



REPUBLIC OF KENYA



**Karura Investments Limited v Magugu & 4 others (Environment and Land Case
Civil Suit 329 of 2016) [2025] KEELC 5279 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5279 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 329 OF 2016**

AA OMOLLO, J

JULY 10, 2025

BETWEEN

KARURA INVESTMENTS LIMITED PLAINTIFF

AND

MARGARET WAIRIMU MAGUGU 1ST DEFENDANT

CHIEF LANDS REGISTRAR 2ND DEFENDANT

DIRECTOR OF SURVEY 3RD DEFENDANT

NATIONAL LANDS COMMISSION 4TH DEFENDANT

DEKA PLANTATIONS LIMITED 5TH DEFENDANT

RULING

1. The Plaintiff filed Notice of motion dated 27th January 2025 brought under order 2 rule 15 of the Civil Procedure Rules. It is supported by the affidavit sworn on the same date by Suleman Abdul Shakur Harunani seeking for the following orders:
 1. Spent
 2. That the Honourable Court be and is hereby pleased to strike out the 1st Defendant's statement of defence dated 18th November, 2016;
 3. That consequent to the grant of prayer (2) above, this Honourable Court be and is hereby pleased to enter judgment in favour of the Plaintiff as sought in its Plaint dated 7th April, 2016 and vacate the injunction issued on the 20th of December, 2022.
 4. That the costs of this Application be borne by the 1st Defendant.



2. The Plaintiff/Applicant seeks to strike out the 1st Defendant/Respondent's Defence on the basis that it discloses no reasonable defence in law, is frivolous, vexatious, and an abuse of court process.
3. The Plaintiff claims legal ownership of the Suit Property, LR No. 12422/21 – IR No. 39545 in Nairobi, pursuant to a purchase from Keremara Holdings Ltd in 1994. That it has been holding the title and possession of the said property since then.
4. The 1st Defendant opposes the Plaintiff's ownership, claiming a "gentleman's agreement" to transfer the suit property to her, between her late husband and Duncan Ndegwa who were Joreth Limited directors as the basis of her alleged interest in the suit property. However, there was no written contract or registered transfer supports her claim.
5. The Plaintiff argues that such a verbal agreement does not meet the legal requirements of Section 3(3) of the Law of Contract Act, which mandates that land transactions must be in writing and signed.
6. Further, that the 1st Defendant's Defence indirectly seeks to recover the suit land by challenging a transfer done in 1985 and the Plaintiff's registration in 1994, but no counterclaim has been filed.
7. The Plaintiff argues that under Section 7 of the Limitation of Actions Act, any action to recover land must be brought within 12 years and that since no action was filed by Joreth Ltd which allegedly owned the land within the required period, any such claim is time-barred.
8. The Plaintiff averred that the impugned statement of defence is beyond repair even by amendment and asks the Court to strike it out under Order 2 Rule 15(1) of the Civil Procedure Rules to uphold justice and prevent unnecessary delay.
9. In opposition, the Defendant/Respondent filed a replying affidavit sworn by Stephen Kirumba, the attorney for the 1st Defendant on 21st February 2025 arguing that the defence raises triable issues and should proceed to full hearing.
10. That the 1st Defendant has a right to defend herself and present her claim to the suit property, especially after discovering potential fraud during the administration of her late husband's estate, starting in 2015.
11. The deponent stated that the 1st Defendant invokes the "discovery rule" under Section 7 of the Limitation of Actions Act, which provides that the limitation period starts when a party becomes aware of their claim not necessarily from when the cause of action accrued. That she became aware of the issue after being appointed the administratrix of her late husband's estate in 2015, with the grant confirmed in 2016.
12. The 1st Defendant stated that she alleges fraud by the Plaintiff in acquiring title to the suit property, which justifies the delayed challenge. She added that a report was filed with the police in 2019, and a disputed deed plan forms part of the substantive issues to be heard in court.
13. The 1st Defendant stated that her defence raises triable issues that meet the legal test for allowing a case to proceed to trial, including the standard in *Patel v E.A. Cargo Handling Services Ltd* [1974] E.A. 75. She also emphasized that courts are urged to exercise caution when striking out defences, doing so only in the clearest of cases, and never to shut out a litigant prematurely.
14. That even if the Defence appears weak, if it can be improved by amendment or raises a prima facie defence, it should be allowed to proceed. She argued that the Plaintiff's application to strike out the defence comes nine years after the suit was filed, and after parties had already filed pleadings and responses making it a deliberate attempt to obstruct justice.



