



Peter (Suing as the Administratrix of the Estates of Milka Wavinya Kakui & Kakui Malii Kiketi—Both Deceased) v Ngumbi & 2 others (Sued in Their Capacity as the Administrators of the Estate of Peter Ngumbi Mulei-Deceased) (Environment and Land Case E025 of 2020) [2025] KEELC 6444 (KLR) (30 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6444 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE E025 OF 2020**

**AY KOROSS, J
SEPTEMBER 30, 2025**

BETWEEN

FRANCISCA MUMBUA PETER (SUING AS THE ADMINISTRATRIX OF THE ESTATES OF MILKA WAVINYA KAKUI & KAKUI MALII KIKETI—BOTH DECEASED) PLAINTIFF

AND

KEVIN MULEI NGUMBI 1ST DEFENDANT

STEPHEN KYALO NGUMBI 2ND DEFENDANT

ERIC NDONYE NGUMBI 3RD DEFENDANT

SUED IN THEIR CAPACITY AS THE ADMINISTRATORS OF THE ESTATE OF PETER NGUMBI MULEI-DECEASED

JUDGMENT

Background

1. This suit was initiated by a plaint dated 10/11/2020, filed by the plaintiff who is the administratrix of her late parents' estates—the deceased plaintiffs. The defendants are also involved as the administrators of the estate of the deceased defendant, who was their father.
2. The plaintiff's case was that the deceased plaintiffs were members of Katheka-Kai Farmers Co-operative Society Limited ("Society") and respectively held membership nos. 169 and 24. Through this membership, they were allotted and became the absolute and indefeasible owners of all the properties known as Machakos/Katheka-Kai 'B' Block 4/146, 147, 148, and 149 ("suit properties").



3. That upon the death of the deceased plaintiffs, the suit properties were to be inherited or distributed to their heirs, namely Anthony Mwanja Kakui, Ringo Mutiso Kakui, Daudi Kakui, Henry Maui Kakui, Mary Ndele Kakui, and Francisca Mumbua Peter.
4. Notwithstanding, in an unfortunate turn of events, when the defendants applied for the grant of letters of administration and confirmation of the estate of the deceased defendant, namely Machakos HCSC No. 897 of 2010 (“succession cause”), they erroneously included the suit properties as part of his estate. Therefore, the plaintiff prayed for judgment to be entered against the defendants for;
 - a. A declaration that properties known as Machakos/katheka Kai 'b' Block 4/146,147, 148 and 149 all belong to the estate of the late Milka Wavinya Kakui and the late Kakui Malii Kiketi, respectively.
 - b. A permanent injunction restraining the defendants, their relatives, agents, employees, servants and/or assigns or any other party, from interfering with and/or dealing with and/or utilising the properties known as Machakos/Katheka-Kai 'B' Block 4/146,147,148 and 149.
 - c. Costs of the suit and interest.
 - d. Any other relief that this honourable court may deem fit to grant to meet the ends of justice.
5. In a brief response, the defendants submitted a statement of defence dated 2/02/2021, wherein they denied the allegations made. They asserted that they were strangers to the matter and maintained that the suit was time-barred. They further asserted that the deceased defendant acquired the suit properties in 2006, took immediate occupation and usage thereof. Of particular importance is their assertion that the suit did not disclose any reasonable cause of action against them, and they urged the court to strike it out.

Hearing and evidence

6. The hearing of this matter commenced on 8/03/2023, during which the plaintiff's (PW1) evidence was led by her brother Ringo Mutiso Kakui (PW2) and Amos James Kimuli (PW3), who is the society's chairman. Their evidence consisted of their respective witness statements, oral testimonies, and documents produced, which were marked as Pex1-7.
7. In her testimony, the plaintiff reiterated the assertions contained in the plaint and informed the court that the defendants' actions bordered on trespass and were malevolent or malicious, as they unlawfully sought to deprive the deceased plaintiffs' estates of their assets. She stated that she and society had communicated with the defendants, asserting that the deceased defendant was never a member of the society or owned the suit properties, to no avail.
8. She testified that, as evidenced by Pex. 2, the society's records showed that the suit properties were 40 acres. She also stated that these records reflected the specific shares belonging to Kakui Malii Kiketi, one of the deceased plaintiffs, which were transferred to PW2. She also stated that she was unsure if the deceased defendant had entered the suit property in 2006; however, she was certain Kevin Mulei, one of the defendants, had entered it in 2018. She told the court that the deceased plaintiffs had never sold the suit properties.
9. PW2 took the stand and corroborated the plaintiff's evidence. Additionally, he informed the court that the society's members list (Pex. 6) showed his name as member no. 24, having succeeded his father Kakui Malii Kiketi in 1998. This list also indicates that Wavinya Kakui, one of the deceased plaintiffs, is the society's member no. 169.



