



**Kibisu v Luchidi (Environment & Land Miscellaneous Case  
E013 of 2024) [2024] KEELC 6210 (KLR) (29 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 6210 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND MISCELLANEOUS CASE E013 OF 2024**

**A OMBWAYO, J**

**JULY 29, 2024**

**BETWEEN**

**ROBERT TOM MARTINS KIBISU ..... APPLICANT**

**AND**

**PAUL SUDI LUCHIDI ..... RESPONDENT**

**RULING**

1. Robert Tom Martins Kibisu, the applicant herein has sued Paul Sudi Luchidi by way of notice of motion dated 1<sup>st</sup> April 2024. The applicant seeks an order of temporary injunction be issued against the Respondent/his agents/servants and or any other person working at his behest from selling, alienating, disposing and or any other way dealing with the suit land pending the hearing of this application. Moreover, that a temporary injunction be issued against the Respondent/his agents/servants and or any other person working at his behest from selling, alienating, disposing and or in any other way dealing with the suit land pending the hearing and determination of this suit. Furthermore, that a restraining order be issued against the Respondent from trespassing onto the suit land pending the hearing and determination of this application. Lastly, a permanent order be issued against the Respondent to exhume the remains of Collins Wangila Sudi from the suit land for internment elsewhere other than the suit land at his expense and that an order be issued to OCS Elburgon to ensure compliance of 5 above and to provide security and any other Order the Court may deem necessary. The application is not opposed despite service.
2. I have perused the file and have not seen any suit filed in any manner prescribed by law. Section 2 of the *C.P.A* provides that a suit should be commenced in the manner prescribed by law. A suit can be commenced by way of Complaint, Originating Summons or Complaint or Notice of Motion for judicial removal under order 53 of the *Civil Procedure Rules* 20100. There is no provision for commencing a suit by way



of Notice of Motion seeking orders of injunction. In the case of *Joseph Kibowen Chemior V William C Kiseru* [2013] eKLR the court extensively discussed 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 (7) "suit of a civil nature" is defined to be a civil action.

(8) "A civil action" is an action brought to enforce, redress, or protect a private or civil right.

(9) Section 2 of the *Civil Procedure Act*, defines "suit" as all civil proceedings commenced in any manner "prescribed" under Section 2 means prescribed by rules.

"Rules" means rules and forms made by the Rules Committee to regulate the procedure of courts.

(12) "pleadings" includes 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 to any defence or counterclaim of a defendant.

Under Section 19 of the *Civil Procedure Act*, every suit shall be instituted in such manner as may be prescribed by rules. It will be observed that Section 19 does not pretend that the Civil Procedure Rules have a monopoly on how suits should be instituted. It provides that suits may be instituted in the manner prescribed by rules. There could be rules in other statutes on how Proceedings may be commenced. For example the *Probate & Administration Rules* under the Succession Act,(14) 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 (in this instance to enforce a civil action), he needs to follow prescribed rules.

3. Order 3 Rule (i) (ii) provides that every suit shall be instituted by way of a Plaint or in such other manner that may be prescribed. As a general rule a suit can only be instituted by way of a Plaint, Petition or an Originating summons. A Notice of Motion is not legally recognized as an originating process. A Notice of Motion can only be filed within a properly instituted suit. I do find that the application has no basis in law and the same is struck out. No orders as to costs.

**RULING DATED, SIGNED AND DELIVERED ELECTRONICALLY ON THE 29<sup>TH</sup> DAY OF JULY 2024.**

**A.O. OMBWAYO**

**JUDGE**

