

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC MISC NO. E005 OF 2026

ROBERT BUNDI MUGAA
APPLICANT

VERSUS

MAISHA HOUSING LIMITED
RESPONDENT

EX TEMPORE RULING

1. What is before me is the Notice of Motion dated 21.1.26 seeking the following orders:

a) *Spent*

b) *Spent*

c) *Pending the hearing and determination of this application, injunction orders to issue to issue to the Respondent not to deny the Applicant access and enjoyment of my utilities. (sic)*

d) *Pending the hearing determination of this application, injunction orders to issues to the Respondent not to interfere with the quiet and peaceful enjoyment of the suit premises.*

e) *A declaration be issued that the Defendant/ Respondents' remedy to any issue is by obtaining a court order and not from issuing illegal threats and interfering with the Applicant's quiet and peaceful enjoyment of the suit premises.*

f) Any other relief that this court may deem fit to issue.

2. The application was challenged by the Respondent through the Notice of Preliminary Objection dated 6.2.26 in which he raised the following grounds:

- i) That the application is incompetent, incurably defective and a total nullity in law as it is not anchored on a plaint or any substantive suit known in law.*
- ii) That the prayers sought in the application specifically for injunction and a declaration are interim in nature and cannot be sought or granted in a vacuum without an underlying primary suit.*
- iii) That in the absence of a plaint there is no substratum upon which this Honourable court can exercise its jurisdiction to grant an order of injunction or declaration.*
- iv) That the filing of a Miscellaneous Application to seek final or interlocutory injunctive relief without a primary cause of action constitutes a gross abuse of the process of this Honourable court.*
- v) That the Applicant having explicitly prayed for costs in his own application, the Respondent is entitled to costs on an indemnity basis for being dragged to court on a procedurally terminal and baseless application.*
- vi) That consequently, the entire application is fatally defective and should be struck out in limine with costs to the Respondent.*

3. The application was disposed of through oral submissions which are on record. The singular issue for determination is whether the order of injunction and declaration can be granted in a vacuum.

4. Section 19 of the Civil Procedure Act provides that:

“Every suit shall be instituted in such manner as may be prescribed by the rules:

5. Order 3 Rule 1 of the Civil Procedure Rules provides that:

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

6. The other ways of commencing suit are through a petition, originating summons, or Judicial Review Application.

7. It is a fundamental principle of law that an injunction whether temporary or permanent cannot be granted unless it is anchored on a substantive suit or put differently, an injunction cannot be granted in a vacuum.

8. In the case of ***Patrick Ngumbao Mweni vs Hellen Jepkoskei Kiplagat & 2 others HC Civil Case No. 19 of 2006*** the court declined to grant the injunction sought by the 1st and 3rd Defendants as they had not filed a counterclaim. They only sought orders that the plaintiff's suit be dismissed.

9. The court observed as follows:

i) There is no prayer to have the registration cancelled. The 3rd defendant has not even raised a prayer that he be declared as the owner of the trees and that he be allowed to harvest them. I totally agree with counsel for the plaintiff that an injunction order cannot be given in a vacuum. “One must show that he has made a claim”.

10. Distilling the principle in the above mentioned authority and applying it to the instant case, the Applicant has not demonstrated that he has filed

a claim against the Respondent either for injunctive relief or a declaratory order.

11. Consequently, the Miscellaneous Application and Notice of Motion dated 21.1.26 are incompetent and incurably defective. The Miscellaneous Application is hereby struck out in its entirety.
12. I make no order as to costs.

The file shall be closed.

Dated, signed and delivered, at Thika this 11th day of February 2026.

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J. M. ONYANGO
JUDGE

In the presence of:

1. Miss Ndichu for the Applicant
2. Mr. Musyoka for the Respondent

Court Assistant: Hinga