10. PW3 also supported the testimonies of witnesses who had testified before him, based on the society's records and ownership of the suit properties. He stated that, in his capacity as the society's chair, he chaired meetings, supervised its membership, and managed committees. He informed the court that, according to their records, the deceased plaintiffs did not transfer or sell their shares and/or the suit properties to anyone at any point during their lifetime.
11. According to him, it was misleading and incorrect for the defendants to claim the properties as part of the deceased defendant's estate. He stated that, if the deceased defendant indeed purchased the suit properties from Abednego Nyamai Makau ("Abednego"), as alleged, he did so from the wrong person, since this Abednego was not a member of the society or did he own the suit properties, and he (Abednego) did not possess a good ownership certificate to transfer to the deceased defendant. He testified that the records showed Abednego was the society's member no. 112, and he was unsure if he was the same person who sold the suit properties to the deceased defendant.
12. One of the deceased defendant's sons, Stephen Kyalo Ngubi (DW2), testified, and his evidence was led by Joseph Mutavi Kituu (DW1), who served as the society's secretary from 1999 to 2006. Their evidence consisted of their respective witness statements, oral testimonies, and documents produced that were marked as Dex1-4.
13. DW1 told the court that he was familiar with the history of the suit properties since the original members sold them to Harun Makau, which was approved by the society's executive committee, of which he was a witness. He stated that the deceased defendant bought the properties from Harun Makau's family. To him, the suit properties belonged to the deceased defendant, and to support this, he referred to Dex. 1 & 2.
14. He later altered his evidence and stated that the deceased defendant, although not being a member of the society or an allottee, purchased the suit properties from Abednego, who was a member of the society; however, he did not possess the sale agreements to substantiate this.
15. In his testimony, DW2 reiterated the assertions made in the defence and maintained that the deceased plaintiffs never owned the suit properties. He stated that Abednego sold the suit properties to the deceased defendant, as evidenced by Dex. 1. However, this document did not disclose the membership no., purchase price, vendor's identity card details, bore no signatures of the vendor or purchaser, and lastly, although it bore the signature of an official and a stamp of the society, it did not disclose the names of the official.
16. He testified that since the suit was filed, the defendants had never used the suit properties, and in the past, they had only utilised them for grazing.

Submissions.

17. Following directions from the court, written submissions were received from the law firm of Ms. Nzavi & Company Advocates for the plaintiff, dated 13/03/2025. Despite Mrs Sang for the defendants being granted an extension to file her submissions, she failed to do so. This court is grateful to the plaintiff's counsel for the well-researched submissions and will consider them in its analysis and determination, including the judicial precedents and provisions of law relied upon to support the plaintiff's arguments.

Issue for determination, Analysis and Determination

18. Having considered the aforesaid pleadings, the evidence of the parties as presented during the hearing, the plaintiff's written submissions, prevailing relevant law, and judicial precedents, the following issues, which will be addressed concurrently commend themselves for determination: -



- I. Whether the plaintiff's claim discloses a reasonable cause of action against the defendant.
 - II. Was it proved?
 - III. What orders should be granted including an order as to costs?
19. The first aspect of this issue was not addressed by the plaintiff's counsel in his submissions. Be that as it may, the prevailing legal framework on the drawing and framing of pleadings is found in our Orders 2 Rule 15 (1) (a), 3 Rule 4, and 4 Rule (1) (f) of the Civil Procedure Rules (CPR), which require a plaintiff in every suit to include their entire claim regarding the cause of action, and if their claim fails to disclose a reasonable cause of action, the court may order the striking out of the pleadings or an amendment.
 20. This court's understanding of Orders 2, 3, and 4 of the CPR is that pleadings disclose the mutual disagreements between the contending parties, which are ordinarily minuted by laying down their facts in the manner set by the law. Notably, the claimant's claim amplifies the cause of action by presenting facts, describes the circumstances of time and place in which the cause of action arose, discloses the cause of action itself, demonstrates the injuries suffered, and informs the court of its jurisdiction and the reliefs sought.
 21. Regarding the definition of cause of action, the Court of Appeal decision in Attorney General & Ministry of State for Immigration & Registrar of Persons v Andrew Maina Githinji & Zachary Mugo Kamunjiga [2016] KECA 817 (KLR) states that it is an act by the defendant that gives the plaintiff a cause for complaint.
 22. In this instance, the plaintiff in paragraph 5 of her plaint merely stated that the suit properties were incorrectly listed in the succession cause of the deceased defendant. Notwithstanding, she did not disclose the cause of action that arose. One would have expected her to draw guidance from the defence and request an amendment to the plaint, but that was not the case.
 23. Imperatively, when it comes to land, which is immovable property, some of the causes of action that would ordinarily arise are trespass, fraud, negligence, trust, waste, and illegality, among many others, but none of them were pleaded in the plaint. Ultimately, and in declining to infer the cause of action from the evidence, as this would significantly prejudice the defendant, this court finds and holds that the plaintiff's suit failed to disclose a cause of action against the defendants.
 24. As this court concludes, it is important to recognise that evidence indicates disputes among the parties involve trespass, fraud, claims of ownership, deprivation of property, or other related issues. The court is left to ponder how the suit properties will be transferred to the defendants, especially since the society's register lists the deceased plaintiff(s) as the rightful owner. Furthermore, what if the plaintiff begins probate proceedings over the deceased's estate and obtains confirmation of the grant, with some of the assets, including the suit properties, being distributed? This creates a complex situation in which the parties find themselves. The court need not say more.
 25. In the end, and for the reasons and findings stated above, this court finds the plaintiff's suit incompetent and it is hereby struck out with costs to the defendants.

Judgment accordingly.

DELIVERED AND DATED AT MACHAKOS THIS 30TH DAY OF SEPTEMBER, 2025.

HON. A. Y. KOROSS

JUDGE



30. 09.2025

**JUDGMENT DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO
CONFERENCING PLATFORM**

In the presence of;

Mr. Nzavi together with Miss Ngumbau for plaintiff.

Mr. Ooko Steven for defendant

Ms Kanja- Court Assistant.

