause of action.
21. These provisions reflect a fundamental procedural principle: interlocutory relief such as a temporary injunction must be sought within the context of a substantive suit and cannot, as a matter of established practice, be shoe-horned into ancillary or miscellaneous proceedings that lack an underlying cause of action.
22. The Applicants assert that they are the registered owners of the land and have produced extensive evidence in their affidavits to establish their title. They contend that their ownership rights provide a clear foundation for the reliefs sought, including possession and injunctive

orders. The Respondents, however, challenge the procedural vehicle through which the Application has been brought

23. This tension between substantive entitlement and procedural propriety finds guidance in **Rono & 9 others v Kenya Forest Service & 4 others [2023] KEELC 535 (KLR)** where the Court observed that:

*“Permanent Injunctions are perpetual in nature and are generally issued after a suit has been heard and finally determined....*

*... an order of permanent injunction cannot issue on a miscellaneous application and/or a miscellaneous application commenced by way of a motion. A party seeking and desirous of such order must file a suit.”*

24. The Court in *Rono* emphasized that final reliefs, including permanent injunctions and possession orders, cannot properly be granted on a miscellaneous application unanchored in a substantive suit.
25. This position was reinforced in **SM v MNM [2025] KEHC 12052 (KLR)** where the court stated:

*“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. The same position was taken in the case of **Swanya Limited & 2 others v***

**Homebay Property Limited [2021] eKLR** where an application for injunction was filed without a substantive suit and the court stated that:

*.....in the absence of a Substantive suit, the subject Application, was mounted in vacuum. Same was therefore legally untenable and incapable of attracting Orders of Temporary Injunction.”*

26. These authorities collectively emphasize that interlocutory or final reliefs cannot issue in isolation, divorced from the procedural foundation of a substantive suit. Even compelling evidence of ownership cannot supply the procedural legitimacy required to sustain such an application.
27. The law is unequivocal: an injunction, whether temporary or permanent, must be anchored in a substantive cause of action or suit, and any attempt to circumvent this requirement renders the application legally tenuous.
28. In the present application the Court notes that, while the Applicants are indisputably the registered owners of the suit property and have adduced extensive evidence to substantiate their title, their choice of procedural vehicle is inconsistent with the law.
29. The Application has been brought as a miscellaneous cause, yet it seeks reliefs of a substantive and final character, including eviction, declarations, and a permanent injunction. There is no extant suit pending before the Court to which these reliefs can properly attach.

30. In light of **Rono & 9 others v Kenya Forest Service & 4 others(supra)** and **SM v MNM (supra)** it is evident that the Court cannot grant final or interlocutory reliefs in the absence of a substantive proceeding. The law does not permit the conferral of such remedies on the basis of ownership alone; procedural propriety is not optional, it is foundational. To allow otherwise would be to render the Rules of Court meaningless and to invite disorder into judicial administration.
31. Accordingly, the Court finds that the Application, in its present form, is procedurally defective. This defect strikes at the very foundation upon which the Applicants' entreaty for relief is predicated.
32. In light of the above finding, it is unnecessary to consider whether the Applicants have satisfied the threshold for injunctive relief. The procedural infirmity alone suffices to dispose of the Application.
33. It is apposite, in passing, to observe that Article 159(d) of the Constitution which provides that, "*justice shall be administered without undue regard to procedural technicalities*" does not confer a license to disregard clear statutory requirements or fundamental procedural safeguards.
34. While the Court is enjoined to avoid being unduly rigid in procedural matters, such flexibility cannot extend to excusing glaring omissions or failures to comply with mandatory provisions that are essential to the proper exercise of jurisdiction. Procedural rules exist not as

empty formalities but as the framework that ensures fairness, predictability, and the orderly administration of justice.

35. Consequently, in the absence of a substantive suit, the orders sought in the Application dated 14<sup>th</sup> January 2025 cannot lawfully issue.

36. The application dated 14<sup>th</sup> January 2025 is hereby struck out with costs.

**Dated, Signed and Delivered, at Thika this 11<sup>th</sup> day of February 2026**

.....  
**J. M. ONYANGO**  
**JUDGE**

**In the presence of:**

1. Mr. Kereu for Mr. Muturi Njoroge for the Respondents
2. Ms Juliet Kabaka Applicant present in person

Court Assistant: Hinga