



Kambi & 4 others v Ngala & 2 others (Environment and Land Case E001 of 2024) [2025] KEELC 6967 (KLR) (9 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6967 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ENVIRONMENT AND LAND CASE E001 OF 2024

EK MAKORI, J

OCTOBER 9, 2025

IN THE MATTER OF: THE LIMITATION OF ACTIONS ACT, CAP 22, LAWS OF KENYA

AND

IN THE MATTER OF: AN APPLICATION FOR ADVERSE POSSESSION

AND

IN THE MATTER OF: LR. NO. KAWALA/KADZONZO/MADZIMBANI/37

BETWEEN

GIBSON CHOME KAMBI 1ST APPLICANT

SHAMIM SELF SAID 2ND APPLICANT

NEEMA ATHMAN NDESHO 3RD APPLICANT

MILICENT MAKINI 4TH APPLICANT

FRANCIS KALAMA 5TH APPLICANT

AND

JIMMY FURAHA NGALA 1ST RESPONDENT

PAUL K NGALA 2ND RESPONDENT

GEORGE K. NGALA 3RD RESPONDENT

RULING

1. Notice of Motion dated June 5, 2025, seeks to have this suit struck out with costs.
2. The motion was canvassed through written submissions.



3. The court acknowledges receipt of the parties' submissions and thanks them for their assistance in resolving the issues before it.
4. The core issues that I frame for the decision of this court are whether the suit should be struck out and who should bear the costs.
5. The applicant in this motion states that this legal action was started with an Originating Summons dated October 4, 2024. On record, there is a Chamber Summons dated February 21, 2025, filed by the plaintiffs and supported by an affidavit of Peter Kennedy Ombati, Advocate, sworn on the same date. The affidavit of Peter Kennedy Ombati contains a single annexure, marked "PKO 1," which is a copy of the title deed for Kilifi/Kadzonzo Madzimbani/37, confirming that the registered owner of that title is Noah Katana Ngala. As early as October 24, 2024, the defendants notified the plaintiffs that they had incorrectly named the parties in the suit - paragraphs 4 and 5 of the 1st defendant's Replying Affidavit, sworn on October 23, 2024, and filed on October 24, 2024. Therefore, the plaintiffs are aware of the actual registered owner of the suit property but have not included him as a party in the proceedings.
6. In response to the above, the respondents in this motion assert that they filed a motion for an injunction on October 4, 2024, to prevent the respondents from dealing with the suit property in any way that could harm them or alter its ownership rights. They also requested protection from this court to guarantee their peaceful occupation of the suit property, which they claim they have occupied for over 12 years. As a result, they argue that they are entitled to be registered as the owners of the property based on the doctrine of adverse possession.
7. The respondents state that in seeking an injunction, they sued the persons who were in occupation, and therefore, the applicants in the OS are joined correctly in this matter.
8. The test for striking out pleadings is as reiterated in the case of Kenyariri v Double Win Company Ltd and 2 others [2024] KEELC 1609 (KLR):

"The Court's jurisdiction to strike out pleadings is found under Order 2 Rule 15 of the Civil Procedure Rules which provides thus;

"Rule 15. (1) 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."

It is trite that striking out pleadings is a drastic remedy that should only be resorted to where a pleading is a complete sham. The Court of Appeal in Blue Shield Insurance Company Ltd vs Joseph Mboya Oguttu [2009] eKLR restated this principle thus;

"The principles guiding the Court when considering such an application which seeks striking out of a pleading is now well settled. Madan J.A. (as he then was) in his judgment in the case of D.T. Dobie and Company (Kenya) Ltd vs Muchina (1982) KLR 1 discussed the issue at length and although what was before him was an application under Order 6 Rule 13 (1) (a) which was seeking striking out a plaint on grounds that it did not disclose a reasonable cause of action against the defendant, he nonetheless dealt with broad principles



which in effect covered all other aspects where striking out a pleading or part of a pleading is sought. It was held in that case inter alia as follows: -

“The power to strike out should be exercised after the Court has considered all facts, but it must not embark on the merits of the case itself as this is solely reserved for the trial Judge. On an application to strike out pleadings, no opinion should be expressed as this would prejudice fair trial and would restrict the freedom of the trial Judge in disposing the case.”

We too would not express our opinion on certain aspects of the matter before us. In that judgment, the learned Judge quoted Dankwerts L.J in the case of *Cail Zeiss Stiftung vs Ranjuer & Keeler Ltd and others (No.3) (1970) ChpD 506*, where the Lord Justice said: -

“The power to strike out any pleading or any part of a pleading under this rule is not mandatory; but permissive and confers a discretionary jurisdiction to be exercised having regard to the quality and all the circumstances relating to the offending pleading.”

We may add that like Madan J.A, said, the power to strike out a pleading which ends in driving a party from the judgment seat should be used very sparingly and only in cases where the pleading is shown to be clearly untenable.”

9. The respondents filed the current OS seeking a declaration that they acquired the suit property through the doctrine of adverse possession. I agree with the applicants in this motion that one of the requirements for an adverse possession claim is to sue the registered owner, as shown in the title document they provided. This non-joinder was brought to the respondents' attention, and they were permitted to amend the OS and remove the applicants. However, this was never done, which is why the current application subsists.

10. I fully agree with the decision cited by the applicants—*Abdirashid Adan Hassan v Estate of W H E Edgley [2022] KEELC 1114 (KLR)*, where Wabwoto J. held the following regarding the need to join a registered owner in a claim of adverse possession:

“Secondly, the effect under Section 17 of the *Limitation of Actions Act* would be to extinguish the title, therefore there is need for reference or production of a copy of a title. A claim for adverse possession must be brought against the registered proprietor since it seeks a declaration that the proprietor's title has been extinguished by prescription. It follows therefore that the proceedings must be in respect of the correct parcel of land and whose ownership is verified by an annexed extract of title in terms of Order 37 rule 7 of the Civil Procedure Rules. In the instant case, the Plaintiff only adduced a deed plan as Plaintiff's Exhibit 2 which is inconclusive proof of ownership of the property. In determining the issue of adverse possession, this Court cannot extinguish an ‘non-existence and unknown title.’”

11. As previously stated, the title document shows Ronald Ngala as the registered owner of the suit property, not the respondents. Ronald Ngala should have been included as the respondent in the OS. The respondents, as I have noted, were granted leave to amend and to join the necessary party; however, they failed to do so. Therefore, there is no claim against the applicants that can be upheld at a hearing.

12. The upshot is that the current suit is hereby struck out with costs.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT MALINDI ON THIS 9TH DAY OF OCTOBER, 2025.

E. K. MAKORI

JUDGE



In the presence of:

Mr. Kiplagat for the Respondents/Applicants

Mr. Kings for Respondents/Applicants

Happy: Court Assistant

