



**Muraya v Kivindu & 3 others (Environment & Land Case  
E152 of 2021) [2025] KEELC 3338 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3338 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E152 OF 2021**

**CG MBOGO, J**

**APRIL 24, 2025**

**BETWEEN**

**JOSEPH NGUME MURAYA ..... PLAINTIFF**

**AND**

**VICTOR WAMBUA KIVINDU ..... 1<sup>ST</sup> DEFENDANT**

**CAROLYNE MUENI MUINDI ..... 2<sup>ND</sup> DEFENDANT**

**PENINAH WAMBUA ..... 3<sup>RD</sup> DEFENDANT**

**DICKSON NYANDIKA ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. Before this court for determination is the notice of motion dated 29<sup>th</sup> July, 2024, filed by the plaintiff/applicant, and it is expressed to be brought under Order 51 Rules 1, 2 and 15 of the [Civil Procedure Rules](#), and Sections 1A, 1B and 3A of the [Civil Procedure Act](#), seeking the following orders: -
  1. That the defendants' statement of defence and counterclaim dated 12<sup>th</sup> June, 2024 together with the evidentiary material filed therewith be struck out.
  2. The suit, ELCC/ E036/021 *Samson Otiemo Magogo (Suing on behalf of Embakasi Youth JuaKali Project) v National Land Commission and Joseph Ngume Muraya* (as consolidated with the instant suit) be struck out with costs to the plaintiff herein.
  3. The plaintiff's claim herein be set down for formal proof hearing.
  4. That the defendants pay the costs of this application.
2. The application is premised on the grounds inter alia that by a statement of defence and counterclaim, the defendants/respondents alleged that the suit property was availed to the self-help group for social development.



3. The application is supported by the affidavit of the plaintiff/ applicant sworn on even date. The plaintiff/applicant deposed that the defendants/respondents filed their statement of defence and counterclaim dated 12<sup>th</sup> June, 2024. That as a background check, sometime in the year 2022, he filed a complaint with the Directorate of Criminal Investigations where it was purported that the self-help group is non-existent. He deposed that the defendants/respondents defence, and counterclaim in this suit, together with the pleadings in ELCC/ E036 of 2021 are fatally defective, and hence a nullity.
4. The plaintiff/applicant deposed that the non-existence of the defendants/respondents alleged association renders their statement of defence and counterclaim a nullity, since they lack the locus standi to defend the suit. In support of his averments, the plaintiff/ applicant annexed a copy of the certificate of registration of Embakasi Youth JuaKali Project dated 11<sup>th</sup> November, 2013 and the letter from the County Coordinator for Social Development dated 14<sup>th</sup> April, 2021.
5. The application was opposed vide the replying affidavit of Samson Otieno Magogo (the plaintiff in ELCC No. E036 of 2021) sworn on 15<sup>th</sup> August, 2024 on his own behalf and on behalf of the 1<sup>st</sup> to 4<sup>th</sup> defendants/respondents in this matter. The defendants/respondents deposed that Embakasi Youth JuaKali Project was registered on 12<sup>th</sup> October, 2013, and that it is a requirement that they apply for the replacement of the certificate after every five years and renew their license every year. He deposed that they have been paying for their license, and were issued with a replacement of the certificate on 6<sup>th</sup> October, 2022 which is to run until the year 2027. That as such, they are properly registered, and the plaintiff/applicant's claim is without basis, and is meant to delay the expeditious disposal of this suit.
6. The defendant/respondent further deposed that the registration or otherwise of the CBO is of no consequence to this suit since the individual members have been sued, and they have a right to have their suit determined on merit. Further, that the issues raised in these proceedings, and cannot be wished away by technicalities. They attached copies of receipt of payments evidencing renewal of the CBO.
7. The application was canvassed by way of written submissions. The plaintiff/applicant filed his written submissions dated 28<sup>th</sup> January, 2025. He submitted that having established that Embakasi Youth Jua Kali Self Help Group Project is non-existent, the proceedings are thus a nullity and incurably defective as there is no legal entity by the name. He submitted that the 1<sup>st</sup> to 4<sup>th</sup> defendants ought to bring the suit in their personal capacity in respect to their claims, if any. The plaintiff/applicant relied on the cases of *Ernie Campell & Co. Ltd v Automobile Association of Kenya* [2006] eKLR, *Banque Internationale de commerce de Petrogad v Goukassow* [1923] 2 KB, 682 and *Housing Finance Company of Kenya Ltd v Embakasi Youth Development Project* [2004] KEHC 2613 (KLR).
8. The defendants/respondents filed their written submissions dated 7<sup>th</sup> March, 2025. They submitted that the issues raised by the National Land Commission and the defendants/respondents on the validity of the plaintiff's/applicant's title deeds are issues that warrant determination on merit. Further, that Article 159 of the *Constitution* provides that justice be dispensed without undue regard to technicalities. Further, that the defendants/ respondents are individuals suing and being sued in their individual capacities, hence competent to sue and be sued in their personal capacities.
9. I have considered the application, the reply thereto and the written submissions filed by the respective parties. The issue for determination is whether the application has merit.
10. I have perused the record in this matter, and I note that this file is consolidated together with E036 of 2021 where the parties are *Samson Otieno (Suing on behalf of Embakasi Youth Juakali Project) v National Land Commission and Joseph Ngume Muraya*. The plaintiff/applicant herein argues that upon further enquiry, he learnt that Embakasi Youth Juakali Project is non- existence, and therefore all the pleadings filed on its behalf ought to be struck out.



11. It ought not to be forgotten that striking out a suit is a draconian act which denies an aggrieved party the avenue to have the dispute determined on merit. The power to strike out a suit should be exercised sparingly and a court should rather sustain a suit than dismiss it.
12. Looking at the circumstances of this case, the defendants/respondents produced receipts of payment indicating that they are in existence. From these receipts, it appears that even prior to the filing of the suit, payments were being made as far back as the year 2016. Is this reason enough to strike out a suit? Definitely not. There are individuals listed as parties to the suit, and the lack of renewal of the license as at the time of filing the suit, is not in my view fatal to the suit.
13. In the case of *Lamanken Aramat v. Harun Maitamei Lempaka*, SC Petition No 5 of 2014, the Supreme Court stated:

“[123] A court dealing with a question of procedure, where jurisdiction is not expressly limited in scope... may exercise a discretion to ensure that any procedural failing that lends itself to cure under Article 159, is cured. We agree with learned counsel that certain procedural shortfalls may not have a bearing on the judicial power (jurisdiction) to consider a particular matter. In most cases, procedural shortcomings will only affect the competence of the cause before a court, without in any way affecting that court’s jurisdiction to entertain it. A court so placed, taking into account the relevant facts and circumstances, may cure such a defect; and the *Constitution* requires such an exercise of discretion in matters of a technical character.”

14. While I place reliance on the above cited authority, it is imperative to note that the suit is yet to be set down for hearing. There is still room for amendment or otherwise in compliance with the requisite procedure, if need be. This court will not be in a rush to remove a litigant out of the seat of justice where an avenue exists for the correction of any defect.
15. From the above, the notice of motion dated 29<sup>th</sup> July, 2024 lacks merit, and it is hereby dismissed. Costs in the cause.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY THIS 24<sup>TH</sup> DAY OF APRIL, 2025.**

**HON. MBOGO C.G.**

**JUDGE**

**24/04/2025.**

In the presence of:-

Mr. Benson Agunga - Court assistant

Mr. Mwaura holding brief for Mr. Mburu for the Plaintiff/Applicant – present

Mr. Olande for the Defendants/Respondents – present

