



Ngure (Suing as an Administrator of the Estate of Hellen Wanjiru Ngure - Deceased) & another v Ouma & 4 others (Environment and Land Case E016 of 2024) [2025] KEELC 6706 (KLR) (6 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6706 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E016 OF 2024
CA OCHIENG, J
OCTOBER 6, 2025**

BETWEEN

**DENNIS NYINGI NGURE (SUING AS AN ADMINISTRATOR OF THE ESTATE OF HELLEN WANJIRU NGURE - DECEASED) 1ST PLAINTIFF
LUCY WANJIKU NYINGI (SUING AS AN ADMINISTRATOR OF THE ESTATE OF HELLEN WANJIRU NGURE - DECEASED) 2ND PLAINTIFF**

AND

**DAMARIS AKURO OUMA 1ST DEFENDANT
KIAMBU DANDORA FARMERS CO. LTD 2ND DEFENDANT
CHIEF LAND REGISTRAR OF TITLES 3RD DEFENDANT
DIRECTOR DEPARTMENT OF PLANNING, COMPLIANCE AND ENFORCEMENT NAIROBI COUNTY 4TH DEFENDANT
THE COUNTY SECRETARY, NAIROBI COUNTY 5TH DEFENDANT**

RULING

1. What is before the Court for determination is the 4th and 5th Defendants Chamber Summons application dated the 14th February 2025, where they seek the following Orders:
 1. Spent.
 2. That this Honorable court be pleased to strike out the 4th and 5th Defendants/Applicants from this suit.
 3. That the costs of this application be provided for.



2. The application is premised on grounds on its face and on the supporting affidavit of Boniface Waweru, Litigation Director at the office of the County Attorney, Nairobi City County. He avers that as per the plaint dated 17th January 2024, the Plaintiffs are seeking relief against the actions of the 1st Defendant, which relief is based on tortious actions of trespassing and forcefully entering the Plaintiff's property, No. LR 15400/163 Sossian Estate and the fraudulent issuance of a share certificate with respect to the property on part of the 2nd Defendant. Further, that the Plaintiffs have also alleged that the 2nd Defendant was in collusion with the 3rd Defendant to conduct a subdivision on the suit property, without consulting them. He asserts that the said issues are private between the Plaintiffs and the 1st including 2nd Defendants and there is no nexus between the said issues and the 4th and 5th Defendants. Further, that the Plaintiffs have not disclosed any material facts or reasonable cause of action in their plaint that would point towards the 4th and 5th Defendants, that warrants a right to some relief against them in respect of the subject matter of the suit.
3. The application is opposed by the Plaintiffs vide the 1st Plaintiff's replying affidavit. He asserts that the 4th and 5th Defendants are crucial parties in this suit as they have a statutory mandate over enforcement of any court orders regarding development control, illegal development and subdivision over the suit plot. Further, that the Plaintiffs seek orders directing the 4th Defendant to assist in implementing lawful court orders and that the 4th and 5th Defendants have not demonstrated any prejudice they will suffer by remaining in the suit while striking them out would prejudice the Plaintiffs, who would be forced to file a separate suit against the County Government if enforcement becomes necessary.
4. The 1st -3rd Defendants did not file responses to oppose the instant application, which was canvassed by way of written submissions.

