



**Kuria & 2 others v Wainaina (Environment & Land Case
16 of 2021) [2022] KEELC 3904 (KLR) (22 August 2022) (Ruling)**

Neutral citation: [2022] KEELC 3904 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 16 OF 2021**

**BM EBOSO, J
AUGUST 22, 2022**

BETWEEN

**DANIEL GITAU KURIA 1ST PLAINTIFF
SMART CITY DEVELOPERS (K) LIMITED 2ND PLAINTIFF
JOHN NGIGI KURIA 3RD PLAINTIFF**

AND

TERESIA WANJIKU WAINAINA DEFENDANT

RULING

1. The plaintiffs initiated this suit through a plaint dated 22/1/2021. Their case is that the late Lucy Wanjiku Karanja [hereinafter referred to as “the deceased”] was a member of Nyakinyua Company Limited and the initial allottee of land parcel number Ruiru/Ruiru East Block 2/4835 [hereinafter referred to as “parcel number 4835”]. The deceased subsequently transferred parcel number 4835 to the 1st plaintiff. In July 2014, the 1st plaintiff subdivided parcel number 4835 into ten subdivisions, parcel numbers Ruiru/Ruiru East Block 2/14361 to 14370. In 2020, the 1st plaintiff transferred parcel number Ruiru/Ruiru East Block 2/14362, 14363 [sic], 14364, 14365, 14366, 14368, and 14369 to the 2nd plaintiff. He transferred parcel number Ruiru/Ruiru East Block 2/14361 to the 3rd plaintiff. He retained parcel numbers Ruiru/Ruiru East Block 2/14363 (sic) and 14369 [sic].
2. They contend that in 2016, the 1st plaintiff put up a site house on parcel number 4835 but the defendant unlawfully demolished the site house, prompting the 1st plaintiff to report the matter to the Police. They add that in 2020, the 2nd plaintiff put up a fence on his plots but the defendant carted away the fencing poles, claiming to be the owner of the land.
3. Consequently, the plaintiffs seek the following reliefs against the defendant:



- i. A declaration that Daniel Gitau Kuria is the bonafide registered owner of land parcel No Ruiru/Ruiru East Block 2/4835 having purchased the same from Lucy Wanjiku Karanja, the original allottee from Nyakinyua Investment Company Ltd and Ruiru/Ruiru East Block 2/14363 and 14369 being resultant subplots thereof.
 - ii. A declaration that Smart City Developers (K) Limited is the bonafide registered owner of Land Parcel No. Ruiru/Ruiru East Block 2/14362, 14364, 14365, 14366, 14367, 14368 and 14370
 - iii. A declaration that John Ngigi Kuria (the 3rd plaintiff) is the bonafide registered owner of Land Parcel No Ruiru/Ruiru East Block 2/14361.
 - iv. A permanent injunction to issue against the defendant, her agents, servants, employees, the family members and or anybody else claiming against her from trespassing, entering, selling constructing and or interfering in whatever manner Land Parcel No Ruiru/Ruiru East Block 2/4835 and or resultant subplots No. Ruiru/Ruiru East Block 2/14361, 14362, 14363, 14364, 14365, 14366, 14367, 14368, 14370
 - v. Any title deed held by the defendant in respect to land parcel No Ruiru/Ruiru East Block 2/4835 be declared null and void and cancelled forthwith.
 - vi. General damages for trespass.
 - vii. Costs and interest of the suit.
 - viii. Any other and such further relief as the court may deem fit to grant.
4. The defendant filed an unsigned statement of defence dated 18/11/2021 through M/s KMK LAW LLP. She denies the averments made in the plaint and contends that she is “a victim of misjoinder or a shot in the dark”, as she is neither the registered proprietor of the suit properties nor does she lay a claim of ownership over the suit properties.
 5. Together with the defence, the defendant filed an unsigned notice of motion dated 18/11/2021, seeking an order striking out this suit on the ground that it does not disclose any reasonable cause of action against the defendant. The said application is the subject of this ruling.
 6. The plaintiffs opposed the application through grounds of opposition dated 6/12/2021. They contended that: (i) the application was misconceived and unmerited; (ii) that the plaintiffs had clearly pleaded trespass, destruction of property and unlawful claim of ownership of the suit property by the defendant; (iii) the plaintiffs stood to be denied justice if the suit was to be struck out; and (iv) the application was a delay tactic aimed at frustrating the efficient disposal of the suit.
 7. The application was canvassed through brief written submissions dated 28/2/2022, filed by M/s KMK Law LLP. Counsel for the defendant submitted that the plaintiffs were hell-bent on making the defendant to participate in this suit yet she knows nothing about the suit properties and has no claim over them. Counsel contended that the suit was an attempt to sanitize the plaintiffs’ titles.
 8. The plaintiffs filed written submissions dated 17/2/2022 through M/s Milimo, Muthomi & Co Advocates. Counsel for the plaintiffs identified the following as the two issues that fall for determination in the application: (i) Whether the application is merited; and (ii) Who should pay costs of the application.
 9. Counsel cited, among other decisions, the decisions in: (i) *Susan Rokih v Joyce Kandia & 6 others* [2018] eKLR; and (ii) *Solomon Kipchoki Kipsisei & another v Lake Victoria North Water Services Board & 3 others* [2019] eKLR, and submitted that the plaintiffs had at paragraphs 6 and 8 of the plaint averred



