



**Oceanic View Plaza Limited v Ideal Locations Limited & 3 others (Environment & Land Case 83 of 2010) [2025] KEELC 1152 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1152 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 83 OF 2010**

**YM ANGIMA, J  
MARCH 6, 2025**

**BETWEEN**

**OCEANIC VIEW PLAZA LIMITED ..... PLAINTIFF**

**AND**

**IDEAL LOCATIONS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**NAKUMATT HOLDINGS LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**COMMISSIONER OF LANDS ..... 3<sup>RD</sup> DEFENDANT**

**COUNTY GOVERNMENT OF MOMBASA ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

**A. Introduction**

1. The material on record shows that vide a further amended plaint amended on 16.02.2016 the plaintiff sought various reliefs against the defendants on account of alleged violation of its proprietary rights over certain parcels of land of which the plaintiff was the registered proprietor. The parcels were described as subdivision 9892 Section I Mainland North and sub-division No. 9933 Section I Mainland North (the suit properties).
2. It was pleaded that the 3<sup>rd</sup> defendant had alienated parts of the suit properties to the 4<sup>th</sup> defendant which were taken over and utilized as a parking lot as a consequence whereof it had suffered loss and damage for which all the defendants were liable. The plaintiff sought, inter alia, declaratory orders, damages, orders for rectification of the register, a permanent injunction and costs against the defendants.

**B. 1<sup>st</sup> defendant’s application**

3. Vide a notice of motion dated 06.09.2024, filed pursuant to Article 50(1) and 159 of *the Constitution* of Kenya, 2010, Section 3 and 19 of the *Environment and Land Court Act*, 2011, Section 1A, 1B, and



3A of the *Civil Procedure Act* (Cap 21), Order 2 Rules 15, (1)(a) and (d) and Order 51 Rule (1) and Section 3A of the *Civil Procedure Act* and all other enabling provisions of the law, the 1<sup>st</sup> defendant sought the striking out of the plaintiff's suit on the basis that it did not disclose a reasonable cause of action and for having been overtaken by events.

4. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the 1<sup>st</sup> defendant's director, ANISH DOSHI, on 06.09.2024 and the annexures thereto. It was stated that the suit properties had since been compulsorily acquired by the National Land Commission (NLC) on behalf of the Kenya National Highways Authority for road expansion as evidenced by various gazette notices publicized by the NLC. It was averred that inquiry as to compensation had been undertaken in which the plaintiff participated hence the plaintiff's claim had been overtaken by events. It was contended that proceeding with the suit would be for academic purposes only since there was no live issue pending determination.

### **C. Plaintiff's response**

5. The material on record shows that the plaintiff filed grounds of opposition dated 13.09.2024. However, it did not file any replying affidavit to respond to the factual foundation of the 1<sup>st</sup> defendant's application. In the said grounds, the plaintiff contended that the application was fatally defective for violations of Order 2 rule 15(1) and (2) of the Civil Procedure Rules, 2010.

### **D. Directions on submissions**

6. When the said application was listed for inter parties hearing it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their submissions. The record shows that the 1<sup>st</sup> defendant filed submissions dated 20.01.2025 whereas the plaintiff's submission were dated 31.01.2025. There is no indication on record of the rest of the defendants having filed any responses or submissions to the application.

### **E. Issues for determination**

7. The court has perused the notice of motion dated 06.09.2024, the plaintiff's grounds of opposition dated 13.09.2024 as well as the material on record. The court is of the view that the following are the key issues for determination herein;
  - a. Whether the 1<sup>st</sup> defendant had made out a case for striking out the suit.
  - b. Who shall bear the costs of the application.

### **F. Analysis and determination**

#### **a. Whether the 1<sup>st</sup> defendant has made out a case for striking out the suit**

8. The court has considered the material and submissions on record on this issue. The 1<sup>st</sup> defendant's case was quite straightforward. That the suit properties having been compulsorily acquired by the NLC for public purposes the plaintiff was no longer the proprietor thereof hence the suit had been overtaken by events. It was the 1<sup>st</sup> defendant's case that any further prosecution of the case would be purely an academic exercise since the plaintiff had been compensated for the acquisition of the suit properties.
9. The court has noted that the plaintiff did not file any affidavit to dispute that the NLC compulsorily acquired the suit properties in 2022 or thereabouts or that there had been an injury into compensation. It was not denied that the plaintiff was compensated for the loss of its property. In the event, the



court finds that the factual foundation of the 1<sup>st</sup> defendant's application remains undisputed and unchallenged.

10. It is evident from the pleadings on record that the plaintiff's grievances arose from the alleged wrongful, irregular and fraudulent alienation of the suit properties and conversion of part thereof into a public parking without due process and without any form of compensation. It would appear from the material on record that the NLC ultimately decided to follow due process by undertaking compulsory acquisition of the suit properties. The court takes the view that even if the compulsory acquisition had taken place in 2010 before the suit was filed, the only remedy which the plaintiff would have obtained was compensation for the market value of the suit properties. That is the remedy the plaintiff ultimately obtained upon compulsory acquisition in 2022 or thereabouts.
11. The court is thus satisfied that the plaintiff having obtained a remedy through the process of compulsory acquisition of the suit properties it is not entitled to litigate for any additional remedies arising from the same circumstances complained of in the further amended plaint. The court takes the view that there are no bona fide live issues pending adjudication on account of violation of the plaintiff's property rights over the suit properties.
12. The plaintiff submitted that the court should be slow and reluctant to terminate suits without a substantive hearing on merit. The plaintiff cited the case of *D.T. Dobie & Company (Kenya) Limited vs Joseph Mbaria Muchira & Another* [1980] eKLR in support of that submission. The court fully subscribes to the holding in that case. A court of law should always aim at sustaining rather than terminating a suit unless it is so weak and so helpless as to be beyond redemption.
13. As pointed out before, the plaintiff has not disputed the factual foundation of the application for striking out. The plaintiff has not disputed that it is no longer the owner of the suit properties. It was not disputed that the suit properties were compulsorily acquired by the NLC and that it obtained full compensation for the land. The court is thus satisfied that it would not serve any useful purpose to sustain the suit since the plaintiff has been adequately compensated through a different process. In the premises, the court is satisfied that the 1<sup>st</sup> defendant has demonstrated that the plaintiff's suit is for striking out.

#### **a. Who shall bear costs of the application**

14. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons –vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court has noted that the suit properties were compulsory acquired long after the filing of the suit. The plaintiff ought not to be condemned to bear costs of the suit. However, the plaintiff should bear costs of the application for needlessly defending the application whilst knowing that it had obtained compensation through the process of compulsory acquisition. The plaintiff shall thus pay costs of the application. The rest of the defendants are not entitled to costs since they did not participate in the application.

#### **G. Conclusion and disposal orders**

15. The upshot of the foregoing is that the court finds merit in the 1<sup>st</sup> defendant's application for striking out the suit. As a consequence, the court makes the following orders for disposal thereof;
  - a. The plaintiff's suit is hereby struck out with no order as to costs.



b. The 1<sup>st</sup> defendant is hereby awarded costs of the motion dated 06.09.2024.

Order accordingly.

**RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 6<sup>TH</sup> DAY OF MARCH 2025.**

In the presence of:

Mr. Kisia for the plaintiff

Ms. Winnie Julu for the 1<sup>st</sup> defendant

No appearance for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants

Mr. Lumatete for the 4<sup>th</sup> defendant

Court assistant Kalekye

.....

**Y. M. ANGIMA**

**JUDGE**

