



Kamau & 4 others (The Registered Trustees of New Testament Church Of God Kenya) v Njuguna t/a Charismata Ministries Network & 2 others (Environment and Land Case E072 of 2024) [2025] KEELC 6065 (KLR) (18 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6065 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE E072 OF 2024
MAO ODENY, J
SEPTEMBER 18, 2025**

BETWEEN

**FLORENCE WANJIRU KAMAU 1ST PLAINTIFF
SAMUEL KAGOCHI MWUARA 2ND PLAINTIFF
PETER MACHARIA SIGAKA 3RD PLAINTIFF
ALFRED GEORGE RIOBA 4TH PLAINTIFF
FRANCIS WAMWEYA NGANGA 5TH PLAINTIFF
THE REGISTERED TRUSTEES OF NEW TESTAMENT CHURCH OF GOD
KENYA**

AND

**REVEREND DR MUSA NJUGUNA T/A CHARISMATA MINISTRIES
NETWORK 1ST DEFENDANT
MUSA NJUGUNA MINISTRIES INC 2ND DEFENDANT
REV MUSA NJUGUNA, THE REGISTERED TRUSTEE CHARISMATA
MINISTRIES NETWORK 3RD DEFENDANT**

RULING

1. This ruling is in respect of the Plaintiff’s Notice of Preliminary Objection dated 8th May, 2025, which is raised on the following grounds:
 1. That the Defendants application dated 24th April, 2025 is fatally defective as it is not anchored on a substantive suit.



2. That the Defendants application dated 24th April, 2025 is therefore, incurably defective and is incapable of obtaining the orders sought.

Plaintiff's Submissions

2. Counsel for the Plaintiff filed submissions dated 23rd June, 2025, and identified the issue for determination as whether the preliminary objection is merited. Counsel submitted that the court issued an order striking out the present suit on 19th March, 2025, thereby disposing of the suit summarily for being time barred.
3. It was counsel's submissions that, in light of the striking out of the suit, there ceased to exist substantive proceedings against which any further proceedings/applications can be filed.
4. Counsel relied on the cases of Anastacia Wagiciengo vs Ezekiel Wafula [2018] eKLR and Nyamira F.C.S vs The Chief Land Registrar & Another [2005] eKLR, where the court dismissed an application for being defective and incompetent as the same was not backed by any suit. Counsel submitted that the main suit has to be alive for the interlocutory orders to be made.
5. It was counsel's submission that the import of the orders of striking out the suit is that the court was consequently deprived of jurisdiction to deal with any matters in the suit including the present application.
6. Counsel relied on the case of Akasha (Suing as administrator of the Estate of Karima Akasha Abdalla) vs Abeid & Another (Environment and Land Case Civil Suit 94 of 2021) [2023] KEELC 16797 (KLR), where the court held that whether or not the plaintiff's suit is barred by Statute on account of limitation goes to the jurisdiction of the court to entertain the suit. This would make any decision null and void. Counsel urged the court to uphold the preliminary objection and dismiss the application with costs.

Defendants' Submissions

7. Counsel for the Defendants filed submissions dated 1st July, 2025, and submitted that the preliminary objection is misplaced based on a reading of Sections 153 E and 153F of the Land Act and, that the issue before the court is an issue arising from execution of a decree, and it ought to be determined in the same suit. It was counsel's submission that following the striking out of the suit, the plaintiff lacks any legal justification for the continued occupation of the parcels of land in dispute.
8. Counsel submitted that the application before the court is a post-judgment application against parties whose occupation on the disputed parcels of land is not supported by either title or decree of a court of law.
9. Counsel relied on the cases of Kariuki vs Harunani & another; Chief Land Registrar (Interested Party) (Miscellaneous Application E050 of 2022), Onyango vs Mankone & another (Environment and Land Miscellaneous Application E7 of 2022) and Muia vs Ndeti & another (Environment & Land Case 98 of 2017) [2024]. It was counsel's submission that the preliminary objection lacks merit and it should be dismissed with costs.



Analysis and Determination

10. The issue for determination is whether the Preliminary objection dated 8th May, 2025 has merit. The Supreme Court in the case of Hassan Ali Joho & another -Vs- Suleiman Said Shabal & 2 Others SCK Petition No. 10 of 2013 [2014] eKLR held thus:

“a Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit”
11. The Plaintiff contends that the court issued an order striking out the present suit on 19th March, 2025 thereby disposing of the suit summarily for being time barred. The Plaintiff argues that there ceased to exist substantive proceedings against which any further proceedings/applications can be filed or exist. The Defendants, on the other hand, contend that the application before the court is a post-judgment application against parties whose occupation on the disputed parcels of land is not supported by either title or decree of a court of law.
12. The Defendants’ Application dated 24th April, 2025, seeks the following orders:
 - a. That the Plaintiffs/respondents be ordered to deliver vacant possession of the parcels of land known as Mau Summit/Molo Block 1/181 (Mutirithia) and Mau Summit/Molo Block 1/182 (Mutirithia) within (90) days from the 20th April 2025.
 - b. That in default of delivering vacant possession, the plaintiffs/respondents be evicted by the officer commanding Molo police station and the defendant/applicant be put in possession of the parcels of land herein.
 - c. That any costs incurred in the private engagement of the police as well as costs of this application be borne by the respondents.
13. This court delivered its ruling on 19th March, 2025, where it found that the suit was time barred and proceeded to strike out the same. In the case of Registered Trustee of Archdiocese of Kisumu v Awad Auto Limited; Ecobank Kenya Limited (Proposed Interested Party) [2025] KEELC 5973 (KLR) at paragraph 22 where the court stated as follows:

“Can the court determine stay of execution pending appeal or review the same ruling which was time bound and which time has lapsed? In the circumstance, I find that it would be a waste of the court’s precious time to consider the said application. The implication of the ruling goes to the issue of locus standi of the defendant/applicant to further argue the notice of motion dated 21st February, 2025. The defence filed by the defendant/applicant was struck out on 30th July, 2024. This would mean that the defendant/applicant forfeited his right of standing before the court to enable him have audience...”
14. The Defendants herein did not file a counter-claim and the application dated 24th April, 2025, is an attempt to obtain reliefs from the court without filing a substantive suit.
15. The cases that the Defendant/Applicant has referred relate to Miscellaneous Application brought under Sections 153E and 153F of the *Land Act*. The Defendants cannot hinge their application on a non-existent suit, which was struck out. No further proceedings can be sustained or entertained in this file.



16. This court finds that the Preliminary Objection dated 8th May, 2025 has merit and hence upheld. The application dated 24th April, 2025 is hereby struck out. Each party shall bear their own costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 18TH DAY OF SEPTEMBER 2025.

M. A. ODENY

JUDGE

