



**Fulson Company Limited v Rama & 3 others (Environment & Land  
Case 130 of 2018) [2025] KEELC 3236 (KLR) (7 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3236 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 130 OF 2018**

**FM NJOROGE, J**

**APRIL 7, 2025**

**BETWEEN**

**FULSON COMPANY LIMITED ..... PLAINTIFF**

**AND**

**RICHARD PREMCHAND RAMA ..... 1<sup>ST</sup> DEFENDANT**

**LYDIA WAIRIMU NJOROGE ..... 2<sup>ND</sup> DEFENDANT**

**EDWARD MZEE KAREZI ..... 3<sup>RD</sup> DEFENDANT**

**REGISTRAR OF TITLES MOMBASA ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The Notice of Motion for determination is dated 6/6/2024 and brought under section 1A, 3, 3A and 63 (e) of the [Civil Procedure Act](#) and Order 2 Rule 15 of the Civil Procedure Rules. The orders sought are: -
  1. ....Spent;
  2. That the honourable court be pleased to strike out the entire Plaintiff's suit with costs;
  3. That the costs of this application be in the cause.
2. The application is premised on the grounds on the face of it and more particularly in the supporting affidavit of the 2<sup>nd</sup> Defendant/Applicant sworn on 6/6/2024. The 2<sup>nd</sup> Defendant/applicant deposed that the Plaintiff's title herein was cancelled vide a judgment delivered on 16/2/2022 in Mombasa ELC Petition No. 32 of 2020, which judgment has never been appealed; that the Plaintiff has no valid title deserving protection by this court. According to the Applicant, the present suit is thus an abuse of the court process as there is no claim against the Defendants.
3. The 1<sup>st</sup> Defendant filed a replying affidavit which he swore on 21/6/2024 in support of the application.



4. The Plaintiff filed a replying affidavit sworn by its director, Sangeeta Jiwan, on 14/6/2024, opposing the application. The Plaintiff's director averred that the Plaintiff is the registered owner of a parcel of land known as sub-division No. LR 17835/1 (Original No. 17835) having purchased the same from the 3<sup>rd</sup> Defendant pursuant to an agreement dated 14/10/2010; that upon purchase, the Plaintiff took possession thereof until sometime in May 2018 when the 1<sup>st</sup> and 2<sup>nd</sup> Defendants trespassed upon and forcefully entered the suit property, claiming purchaser's interest. The present suit proceeded for hearing where the Plaintiff's case was closed on 14/6/2022; that in 2019, one Mohamed Shally Sese filed Mombasa ELC Petition 32 of 2020 against the Plaintiff and the 3<sup>rd</sup> Defendant herein and other parties seeking nullification of the mother title LR No. 17835. That Petition was allowed on 16/2/2022 necessitating the Plaintiff herein to file a Notice of Appeal. On 6/12/2022, the Mombasa Court reviewed its judgment directing that the petitioner therein be compensated a sum of Kshs. 175,000,000/- in lieu of the claim for cancellation of title; that the effect of the said review was that the registration status of the original title LR No. 17835 and subsequent subdivisions including the suit property in the present suit, were left undisturbed.
5. The application was canvassed by way of written submissions.

### **2<sup>nd</sup> Defendant/Applicant's Submissions**

6. Relying on the case of Technology Investments Limited *vs* 3 others *v* Patel *vs* 2 Others (ELC 55 *vs* 179 of 2020 consolidated) [2023] KEELC 16641 (KLR), counsel submitted that once a title is said to have been obtained irregularly, then it is tainted to the end; that since the Mombasa ELC found that the 3<sup>rd</sup> Defendant's title had been obtained fraudulently, the Plaintiff's title was equally tainted with fraud and could not be sanctified by virtue of being transferred. To counsel therefore, this suit has been overtaken by events and no cause of action exists.

### **Plaintiff's Submissions**

7. Counsel for the Plaintiff largely reiterated the facts leading to the present issue, and those stated in the Plaintiff's replying affidavit. I need not reiterate the same. He submitted that since the Defendants argue that the suit property has reverted to the government, they should close their respective cases and allow the court deliver its judgment. He added that the decision in Mombasa ELC 32 of 2020 is not binding to this court considering the Plaintiff herein was not a party therein and that there is no order against the Plaintiff's title. Counsel urged the court to dismiss the application.