15. The 1st Defendant states that striking out the Defence at this stage would result in a serious miscarriage of justice, depriving her of the opportunity to be heard and exposing a possible attempt by the Plaintiff to cover up fraudulent dealings regarding the suit land.

Submissions:

16. In support of its motion, the Plaintiff/Applicant filed submissions dated 23rd May 2025 stating that main issue for determination is whether the 1st Defendant's Statement of Defence discloses any reasonable defence in law and should be struck out under Order 2 Rule 15 of the Civil Procedure Rules.
17. The Applicant submits that under Order 2 Rule 15(1)(a)-(d) allows the court to strike out pleadings that disclose no reasonable cause of action or defence, that it is scandalous, frivolous or vexatious, may prejudice or delay fair trial or are an abuse of the court process.
18. They further argue that the Defence is frivolous, mounted to delay and embarrass trial proceedings. That it is founded on a "gentleman's agreement" between her late husband and Duncan Ndegwa, allegedly relating to ownership of the land, but lacks any formal written contract as required by Section 3(3) of the *Law of Contract Act* (Cap 23) which provides that no suit shall be brought for disposition of land unless the contract is in writing, signed by all parties and signatures attested by witnesses.
19. Therefore, any oral agreement or informal understanding cannot confer legal ownership or support a legal defence. To support its claim, the Plaintiff relied on the case of *Madison Insurance Co. Ltd v Augustine Kamanda Gitau* [2020] eKLR where Odunga J described a frivolous matter as one that has no substance, wastes court's time and is incapable of reasoned argument. The decision in *Willis v Earl Beauchamp* (1886) 11 PD 59 was cited and which decision held that a pleading is vexatious when it has no foundation, no chance of succeeding, is meant to annoy and leads to no possible good.
20. The Plaintiff argues that the 1st Defendant's Defence alleging fraudulent transfer of the suit land in 1985 is both frivolous and vexatious, as it challenges a transaction that occurred over 30 years ago, was never contested by the 1st Defendant's late husband during his lifetime and lacks supporting documentary evidence.
21. It is their further submission that section 7 of the *Limitation of Actions Act* provides that actions to recover land must be brought within 12 years from the date the cause of action accrued. Consequently, the impugned transfer occurred in 1985, Joreth Ltd to Keremara Holdings, and the Plaintiff acquired the land from Keremara in 1994.
22. In addition, they assert that the 1st Defendant's husband, Arthur Magugu who died in 2012 never challenged the transactions during his lifetime and the 1st Defendant only raised these issues in 2016, well beyond limitation. In support they cited the case of *Margaret Wairimu Magugu v Karura Investments Ltd & 4 Others* [2019] eKLR involving the same parties herein, where the Court of Appeal held that where the deceased Arthur Magugu had 19 years to challenge alleged fraud but failed to act, the administrator, his wife cannot revive such a stale claim decades later.
23. Similarly that Section 26 of the *Limitation of Actions Act*, discovery rule does not apply when fraud could have been discovered with reasonable diligence during the deceased's lifetime relying on the case of *Paragon Finance v DB Thackerar & Co* [1999] 1 All ER 400 – UK which stated that due burden of proof is on Plaintiffs who should have discovered fraud sooner, stating that they must establish that they could not have discovered the fraud without exceptional measures which they could not reasonably have been expected to take.



