



Joseph v Namu & another; Njeru (Interested Party) (Environment & Land Case 12 of 2023) [2025] KEELC 3816 (KLR) (9 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3816 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT & LAND CASE 12 OF 2023**

**AK BOR, J
MAY 9, 2025**

BETWEEN

GABRIEL NJUE JOSEPH PLAINTIFF

AND

MARITINO NJIRU NAMU 1ST DEFENDANT

DANIEL IRERI NAMU 2ND DEFENDANT

AND

ANDREW IRERI NJERU INTERESTED PARTY

RULING

1. The Plaintiff, Gabriel Njue Joseph, filed the application dated 16/2/2024 seeking to have the Defendants' undated defence and counterclaim filed on 2/1/2024 struck out. He also sought to have the court enter judgment against the Defendants as sought in the plaint together with the costs of the suit.
2. The application was made on the grounds that the defence is a mere denial, a sham and an afterthought in light of the judgment delivered on 19/10/2022 in Embu ELC Case No. 55 of 2016 (O.S) and ruling delivered in Embu ELC Petition No. 1 of 2023. It was contended that in Embu ELC Case No. 55 of 2016, the Defendants unsuccessfully pursued a claim of adverse possession against the Plaintiff and through the judgment delivered by the court, they were ordered to vacate the parcels of land known as Evurore/Nguthi/2705 and 2706 (the suit land). In those cases, the court observed that an eviction order had been issued against the Defendant's father in 1990 which in essence was made against him and his family. The Plaintiff contended that since no appeal was preferred against that judgment, then it was binding on the Defendants and they cannot file a defence claiming ownership of the suit land.



3. In ELC Petition No. 1 of 2023, the respondent's grievance was that they had been served with an eviction order by the Plaintiff and the Plaintiff raised a preliminary objection that the case was res judicata in view of the judgment in Embu ELC Case No. 55 of 2016 (O.S). The court upheld the preliminary objection and found that the renewed claim in the form of a petition was an abuse of the court process. The findings in those cases necessitated the Plaintiff to bring this application for summary judgment urging that the Defendants have no defence as far as the suit land is concerned.
4. The Plaintiff's advocate, Felistas Fatuma Wanjiku, swore the affidavit in support of the application and attached copies of the judgment in Embu ELC Case No. 55 of 2016 (OS) and ruling in ELC Petition No. 1 of 2023.
5. The 1st Defendant, Maritimo Njiru Namu, swore the replying affidavit in opposition to the application. The affidavit was drawn by the 1st Defendant in person and although it is not elegantly drafted, the court did its best to interpret and decipher its content. The Defendants averred that their defence and counterclaim were grounded in law and were not an abuse of process. They urged that the Plaintiff's application seeks to unfairly dismiss their claims, despite them having filed Appeals Nos. E013 of 2024 and E080 of 2024 concerning the suit land parcels which they claimed originally formed part of Evurore/Nguthi/2240. They denied the allegations made by the Plaintiff in the application and objected to the reliance on current land records without considering the history of the suit land. They invited the court to uphold their defence and counterclaim while respecting the pending appeals.
6. The court gave directions for filing and exchange written submissions. Only the Plaintiff filed submissions which the court has considered. The Plaintiff mainly reiterated the grounds of his application and contended that having found that the Defendants failed to prove their claim to the suit land in the previous suits, this court should find that their defence and counterclaim which asserts ownership of the suit land has no basis, is an abuse of the court process and should be struck out. He contended that the Defendants had not demonstrated that there were any active appeals or that orders for stay of execution had been issued in the suits they claimed to have appealed against.
7. The issue for determination is whether the Defendants defence and counterclaim should strike out and judgment entered in favour of the Plaintiff as prayed in the plaint.
8. The Plaintiff filed the plaint dated 21/11/2023 seeking a permanent injunction to restrain the Defendants from interfering with his ownership of the suit land. He also sought an eviction order against them from the suit land and for the Officer Commanding Ishiara Police Station to provide security during the eviction as well as costs of the suit. His claim is that he is the registered proprietor of the suit land which the Defendants had illegally occupied. He produced copies of searches over the suit land showing him as the registered proprietor. He advanced the argument that the issue of ownership of the suit land was already determined in previous suits against the Defendants and that those decisions had not been appealed against and that that was the same issue that the Defendants are raising in the defence and counterclaim in this suit.
9. The court has looked at the defence and counterclaim filed on 2/1/2024. The Defendants deny that the suit land is registered in the Plaintiff's name and contend that the suit land originally formed part of Evurore/Nguthi/2240 which belonged to their father Namu Ndumo, and that they have a right to occupy the land on that ground. In their counterclaim, they invited the court to order that the parties to this suit be subjected to the Mbeere customary oath. They also sought to have the suit dismissed for being an abuse of the court process. They urged the court to direct the Land Registrar, Siakago to cancel the Plaintiff's name on the register of the suit land and have the suit land revert to the original parcel number 2240.



10. Order 2 Rule 15 of the Civil Procedure Rules provides that at any stage of the proceedings, the court may order to be struck out or amended any pleading on the grounds that it discloses no reasonable cause of action or defence in law; or it is scandalous, frivolous or vexatious; or it may prejudice, embarrass or delay the fair trial of the action; or it is otherwise an abuse of the process of the court. Additionally, the court may order the suit to be stayed, dismissed or for judgment to be entered accordingly, as the case may be.
11. Striking out pleadings is a drastic measure, and should be employed sparingly and only where the pleading on its face is clearly untenable (See *Blue Shield Insurance Company Ltd v Joseph Mboya Oguttu* [2009] KECA 221 (KLR)).
12. It is not in dispute that the Defendants' claim of ownership of the suit land has previously been litigated and determined in Embu ELC No. 55 of 2016 between the Defendants and the previous registered owners of the land being Pius Kariuki Njue and Hazron Njiru Nahashon where the Defendants lost. They made a second attempt to reassert the same claim in ELC Petition No. 1 of 2023, which this court found to be *res judicata* and a disguised duplication of the same issues. The Defendants have not produced any evidence to show that they appealed against either of those decisions and that the decisions were set aside by the Court of Appeal.
13. This court agrees with the Plaintiff that a pleading that seeks to reopen matters that have already been fully adjudicated, and where final judgment has been rendered and not appealed, is undoubtedly an abuse of the court process as is the case here. The Plaintiff is the registered owner of the suit land and the Defendants continued presence on the land is illegal.
14. The defence and counterclaim filed by the Defendants in this case is an attempt to re-litigate matters which were already determined. The defence and counterclaim discloses no reasonable defence.
15. The court allows the Plaintiff's application dated 16/2/2024 and strikes out the defence and counterclaim filed by the Defendants on 2/1/2024. The court enters judgment in favour of the Plaintiff as prayed in the plaint.

The Plaintiff is awarded the costs of the suit.

DELIVERED VIRTUALLY AT EMBU THIS 9TH DAY OF MAY 2025.

K. BOR

JUDGE

In the presence of: -

Mr. Collins Njage for the Plaintiff

Mr. Maritino Njiru Namu- 1st Defendant

Mr. Daniel Ileri Namu- 2nd Defendant

Mr. Andrew ireri Njeru-Interested Party

Diana Kemboi- Court Assistant

