



**Mzahedo v Kioko & 4 others (Environment and Land Case
E109 of 2024) [2025] KEELC 4874 (KLR) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4874 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE E109 OF 2024**

**YM ANGIMA, J
JUNE 26, 2025**

BETWEEN

DAWSON MWALUANDU MZAHEDO PLAINTIFF

AND

MORRIS NZING’U KIOKO 1ST DEFENDANT

RACHAEL KASANA KIOKO 2ND DEFENDANT

MORGAN NZING’U 3RD DEFENDANT

MOSDELL NZING’U 4TH DEFENDANT

MOFFDAT NZING’U 5TH DEFENDANT

RULING

1. By a notice of motion dated 04.03.2025 expressed to be filed pursuant to Order 1 Rule 10 (2), Order 51 Rule 1 of the Civil Procedure Rules, Sections 1, 1A and 1B of the *Civil Procedure Act* (Cap. 21), and all enabling provisions of the law, the defendants applied to have the names of the 2nd -5th defendants struck out of the suit on the basis that they had been improperly joined in the suit.
2. 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 1st defendant, Morgan Nzing’u on 04.03.2025. He deposed that the 2nd defendant was his wife and that the 3rd to 5th defendants were his children. It was pleaded that the 2nd to 5th defendants were not necessary parties to the suit because they were not privy to the sale agreement between the plaintiff’s late father and himself over a portion of the suit property.
3. The plaintiff filed a replying affidavit sworn on 10.03.2025 in opposition to the application. He deposed that he was the registered proprietor of the suit property through transmission and that his claim was not based upon any sale agreement. He deposed that all the defendants were residing on his



property and he wanted them to be evicted therefrom. It was thus his view that all the defendants were properly sued in the proceedings. As such, he asked the court to dismiss the said application with costs.

4. When the application was listed for directions it was directed that it shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The material on record shows that the plaintiff's submissions were filed on 24.04.2025 but the defendants' submissions were not available on the e-filing platform by the time of preparation of the ruling.
5. The court is of the view that the main question for determination herein is whether the 2nd – 5th defendants were improperly joined in the proceedings and if they should be struck out of the suit. The court has noted from paragraph 9 of the defence that the defendants conceded that they were all living on the suit property as family members but asserted that they were residing there as a matter of right and not as trespassers. In particular, the 1st defendant pleaded that he had purchased the suit property or part thereof from the plaintiff's father in 2002.
6. It is evident from the pleadings on record that the plaintiff is seeking to recover the suit property which is admittedly in the possession and occupation of the 1st to+ 5th defendants. There is no allegation that 2nd to 5th defendants are minors or suffer from any form of legal disability. The court is of the opinion that every person of sound mind and memory and of the age of majority who is alleged to be in wrongful occupation of property belonging to another person may properly be sued for eviction.
7. The court is not aware of any rule or principle of law which insulates adult children from legal liability in land disputes. The court is also not aware of any law which would shield a wife from legal action in similar circumstances. We do not have a law which requires that parents should be sued for the transgressions of their adult children or one which requires husbands to be sued for the sins of their wives.
8. The court is of the opinion that Order 1 Rule 7 of the Civil Procedure Rules grants sufficient leeway to a plaintiff to sue all those persons whom he considers to have violated his legal rights. The said rule stipulates that;

“where the plaintiff is in doubt as to the persons from whom he is entitled to obtain orders, he may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties.”
9. As a result, the court is not satisfied that the 2nd to 5th defendants were improperly joined in the suit or that there is no reasonable cause of action against them in their continued occupation of the suit property. In the event, the court finds no merit in the defendants' said application. Consequently, the court makes the following disposal orders;
 - a. The defendants' notice of motion dated 04.03.2025 is hereby dismissed in its entirety with costs to the plaintiff.
 - b. The suit shall be mentioned on 02.10.2025 for pre-trial directions

Orders accordingly.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 26TH DAY OF JUNE, 2025.

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Y. M. ANGIMA



JUDGE

In the presence of:

Gillian - Court assistant

Mr. Oddiaga for the plaintiff

Mr. Mohamed holding brief for Mr. Malombo for the defendants

