



Francis & 2 others (Suing on Their Behalf and on Behalf of the Members of Sosian Community Development Trust (SCODET) CBO as the chairperson, Treasurer and the Vice Secretary Respectively) v Ol Maisor Farm & another (Environment & Land Case E024 of 2024) [2025] KEELC 1350 (KLR) (19 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1350 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND CASE E024 OF 2024**

**LN MBUGUA, J
MARCH 19, 2025**

BETWEEN

**AUKO FRANCIS 1ST PLAINTIFF
JAMES ELIMLIM 2ND PLAINTIFF
EMURIA LORERE 3RD PLAINTIFF
SUING ON THEIR BEHALF AND ON BEHALF OF THE MEMBERS OF
SOSIAN COMMUNITY DEVELOPMENT TRUST (SCODET) CBO AS THE
CHAIRPERSON, TREASURER AND THE VICE SECRETARY RESPECTIVELY**

AND

**OL MAISOR FARM 1ST DEFENDANT
MARTIN JAMES EVANS 2ND DEFENDANT**

RULING

1. The application dated 18.12.2024 was presented before the court on 19.12.2024 when it was given a hearing date for 4.2.2025. On 4.2.2025, this court gave directions for the prosecution of the said application alongside a preliminary objection dated 31.1.2025 and a date for a ruling was given, the same being 19.3.2025.
2. In the said application dated 18.12.2024 filed contemporaneously with the suit, the plaintiffs are seeking a temporary order of injunction restraining the defendants/respondents by itself, its agents, servants and/or employees from dealing in, evicting, fencing, trespassing, erecting and/or causing to erect structures and/or fences, denying ingress to and egress from and/or in any other way interfering with Applicant's quite possession and use of the riparian land abutting L.R No. 8038/1.



3. The application is premised on grounds on the face of the application and the supporting affidavit of one Emuria Lorere who introduces himself as the vice secretary of Sosian Community Development Trust (SCODET) which is a CBO whose membership is rather diverse traversing families and displaced communities etc. He contends that the defendant fenced off his land in November 2024 but extended the fence all the way from Old Maral road to Ewaso river thereby restricting plaintiffs access to their homes and the river.
4. In opposition thereof, the defendant filed a replying affidavit dated 27.1.2025 sworn by Martin James Evans who contends that he is the registered proprietor of parcel L.R.8038 commonly known as Ol Maisor Farm. He avers that Ol Maisor Farm is not a legal entity capable of being sued under such a name. To this end, he filed a Preliminary objection dated 31.1.2025 seeking orders to have the suit struck out.
5. In rejoinder, Lemuria Norere filed a supplementary affidavit dated 14/2/2025 where he contends that the plaintiffs were not aware that Ol Maisor Farm was unregistered and cannot be sued, thus they have since filed an amended plaint to bring on board Martin James Evans as a defendant.
6. I have considered all the material presented before this court. I note that the plaintiffs have filed an amended Notice of Motion Application contemporaneously with an amended plaint on 17.2.2025, long after the court gave a date for ruling on 4.2.2025. It is also noted that the submissions of the plaintiff are in support of the amended notice of motion application.
7. In so far as this ruling is concerned, the court cannot consider the aforementioned documents as they had not been made a subject of contest as at 4.2.2025. Simply put, the said amended Notice of Motion and the Plaint did not exist as at that time.
8. The court however did grant the plaintiffs leave to file a supplementary affidavit restricted to the issues raised in the replying affidavit of the defendant. The said supplementary affidavit was filed on 17.2.2025 in which the plaintiffs admit that the defendant is not a registered entity.
9. This far, I find that the defendant has rightly submitted on the Preliminary Objection that the suit is a non starter as it was instituted against a non legal entity. See, Ernest Ngigi Waitthaka & 2 Others v Peter Mutunga Gachigi [2017]eklr.
10. Should the court then proceed to strike out the entire suit? I hesitate to do so. The reason being that the actual defendant is known. In the case of Kipsiwo Community Self Help Group v Attorney General And 6 Others [2013] KEELC 63 (KLR), the court while dealing with the question of capacity to sue by a non legal entity, stated thus;

“I could probably have allowed the petition to stand, and be amended, if I had known who precisely the petitioners are. But I do not know who they are and even if I am to allow a substitution, with whom will I substitute the plaintiff? Substituting the initiator of a claim is always more difficult than substituting the defendant/respondent”.
11. In as much as the court has declined to determine the issues at hand based on the amended documents, I find that striking out the entire suit when the defendant is known is a draconian measure. To this end, I am guided by the provisions of Article 159 (2) (d) of [the Constitution](#) which mandates this court to administer justice without undue regard to procedural technicalities.



12. Further, I make reference to the provisions of Section 1A of the Civil Procedure Act which stipulate that;

- “(1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
- (2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
- (3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court”

13. Nevertheless, the court shall not entertain messy pleadings and will therefore give orders geared towards streamlining the pleadings of the parties.

14. In the end, I find that the appropriate orders to give at this stage are as follows;

- 1) The suit against the defendant identified as Ol Maisor Farm is hereby struck out.
- 2) The application dated 18.12.2024 is hereby struck out, thus the amended version dated 14.2.2025 is also struck out.
- 3) The plaintiff is granted 14 days to amend their pleadings to reflect the correct party.
- 4) The plaintiffs are at liberty to file a fresh application to capture the correct party.
- 5) Each party shall bear their own costs in relation to the application dated 18.12.2025 and the preliminary objection dated 31.1.2025.

DATED, SIGNED AND DELIVERED AT NANYUKI THIS 19TH DAY OF MARCH 2025 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Waichungo Martin for Plaintiffs

Thuku Mbaaro holding brief for Mwangi J. for Defendants

Nancy Mwangi – Court Assistant

