



**Mavoko Land Development Co. Ltd v County Government of Machakos & 4 others (Environment and Land Case E068 of 2024) [2025] KEELC 6171 (KLR) (23 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6171 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND CASE E068 OF 2024  
NA MATHEKA, J  
SEPTEMBER 23, 2025**

**BETWEEN**

**MAVOKO LAND DEVELOPMENT CO. LTD ..... PLAINTIFF**

**AND**

**COUNTY GOVERNMENT OF MACHAKOS ..... 1<sup>ST</sup> DEFENDANT**

**HON. DANIEL MUTINDA NDWIKI (KATANI-MLOLONGO  
MCA) ..... 2<sup>ND</sup> DEFENDANT**

**ERICK MATHEKA NDUNDA (P.A. MAKAU) ..... 3<sup>RD</sup> DEFENDANT**

**PETER NDUNDA MUSAU (MLOLONGO CHIEF) ..... 4<sup>TH</sup> DEFENDANT**

**HON. ATTORNEY GENERAL, MACHAKOS COUNTY ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. The application is dated 22<sup>nd</sup> October 2024 and is brought under Sections 1A, 1B and 3A of the [Civil Procedure Act](#); Order 1 Rule 10(2), Order 2 Rule 15(1) a, c and d of the Civil Procedure Rules, 2010 seeking the following orders;
  1. That the Honourable Court be and is hereby pleased to strike out the Plaintiff's suit against Erick Matheka Ndunda (P.A. Makau) the 3<sup>rd</sup> Defendant/Applicant herein.
  2. That the costs of this suit and the Application be awarded to the 3<sup>rd</sup> Defendant/Applicant.
2. It is premised on the affidavit of Erick Matheka Ndunda and grounds that the suit against the 3<sup>rd</sup> Defendant/Applicant discloses no reasonable cause of action in law and the same is vexatious, misconceived, devoid of any merit and a misjoinder which will only serve to prejudice and/or unnecessarily delay or obstruct determination of the real issues in the suit. That the 3<sup>rd</sup> Defendant/Applicant is not a necessary party to the suit herein for purposes of determination of the real issues at



the crux of the suit and is thus wrongly and/or improperly enjoined in the suit. The 3<sup>rd</sup> Defendant/Applicant has no legal interest whatsoever in the said properties known as Athi-River/Athi River Block 18/75, 77, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 242, 243, 246 and 247 respectively and would therefore not be a necessary party to the suit herein for purposes of determination of the real issues at the crux of the suit in as far as ascertaining which party has a lawful interest in the said properties. That the 3<sup>rd</sup> Defendant/Applicant is a complete stranger to the facts alluded to in the suit herein for the reason that he was not a party to the purported actions that took place on the said properties on 1<sup>st</sup> July, 2024. It therefore follows that the Claim by the Plaintiff herein against the 3<sup>rd</sup> Defendant/Applicant is a misjoinder and therefore the same ought to be struck out ex-debito justitiae for misjoinder.

3. That no plausible prejudice can be suffered by the adverse parties in having this Application allowed as indeed the 3<sup>rd</sup> Defendant/Applicant has absolutely no role to play in the suit herein and his presence herein does not in any way aid this Honourable Court adjudicate upon, and, settle all questions involved in the suit, from an informed and justiciable position. For reasons stated above, it is just and mete that the Application herein be allowed and orders sought therein be granted, to mitigate the irreparable prejudice visited on the 3<sup>rd</sup> Defendant who has been clearly improperly enjoined in the suit herein. Further, the continued pendency of the suit against the 3<sup>rd</sup> Defendant/Applicant is causing it unnecessary anxiety, notwithstanding that it is clearly not a necessary party to the suit.
4. This court has considered the application, affidavits and submissions therein. Order 2 rule 15 of the Civil Procedure Rules which 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.”

5. Order 2 Rule 15(2) of the Civil Procedure Rules provides that no evidence is admissible on an application under sub rule (1) (a) and therefore, it should be evident from the pleadings sought to be struck out that no reasonable cause of action has been disclosed without reference to further evidence. The court’s power to strike out pleadings therefore, is to be exercised sparingly and cautiously. In the case of D.T. Dobie & Company (Kenya) Ltd. vs. Muchina (1982)KLR 1 the court stated that;

No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it.”

6. The main principle to be considered in an application for striking out a pleading therefore is, whether triable issues have been raised. This application is based on the grounds that that the That the 3<sup>rd</sup> Defendant/Applicant having not taken part in the purported trespass on 1<sup>st</sup> July, 2024, the Plaintiff has absolutely no lawful cause action against the 3<sup>rd</sup> Defendant for any liability and its claim lies solely as against the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants. That the 3<sup>rd</sup> Defendant/Applicant has been improperly, unfairly and unjustly sued and is not a necessary party whose presence will enable the court to effectively



and completely adjudicate upon and settle all the questions involved in the suit but rather its continued presence shall lead to unnecessary delay of the suit and also cause it to unfairly accrue unnecessary legal costs, notwithstanding that its presence is not needed in the suit. The Plaintiff/Respondent stated that the 3<sup>rd</sup> Defendant supervised the invasion and trespass onto the Plaintiff's plots. That he was involved in threatening th PARA 1.e plaintiff's agents and servants with dire consequences if they interfered with the demolitions he was supervising. That he has not disclosed to the court that he was acting on behalf on someone else. I find that the Plaintiff have raised a prime facie case against the 3<sup>rd</sup> Defendant/ Applicant which should go to trial for adjudication. I find there are triable issues in this case and can only be determined once the matter goes to full trial. Judicial precedent has established that the jurisdiction to strike out any pleadings or suit is one to be exercised with utmost caution and sparingly. I find that the application is not merited and I dismiss it. Costs to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 23<sup>RD</sup> DAY OF SEPTEMBER 2025.**

**N.A. MATHEKA**

**JUDGE**