how the defendant had caused destruction to the plaintiffs' land by demolishing a site house and the 2nd plaintiff's fence. Counsel added that paragraph 9 of the plaint contained specific pleadings relating to the illegal actions of the defendant in relation to the suit properties. Counsel urged the court to dismiss the application.

10. I have considered the application, the grounds of opposition, and the parties' respective submissions. I have also considered the relevant legal frameworks and jurisprudence. Two key issues fall for determination. The first issue is whether the unsigned notice of motion dated 18/11/2021 is competent. The second issue is whether the plaintiff's suit discloses a reasonable cause of action against the defendant. I will make brief sequential pronouncements on the two issues in the above order.
11. The defendant has invited this court to invoke its powers under Order 2 rule 15 of the [*Civil Procedure Rules*](#) and strike out the plaintiff's suit on the ground that it does not disclose a reasonable cause of action against her. The motion which the court is expected to grant is unsigned. The defendant's defence, too, is unsigned. Is an unsigned application a proper platform on which a court of law, properly directing itself, would issue the draconian order striking out a suit? My answer to the above question is in the negative. Order 51 rule 13(1) of the [*Civil Procedure Rules*](#) requires that an application taken out in any proceedings be signed either by an advocate representing the applicant or by the applicant himself in a scenario where the applicant is acting in person.
12. Our courts have umpteen times emphasized that an application that is unsigned is incompetent. That, is my finding on the competency of the unsigned notice of motion under consideration.
13. Even assuming that I am wrong on the above finding, I do not think the defendant has satisfied the criteria upon which our courts exercise jurisdiction to strike out suits on the ground of non-disclosure of a reasonable cause of action. Madan JA outlined the relevant criteria in [*DT Dobie & Co \(K\) Ltd v Muchina*](#) [1982] 1KLR in the following words:

“The court ought to act very cautiously and carefully and consider all facts of the case without embarking upon a trial thereof before dismissing a case for not disclosing a reasonable cause of action being otherwise an abuse of the process of the court. At this stage, the court ought not to deal with any merits of the case for that is a function solely reserved for the judge at the trial as the court itself is usually fully informed so as to deal with the merits without discovery, without oral evidence tested by cross examination in the ordinary way..... no suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward...”
14. The Court of Appeal emphasized the above criteria in [*Crescent Constructions Company Ltd v Delphis Bank Limited*](#) [2007] eKLR in the following words:

“However, one thing remains clear, and that is that the power to strike out a pleading is a discretionary one. It is to be exercised with the greatest care and caution. This comes from the realization that the rules of natural justice require that the court must not drive away any litigant however weak his case may be from the seat of justice. This is a time-honoured legal principle. At the same time, it is unfair to drag a person to the seat of justice when the case purportedly brought against him is non-starter.”
15. I have looked at the plaint. The plaintiffs have made specific allegations against the defendant. The allegations focus on trespass and damage to property. The defendant filed an unsigned defence in



response to the claim. In my view, whether or not the defendant committed the acts alleged in the plaint is a factual question that calls for proof through evidence. At this point, the court is not in a position to conclusively tell whether or not the defendant committed the alleged acts.

16. The result is that the unsigned application does not meet the criteria for striking out pleadings under Order 2 rule 15 of the *Civil Procedure Rules*.
17. In the end, the unsigned notice of motion dated 18/11/2021 is dismissed. The plaintiffs shall have costs of the application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 22ND DAY OF AUGUST 2022

B M EBOSO

JUDGE

In the Presence of: -

Mr Muthomi for the Plaintiffs

Court Assistant: Ms Osodo

