



**Sum (Suing through the guardian ad litem Edel Chepkorir Sum)
v Samoei & 7 others (Environment & Land Miscellaneous Case
E023 of 2024) [2024] KEELC 7573 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7573 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND MISCELLANEOUS CASE E023 OF 2024
JM ONYANGO, J
NOVEMBER 14, 2024**

BETWEEN

**VERONICA CHEPSAT SUM (SUING THROUGH THE GUARDIAN AD LITEM
EDEL CHEPKORIR SUM) APPLICANT**

AND

**JOEL SAMOEI 1ST RESPONDENT
CATHOLIC DIOCESE OF ELDORET 2ND RESPONDENT
CELINE GEORGE POLAND 3RD RESPONDENT
AMBROSE KIPKORIR BITOK 4TH RESPONDENT
FIONA JERONO SUM 5TH RESPONDENT
VALLARIE CHELAGAT 6TH RESPONDENT
PRISCILLA JEPKEMBOI SITIENEI 7TH RESPONDENT
KIBWOTT SERONEY 8TH RESPONDENT**

RULING

1. The court is tasked with determining the Miscellaneous Application dated 3rd June 2024 in which the Applicant sought the following Orders:
 1. The Honourable Court be pleased to order the Respondents, Defendants, their Agents, Official, Representatives, Assigns, Heirs, Squatter, Tenants and/ or Lessees to be evicted from all that parcel of land known as L.R. 2226 (I.R 603)



2. The Applicant can be at liberty to appoint a court bailiff or auctioneers to evict the Respondents
 3. The Honourable Court be pleased to issue an order directing the O.C.S Moiben Police Station to provide the security during the eviction exercise.
2. The Application is premised on the grounds on the face of it and the Supporting Affidavit one Edel Chepkorir Sum which was sworn on even date.
 3. The application was opposed by the Replying Affidavits of the Joel Samoei and Father Paul Kiprono on behalf of the 2nd Respondent, both sworn on 9th July 2024.
 4. On 21st June 2024, the Respondents raised a Preliminary Objection, contending, inter alia, that an eviction order is inherently final in nature and, as such, cannot be sought through a Miscellaneous Application. The Respondent's position implies that such relief, bearing conclusive effect, must be pursued through substantive proceedings rather than ancillary procedural avenues.
 5. Pursuant to the directions of the court, the Applicant and the Respondent filed their written submissions on 15th October 2024 and 24th October 2024 respectively.

Issues for Determination

6. Having scrutinized the Application, the Replying Affidavit in response to the application, the Preliminary Objection and the parties' respective submissions, a single issue emerges for consideration:

Whether an eviction order can be sought by way of a miscellaneous application

Analysis and Determination

7. Before addressing the question of whether an eviction order may properly be pursued through a miscellaneous application, we must pause to consider the character and purpose of such applications within our legal system.
8. Miscellaneous applications, in their essence, are procedural tools crafted to deal with incidental matters, often sidestepping the need for a full and final adjudication. They are the handmaidens of the court, intended to ease the process of justice by swiftly addressing preliminary points without touching the heart of the main dispute.
9. As a general rule, suits are commenced by way of a Complaint, Petition or Originating Summons save where the rules prescribe an alternative course. Order 3, Rule 1 of the Civil Procedure Rules sets forth this principle, establishing the Complaint as the standard mode of instituting proceedings, unless another mode is expressly provided.
10. In this case, however, we are faced with an order of eviction—a relief that strikes at the very root of possession and rights to land. This naturally raises the question: does such a far-reaching remedy fit comfortably within the framework of a miscellaneous application, or does it call instead for a more substantive course?
11. The manner of instituting a suit seeking an eviction order is prescribed for in the *Land Act* No.6 of 292 (Rev 2019), and more particularly sections, 152A to 152H. An evaluation of these provisions does not provide any departure from the general rule under Order 3 Rule 1 of the Civil Procedure Rules.



12. The Courts have had occasion to determine matters of eviction brought under miscellaneous applications. In *Lynette Nasimiyu Wafula v David Mwangi & 4 others* [2022] eKLR the Court addressed the issue as follows:

As stated above the Applicant seeks to enforce her rights as a registered owner of the suit property. She ought to have filed a plaint so that the matter can be heard on its merits. Order 3 rule (1) of the Civil Procedure Rules provides that:-

“(1) Every suit shall be instituted by presenting a plaint to the Court, or in such other manner as may be prescribed.”

... Since the Applicant has approached the court seeking an eviction order, the Respondents must be accorded a fair hearing by being served with the pleadings. Article 50 of *the Constitution* provides for the right to a fair hearing. This can only be possible by each party filing documents in support of his/her case.