### **Analysis and Determination**

8. I have read and analyzed the notice of motion application, replying affidavits and the written submissions together with the authorities filed by both parties. The issue for determination is whether the suit should be struck out.
9. The jurisdiction to strike out pleadings is discretionary and must be exercised judicially. In *Yaya Towers Limited v Trade Bank Limited (In Liquidation)* (Civil Appeal No. 35 of 2000) the court expressed itself thus: -

“A plaintiff (defendant) is entitled to pursue a claim in our courts however implausible and however improbable his chances of success. Unless the defendant (plaintiff) can demonstrate shortly and conclusively that the plaintiff's claim is bound to fail or is otherwise objectionable as an abuse of the process of the Court, it must be allowed to proceed to trial...It cannot be doubted that the Court has inherent jurisdiction to dismiss that, which



is an abuse of the process of the Court. It is a jurisdiction, which ought to be sparingly exercised and only in exceptional cases, and its exercise would not be justified merely because the story told in the pleadings was highly improbable, and one, which was difficult to believe, could be proved”.

10. Order 2 Rule 15 (1) of Civil Procedure Rules, 2010 provides as follows: -

- (1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—
  - (a) it discloses no reasonable cause of action or defence in law; or
  - (b) it is scandalous, frivolous or vexatious; or
  - (c) it may prejudice, embarrass or delay the fair trial of the action; or
  - (d) it is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.
- (2) No evidence shall be admissible on an application under subrule (1)(a) but the application shall state concisely the grounds on which it is made.
- (3) So far as applicable this rule shall apply to an originating summons and a petition.

11. It cannot be gainsaid that striking out of pleadings is a drastic remedy that should only be resorted to in special circumstances. The Court of Appeal in *Blue Shield Insurance Company Ltd -v- Joseph Mboya Oguttu* [2009] eKLR restated these principles thus: -

“The principles guiding the Court when considering such an application which seeks striking out of a pleading is now well settled. Madan J.A. (as he then was) in his judgment in the case of *D.T. Dobie and Company (Kenya) Ltd vs Muchina* (1982) KLR 1 discussed the issue at length and although what was before him was an application under Order 6 rule 13 (1) (a) which was seeking striking out a plaint on grounds that it did not disclose a reasonable cause of action against the defendant, he nonetheless dealt with broad principles which in effect covered all other aspects where striking out a pleading or part of a pleading is sought. It was held in that case *inter alia* as follows: -

“The power to strike out should be exercised after the Court has considered all facts, but it must not embark on the merits of the case itself as this is solely reserved for the trial Judge. On an application to strike out pleadings, no opinion should be expressed as this would prejudice fair trial and would restrict the freedom of the trial Judge in disposing the case.”

We too would not express our opinion on certain aspects of the matter before us. In that judgment, the learned Judge quoted Dankwerts L.J in the case of *Cail Zeiss Stiftung vs Ranjuer & Keeler Ltd and others* (No.3) (1970) ChpD 506, where the Lord Justice said:-

“The power to strike out any pleading or any part of a pleading under this rule is not mandatory; but permissive and confers a discretionary jurisdiction to be exercised having regard to the quality and all the circumstances relating to the offending pleading.”



We may add that like Madan J.A, said, the power to strike out a pleading which ends in driving a party from the judgment seat should be used very sparingly and only in cases where the pleading is shown to be clearly untenable.”

12. The plaintiff is claiming a specific portion of the original parcel of land known as L.R No. 17835 by virtue of the fact that they are in possession of the said portion of land. The Applicant’s argument is that since judgment was delivered in Mombasa ELC No. 32 of 2020, cancelling the aforementioned title, the Plaintiff’s cause of action ceases to exist. I equally note that by consent, the said judgment was reviewed on 13/1/2023 to the effect that the orders to vacate were abandoned and in the alternative, the Petitioner therein was awarded Kshs. 175,000,000 together with interest, as compensation to be paid by the Ministry of Lands, the Attorney General and the 3<sup>rd</sup> Defendant herein. The interpretation of those events should be the subject of the matter herein.
13. Furthermore, it is clear that the dispute between the plaintiff and the defendants is not a simple dispute which can be said to only involve issues of the physical title to land. It involves possession of land. It is also clear that the issues in dispute between the plaintiffs and the defendants has been festering for a very long time. It is therefore prudent to have the suit heard and determined on merit to its conclusion.
14. The upshot is that the notice of motion application dated 6/6/2024 is devoid of merit. It is hereby dismissed with costs. The defence case be set down for hearing at the earliest, and the matter will be mentioned on 17/6/2025 for the purpose.

**DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 7<sup>TH</sup> DAY OF APRIL 2025.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI.**

