

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT ELDORET**  
**ELC LAND CASE NO. E062 OF 2025**

**CHARLES KIBET KOMEN .....**  
**PLAINTIFF/APPLICANT**

**VERSUS**

**JUDY KIPKOTI ..... 1<sup>ST</sup>**

**DEFENDANT/RESPONDENT**

**BEATRICE KIPKOTI ..... 2<sup>ND</sup>**

**DEFENDANT/RESPONDENT**

**ROSE JEPKOSGEI KIPKOTI ..... 3<sup>RD</sup>**

**DEFENDANT/RESPONDENT**

**RULING:**

1. The applicant herein filed a Notice of Motion Application dated 10<sup>th</sup> July, 2025 against the respondents seeking the following orders: -
  - i. Spent.
  - ii. That the honourable court be pleased to issue an eviction order against the defendants/respondents from land parcel number MOSOP/KAPCHORUA/799 being property legally registered in the name of the plaintiff/applicant.
  - iii. That the defendants/respondents be condemned to pay general damages and special damages to the plaintiff/applicant for unlawful occupation, interference with peaceful possession and consequential loss of use of the land.

- iv. That the defendants/respondents do pay the plaintiff/applicant compensation for trespass and unlawful occupation for the entire period of occupation from 28/08/2015 to date.
  - v. That the defendants/respondents be ordered to bear the costs of this court including court filing fees, legal representation, fees and expenses of the court bailiff and any other incidental costs arising from the enforcement of the court's orders.
  - vi. That this honourable court do grant any other relief it deems fit and just in the circumstances.
2. The application is premised on the 4 grounds on the face thereof and on the applicant's Supporting Affidavit sworn and evenly dated.
  3. The applicant stated that he is the registered and lawful proprietor of the parcel of land known as MOSOP/KAPCHORUA/799, hereinafter referred to as the suit property.
  4. He annexed copies of the title deed and green card in respect to the suit property to support his ownership claims and show that there are no encumbrances on the said property.
  5. It was his claim that on or about 28.08.2015, the respondents unlawfully entered into the suit land without his permission, authority and/or any color of right and have since refused to vacate the suit property.

6. That despite several demands and notices requesting the respondents to vacate the suit property, they have refused and continue to occupy and utilize the property to his detriment.
7. He therefore contends that the respondents' unlawful occupation has occasioned him substantial harm, loss of use of the suit property for farming, emotional distress and disturbance.
8. The applicant gave a chronology of events from the acquisition of the suit property, the registration and issuance of the title deed and the subsequent acts of trespass and the various demand notices issued, hence the instant suit.
9. In conclusion, he maintained that the application had been made in good faith and thus urged the court to allow the application and grant the orders sought.
10. The application was opposed. The Respondents filed a Replying Affidavit dated 25.08.2025 sworn by Judy Kipkoti, the 1<sup>st</sup> defendant/respondent herein, on her own behalf and on behalf of the 3<sup>rd</sup> respondent.
11. It is her contention that none of the prayers sought in the present application can be granted at an interlocutory stage.
12. She accused the applicant of misusing the due process of the court by filing multiple applications diversely dated 16.12.2022, 22.03.2024, 17.01.2025 all seeking an order of eviction.
13. It was also her claim that the present suit and application offend the doctrine of *res judicata* for the reason that parties

had earlier filed ELDORET ELC NO. 385 OF 2015 touching on the same subject matter.

14. She further deponed that the previous suit, ELDORET ELC NO. 385 OF 2015 was heard and determined and a decree issued thereto on 16.12.2022.
15. In conclusion, she asked the court to find that the application does not disclose any reasonable cause of action to warrant the grant of the orders sought and thus urged the court to dismiss the application with costs.
16. The application was canvassed by way of written submissions. However, on a perusal of the court record, I have only seen the respondents' submissions dated 23.02.2026 together with authorities. I have also seen the Applicant's reply to those submissions dated 25.03.2026. I have read and considered the same.
17. I will proceed to render my determination on the present application as hereunder.

**Analysis and Disposition:**

18. Having carefully considered the grounds in the application, the supporting affidavit and the replying affidavit as well as the submissions in totality, it is my considered view that the following issues arise for determination: -
  - i. *Whether the orders sought in the present application can be granted at an interlocutory stage.*
  - ii. *Whether the present application is merited.*
  - iii. *Who shall bear the costs of the present application.*

19. Having identified the above issues for determination, I will proceed to discuss and analyse the same as hereunder.

**Whether the orders sought in the present application can be granted at an interlocutory stage;**

20. The applicant herein has sought the grant of an order of eviction against the respondents from the suit property, that the respondents be condemned to pay general and special damages, that this court do grant an order for compensation for trespass and unlawful occupation as well as costs of the suit which includes filing fees, expenses for the court bailiff and urged the court to grant the same.
21. This issue therefore seeks to examine and interrogate whether the said prayers sought in the manner sought can be granted at this interlocutory stage.
22. In essence, this court must consider whether it can issue an order of eviction against the respondents, to vacate and move out from the suit property, issues orders of general and special damages at this interlocutory stage and whether the net/cumulative effect of granting the said orders in the manner sought would amount to dispensing/determining the entire suit on the basis of an application.
23. The applicant has premised his application on the fact that he is the registered and legal proprietor of the suit property

herein and that the respondents without any color of right, authority or consent, encroached into the suit property and have remained in occupation despite several demands to render vacant possession.

24. In my considered opinion, the issues touching on trespass, eviction, general and special damages and subsequent orders thereto, if any, can only be issued after the hearing of the parties and their various claims, production of evidence and evaluation of the merits of the evidence tendered. This is yet to be done in the instant case.
25. The orders sought herein are substantive orders which can only be granted after a full hearing of both parties' claims, evaluation of the evidence tendered in support and against of the rival claims and a determination of the case on merit.
26. In view of the foregoing, it is the finding of this court that the prayers and/or orders sought in the present application are final in nature and cannot therefore be granted by this court at an interlocutory stage. The orders have been sought prematurely and are therefore untenable in the circumstances.

**Whether the present application is merited;**

27. In view of the findings in issue (i) above, this court finds that the present application is not merited. The orders/prayers therein have been sought prematurely and cannot therefore be issued at this stage.

**Who shall bear the costs of the present application;**

28. On the issue of costs, the general rule is that costs shall follow the event unless the court directs otherwise.
29. In this case, having held that the present application is not merited and that the orders sought in the manner sought are untenable, it is the finding of this court that the respondents are entitled to costs of the application.

**Conclusion**

30. In view of the foregoing, I accordingly find that the Notice of Motion Application dated 10<sup>th</sup> July, 2025 is not merited and is hereby dismissed with costs to the Respondents.
31. It is so ordered.

**DATED, SIGNED and DELIVERED in ELDORET this 23<sup>RD</sup> day of APRIL, 2026.**

**HON. C. K. YANO  
JUDGE**

Ruling delivered in the presence of: -

No appearance for the Plaintiff/Applicant

Mr. Kipnyekwei for the Defendants/ Respondents

Court Assistant - Laban

ORIGINAL