13. Similarly, in *Tatecoh Housing and Co-op Sacco Limited v Qwetu Sacco Limited* [2021] eKLR the court stated:

Without much ado, I will agree with the position of the respondent, as raised in the preliminary objection and buttressed by Mr. Muthami in his submissions, that the applicant cannot seek the orders sought in its miscellaneous application without going through the process of filing suit. It will be observed that among the orders sought in the motion are orders of eviction. One will ordinarily only obtain an order of eviction after a full hearing of a case. What the applicant needed to do was therefore to file a substantive suit for eviction through a plaint. It is upon hearing of such suit, and if successful, that an order of eviction would issue.

14. Essentially, the procedural framework does not accommodate the issuance of such a conclusive remedy without the applicant first satisfying the requirements of a properly instituted suit. The pathway to an eviction order demands adherence to due process, allowing both parties to present their case in full; a standard that cannot be circumvented through a miscellaneous application.
15. Learned counsel for the Applicant relied on the case *Ringera v Muhindi* (Environment and Land Miscellaneous Application E128 of 2021) [2022] KEELC 2481 (KLR) (7 July 2022) (Judgment) to support the Application dated 3rd June 2024.
16. With all due respect, while the decision in *Ringera v. Muhindi* (Supra) is distinguishable from the instant case as the Respondents in that case had been convicted of the offence of unlawful detainer of the suit property and they did not lay any claim to the suit property.
17. Conversely, the Respondents herein seem to be staking a claim in the suit property through various suits thus making the matter more contentious. It would be a misstep to treat the decision in *Ringera v. Muhindi* (Supra) as an unassailable edifice upon which to base future decisions. One must not mistake a particular decision, albeit persuasive, for the general rule.
18. In my view, the relief sought in the instant application, an eviction order, carries a finality that necessitates a more thorough process than what a miscellaneous application affords.
19. An eviction is a matter that demands the full scrutiny of a substantive suit, where both parties have the opportunity to present their case.



20. Section 19 of the *Civil Procedure Act* provides that, “Every suit shall be instituted in such manner as shall be prescribed in the rules.” As aforementioned, Order 3, Rule 1 of the Civil Procedure Rules establishes the general manner in which suits may be instituted. In the absence of any clear, prescribed procedure, such suit shall be instituted by way of a plaint.
21. Section 19 and Order 3 Rule of the *Civil Procedure Act* both employ the word “shall,” which imparts an imperative force to the filing of a plaint, rendering it a mandatory requirement of law. It is not a matter of discretion or judicial whim, but a clear, unequivocal directive that must be adhered to unless an alternative is expressly provided for.
22. I am guided by the decisions in *Norah Ndunge Henry & another v Abednego Mutisya & another* [2022] eKLR; *Wanja & another v Roothaert* (Miscellaneous Application E193 of 2021) [2022] KEHC 10255 (KLR) (3 June 2022) (Ruling) where the Courts held that a Notice of Motion, though a useful procedural tool, is not recognized in law as an originating process. It is not the proper vehicle to initiate proceedings, and can only be filed within the framework of a suit already in motion.
23. In the instant matter, the Applicant failed to anchor her Notice of Motion in a suit. I am, of course, mindful of the noble provisions in Article 159(2)(d) of *the Constitution*, which directs that justice be dispensed without undue regard to technicalities.
24. However, it is my firm view that the commencement of a suit in a manner that renders the instituting documents incapable of being regarded as “pleadings” goes far beyond the realm of mere technicality. Such a deviation strikes at the very essence of procedural integrity.
25. It is not merely a question of formalities, but one of preserving the structure upon which the administration of justice depends. To overlook this would be to invite an erosion of the foundational principles that ensure justice is not only done but seen to be done, and that the process remains fair and transparent.
26. The law, while flexible in its application, must never lose sight of the fundamental principles of due process that uphold the rule of law.
27. In my considered view, to proceed with a Notice of Motion unanchored within the framework of a duly filed suit is to invite the fatal defect of jurisdictional infirmity. Such an application cannot stand, as it lacks the essential foundation required for it to be properly before the court.
28. The Preliminary Objection dated 21st June 2024, therefore, has merit, and in the circumstances, I am compelled to dismiss the Application dated 3rd June 2024 in its entirety.
29. The application, in its current form, falls short of the requirements necessary to sustain a suit and it is, accordingly, dismissed with costs.

DATED, SIGNED AND DELIVERED, AT ELDORET THIS 14TH DAY OF NOVEMBER, 2024

J. M. ONYANGO

JUDGE

In the presence of;

Miss Otuma for Mr. Momanyi Gichana for the Applicant

No appearance for the Respondents

Court Assistant: Kuto