Submissions

5. The 4th and 5th Defendants submit that they are not proper and necessary parties within the meaning of Order 1 Rule 3 of the Civil Procedure Rules thus their presence is not relevant for the determination of the suit. They urge the court to strike them out from the suit as their absence will not make it impossible for this court to deliver judgement and have the orders satisfied. They also submit that while they have an obligation to assist in issues of demolition or eviction, it is possible for them to fulfil their obligations without being parties to this suit.
6. To buttress their averments, they relied on the following decisions: Apex International Limited & Another v Kenya Anti-corruption commission [2012] KEHC 2044 (KLR), Jeremiah Maztagaro and Ezekiel Misango Mutisya [2014] eKLR and the case of Joseph Njau Kingori v Robert Maina Chege & 3 Others [2002] KEHC 1192 (KLR).
7. On their part, the Plaintiffs submit that 4th and 5th Defendants are both proper and necessary parties within the meaning of Order 1 Rule 10 (2) of the Civil Procedure Rules, contending that the law distinguishes between necessary parties, without whom no effective decree can be issued and proper parties, whose presence is needed to ensure the court can completely and finally resolve all issues.
8. They argue that the purpose of civil litigation is not merely to resolve theoretical disputes but to facilitate the real and enforceable determination of rights and obligations and in the absence of necessary parties, courts run the risk of issuing impotent judgments that are incapable of practical implementation. They reiterate that the 4th and 5th Defendants involvement is integral to the full and final resolution of the suit. Further, that they have a statutory obligation to assist in issues of demolition.
9. To support their averments, they relied on the following decisions: Zephir Holdings Ltd v Mimosa Plantations Ltd [2014] eKLR; Winnie Kasyoka Mumo v HFC Limited & Another (Civil Appeal No.



17 of 2019); D.T. Dobie & Co. (Kenya) Ltd v Muchina [1982] eKLR and Departed Asians Property Custodian Board v Jaffer Brothers Ltd [1999] 1 EA.

Analysis and Determination

10. Upon consideration of the instant Chamber Summons application including the respective affidavits and rivalling submissions, the only issue for determination is whether the 4th and 5th Defendants should be struck off this suit.
11. The 4th and 5th Defendant claim that their presence in the suit is unnecessary since the Plaintiff has not demonstrated any cause of action against them, which fact is opposed by the Plaintiffs who contend that their continued participation ensures the Court adjudicates fully, effectively, and with the means to implement its decision lawfully.
12. Order 2 Rule 15 (1) of the Civil Procedure Rules, 2010 highlights circumstances, under which a party can strike out pleadings.
13. Further, Court is empowered to strike out a party improperly joined to a suit by virtue of Order 3 Rule 10 of the Civil Procedure Rules which provides that;

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit”
14. In *Pizza Harvest Limited v Felix Midigo*, [2013] eKLR the Court referred to the decision of Devlin J. in the case of *Amon v Raphael Tuck & Sons Ltd*, (1956) 1 All ER 273, where a necessary party was expounded in the following terms:

“.....The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action, and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party.”
15. In *DT Dobie & Co. (Kenya) Limited v Muchina & Another* [1982] KLR, the Court of Appeal defined a reasonable cause of action to mean:

“An action with some chance of success when allegations in the plaint only are considered. A cause of action will not be considered reasonable if it does not state such facts as to support the claim prayer...”
16. On perusal of the Plaintiff, I note the Plaintiffs have not indicated any cause of action against the 4th and 5th Defendants, except for the final prayer (f) where they seek an Order directing the Director Planning Compliance and Enforcement, Nairobi County to assist the implementation of this Court’s Orders.
17. Based on the facts as presented while relying on the legal provisions quoted and associating myself with the decisions cited while applying them to circumstances at hand, I find that the Plaintiffs have not demonstrated why the 4th and 5th Defendants’ presence before the court may be necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. I opine that the 4th and 5th Defendants can still be directed to assist in the implementation of this



Court's Orders, even if they are not parties to the suit. It is my considered view that the fulcrum of the dispute herein revolves around ownership of the suit plot where both the Plaintiffs and 1st Defendant stake a claim. Further, that there is no demonstrated reasonable cause of action to support the claim that the 4th and 5th Defendants interfered with the Plaintiffs' title to the suit plot.

18. It is against the foregoing that I find the instant Chamber Summons application merited and will allow it. I proceed to strike out the 4th and 5th Defendants from this suit but make no orders as to costs.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF OCTOBER, 2025.

CHRISTINE OCHIENG

JUDGE

In the presence of:

Kimani Horeria for Plaintiffs

Ms Mwaura for 4th and 5th Defendants

Were for 1st and 2nd Defendants

Court Assistant: Joan

