



Ethics and Anti-Corruption Commission v Njuguna & 4 others (Environment and Land Case 184 of 2010) [2025] KEELC 5153 (KLR) (10 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5153 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE 184 OF 2010**

**JO OLOLA, J
JULY 10, 2025**

BETWEEN

ETHICS AND ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

GILBERT MWANGI NJUGUNA 1ST DEFENDANT

WILSON GACHANJA 2ND DEFENDANT

JIMMY KIMARU KIRATU 3RD DEFENDANT

YUSUF ALIMKWIRU 4TH DEFENDANT

ESKON RUMWA 5TH DEFENDANT

RULING

1. By the Notice of Motion dated 3rd February, 2025, the Ethics and Anti-Corruption Commission (the Applicant) prays for orders that:
 1. Spent;
 2. The Honourable Court be pleased to strike out the 5th Defendant's Defence;
 3. This Honourable Court be pleased to enter Judgment against the Defendant to vacate the suit property;
 4. That the Honourable Court be pleased to pronounce Judgment in the matter as had been scheduled for 13.11. 2024; and
 5. Costs of this application be provided for.
2. The application is supported by an Affidavit sworn on 3rd February, 2025 by the Applicant's Investigator Dedan Okwama and is premised on the grounds:



- i. That the 5th Defendant's Defence dated 30th December, 2024 does not raise any triable issues worth trial by this Honourable Court;
 - ii. That the said Defence does not disclose any reasonable Defence against the Plaintiff's claim;
 - iii. That the Defence is a sham and does not disclose any triable issues;
 - iv. That the Defence is bad in law and an abuse of Court process as on plain eye sight, it is an assembly of mere denials and is therefore not a sufficient Defence in this type of case; and
 - v. That the Defence is meant to delay Judgment in the suit from being entered accordingly.
3. In addition to the application, the Applicant filed a Notice of Preliminary Objection dated 3rd February, 2025 objecting to the 5th Defendant's Counterclaim on the grounds:
1. That the 5th Defendant's Counterclaim is time barred in terms of Section 7 of the Statute of (the) Limitations (of) Actions (Act) Cap 22, thus the Honourable Court does not have jurisdiction to entertain the Counterclaim as it is bad in law, incurably defective and should be dismissed with costs to the Plaintiff; and
 2. That the suit is an abuse of the Court process.
4. Eskon Rumwa (the 5th Defendant) is opposed to the application. In his Replying Affidavit sworn on the 18th March, 2025, the 5th Defendant avers that the application is fatally defective, bad in law and a brazen attempt to defeat his constitutional rights to be heard, that the same is an abuse of the court process and therefore deserving to be dismissed with costs.
5. In addition, the 5th Defendant avers that he has raised key issues in his Defence to the suit and Counterclaim and that in recognition of that fact the Plaintiff has filed its amended Reply to his Defence and Defence to Counterclaim dated 6th February, 2025 and amended on 13th February, 2025.
6. Following directions issued herein, both the Notice of Motion as well as the Preliminary Objection were canvassed simultaneously. I have accordingly carefully perused both the application and the objection raised to the Counterclaim. I have similarly perused and considered the submissions placed before me by the Learned Counsels representing the parties herein.
7. By its application before the court, the Plaintiff urges the Court to be pleased to strike out the 5th Defendants' Defence and to enter judgment against the 5th Defendant to vacate the suit property. The Plaintiff further urges the court to be pleased to enter judgment in the matter as had been previously scheduled for 13th November, 2024.
8. In his Replying Affidavit sworn on 18th March, 2025, the 5th Defendant objects to the application stating that his Statement of Defence and Counterclaim dated 30th December, 2024 raises key issues ranging from limitation of actions, adverse possession and the right to the due process and equal protection of the law.
9. Order 2 Rule 15(1) of the Civil Procedure Rules, 2010 provides as follows:
- “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.”

10. As to what would amount to a triable issue, the Court of Appeal in the case of Job Kilach –vs- Nation Media Group Ltd & 2 Others (2015) eKLR, held as follows:

“A bona fide triable issue is any matter raised by the defendant that would require further interrogation by the court during a full trial. The Black’s Law Dictionary defines the term “triable” as, “subject or liable to judicial examination and trial.” It therefore does not need to be an issue that would succeed, but just one that warrants further intervention by the Court.”

11. By its lengthy Amended Plaintiff dated 24th February, 2022 the Plaintiff prays inter alia for an order of eviction against the 1st, 3rd, 4th and 5th Defendants from the suit property known as LR. No. Mombasa Municipality/Block XXVI/933. It is the Plaintiff’s case that the said parcel of land was part of a larger parcel of land which the Government had set aside for public purposes and that the same was wrongfully alienated and registered in the name of the 1st Defendant.

12. In response to the Plaintiff’s claim, the 5th Defendant pleads as follows at Paragraph 7 of his Statement of Defence and Counterclaim dated 30th December, 2024:

“7. The Defendant in response to paragraph 18, wishes to respond as follows:

- a. He was not aware that the suit property was reserved for government houses or that it was unavailable for allocation for private use;
- b. Importantly, the 5th Defendant has been in actual and continuous occupation of the subject property being Land Reference Number Mombasa Municipality/Block XXVI/933 for almost twenty years with his family as he watches over the suit property since he was brought in as (a) guard by the 1st Defendant herein;
- c. ...”

13. Having conceded in his pleadings that he was present in the suit property as a mere employee, a watchman guarding the property for the 1st Defendant who is accused of wrongfully alienating the same, I was unable to find any possessory rights that the 5th Defendant could claim to have acquired over the suit property.

14. Being a guard invited into the premises to watch over the same on a salary presumably paid by the 1st Defendant, he cannot claim to have taken possession of the same and asserted any rights over the same and the claim of adverse possession over the land is spurious and totally misconceived. That being the case, there is absolutely nothing raised in the 5th Defendant’s Statement of Defence and Counterclaim that would require any further interrogation by the court at the trial.

15. I was not however persuaded that the court can rightfully at this stage order the 5th Defendant’s eviction from the suit property as sought in prayer No. 3 of the Motion before the court. That shall have to await the full determination by this Court as to whom between the Plaintiff and the 1st, 3rd and 4th Defendants are the rightful owners of the suit property.



16. In the premises, the Plaintiff's Motion dated 3rd February 2025 succeeds partially. I allow the same in terms of prayer No. 2 and hereby strike out the 5th Defendant's Statement of Defence and Counterclaim with costs.

17. It is so ordered.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 10TH DAY OF JULY, 2025

.....

J.O. OLOLA

JUDGE

In the presence of:

Ms. Firdaus Court Assistant.

No Appearance for the Plaintiffs

No Appearance for the Defendants