Analysis and determination:

24. The core issue for determination is whether the statement of defence filed by the 1st Defendant should be struck out. The motion is expressed to be brought under Order 2 Rule 15 of the Civil Procedure Rules which deals with striking out of pleadings and provides as follows;

“Rule 15.

- (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.”

Order 2 Rule 15 (2) states as follows:

- (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.”

25. The Applicant argued that the defendant’s defence does not raise any cause of action against the Plaintiff and it is statutory barred due to limitation of time. The Court of Appeal in *Blue Shield Company Limited v Joseph Mboya Oguttu* (2009) eKLR held as follows;

“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 & Company (Kenya) Limited v Muchina* (1982) KLR 1. 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.”

26. This court has the power to strike out the 1st Defendant’s defence, but the said power is not mandatory but permissive and confers a discretionary jurisdiction to be exercised having regard to the quality and all the circumstances relating to it.

27. I have looked at the quoted paragraphs of the statement of defence which the Applicant has relied on to argue on why the defence should be struck out. That on Paragraph 3 of the defence the 1st Defendant obtained her proprietary interests in the suit property through a gentleman’s agreement, Paragraph 5-8 which challenge the transfer of the suit property conducted in 1985 and that Paragraph 14 of the defence is barred by the time limitation espoused under *Limitation of Actions Act*.



28. In the case of Francis Kamande V Vanguard Electrical Services Ltd [1998] eKLR the Court of Appeal stated as follows:-

“A pleading is embarrassing if it is so drawn that it is not clear what case the opposite party has to meet at the trial. If the defendant raises relevant issues, his defence cannot be termed as embarrassing or delaying the fair trial of the suit. Nor it can be struck out because the other party declares it to be untrue.”

In the same case it was stated as follows:-

“What Madan JA said about the Plaintiff’s suit equally applies to the defendant answer or defence. In Attorney General of Duchy of Lancaster vs. L & N. W. Rly Co [1982] 3 Ch. 274 C. A. it was held:

“The summary procedure under this rule can only be adopted when it can be clearly seen that a claim or answer is on the face of it “obviously unsustainable.”

The learned Judge was right when he said that Counsel for the appellant/plaintiff did not show how the defence and counterclaim offended the rules of pleading. Surely it raised a defence of failure of consideration and counterclaimed refund of money paid under a mistake of fact and for loss and damage suffered by the defendant.”

29. In her defence the 1st defendant certainly do not admit the plaintiff’s claim over the suit property and states that the transfer was fraudulently done. The 1st Defendant further argues that she only became of the alleged illegal transfer of the suit property to the Plaintiff after her husband died. The question whether the allegation is statutory barred is a matter of fact which cannot be determined summarily.

30. Second, the issues raised as grounds in support of the application essentially demonstrates that there are several triable issues in this matter. Hence the same should be determined by affording parties opportunity to present their case/defence.

31. In Pan African Bank Limited V Gulmareba Limited & 2 Others [2006] eKLR the court quoted the decision of Justice A. Ringera in Lynette B. Oyier and others v. Savings and Loan Kenya Limited: HCCC No. 891 of 1996 (UR) as follows:-

“The function of the Court in its jurisdiction of striking out pleadings under Order VI rule 13 of the Civil Procedure Rules is not to determine whether the action or defence as framed will or will not succeed at the trial. That is the function of the trial court after hearing evidence and legal submissions. The function of the Court under that jurisdiction is to determine whether the pleadings have been formulated in accordance with the established rules of pleadings and to impose appropriate sanctions if they have not been so formulated.”

32. It is therefore my considered opinion and I so hold that to delve in the discussion of the grounds relied on by the Applicant as to why the defence should be struck out; on why the issues raised in the defence do not make a case against the Plaintiff, will amount to examining relevant issues at the interlocutory stage. The action would not help resolve the dispute on merits.

33. I conclude that the application dated 27/1/2025 has no merit and the same is dismissed with costs to the 1st defendant.

DATED, SIGNED & DELIVERED AT NAIROBI THIS 10TH JULY, 2025



A. OMOLLO
JUDGE

