

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT KAJIADO**  
**ELCLC E055 of 2024**

JOSEPH NYAMBAKA ORWENYO.....1<sup>ST</sup>

PLAINTIFF

JAMES NYABUGA ORWENYO.....2<sup>ND</sup>

PLAINTIFF

EVERLYN KERUBO NYARIKI .....3<sup>RD</sup>

PLAINTIFF

(SUIING AS THE ADMINISTRATORS OF JASON NYARIKI ORWENYO  
(DECEASED))

-VERSUS-

JAMES NJOROGE GITAU.....1<sup>ST</sup>

DEFENDANT

LAND REGSIATR KISAMIS/KAJIADO.....2<sup>ND</sup>

DEFENDANT

THE ATTORNEY GENERAL.....3<sup>RD</sup>

DEFENDANT

**RULING**

***(In respect of the 1<sup>st</sup> Defendant Notice of Motion dated 24<sup>th</sup> March, 2025 seeking to be struck out of the suit)***

1. On 26<sup>th</sup> March, 2025, the 1<sup>st</sup> Defendant filed a Notice of Motion dated 24<sup>th</sup> March, 2024 brought under Sections 1A, 1B and 3A of the Civil Procedure Act and Order 2 Rule 15 of the Civil Procedure Rules wherein he seeks to be struck out of the suit with costs. His prayer is that 'the 1<sup>st</sup> Defendant/Applicant may be struck out of the suit with costs.'
2. The Application is premised on grounds that the 1<sup>st</sup> Defendant has never had any transactions/dealings with the Plaintiffs nor bought any land from the Plaintiffs, neither does he own KAJIADO/NTASHART/6122.
3. The Application is supported by the extremely brief Affidavit of Martin Njeru Nyaga, counsel for the 1<sup>st</sup> Defendant who asserts that the Plaintiff does not disclose any cause of action against the 1<sup>st</sup> Defendant. According to him, the 1<sup>st</sup> Defendant has no knowledge of the Plaintiffs nor the suit property.
4. What I understand the 1<sup>st</sup> Defendant to be seeking is the striking out of the Plaintiffs' suit against him on the basis that it discloses no reasonable cause of action against him.

**Plaintiffs' Case**

5. The 1<sup>st</sup> Defendant's Application is vehemently opposed by the Plaintiffs through the replying affidavit of James Nyabuga Orwenyo sworn on 7<sup>th</sup> April, 2025. He explains that official search and green card obtained prior to filing

of this suit revealed that the suit property was indeed registered in the name of James Njoroge Gitau.

6. It is alleged that when the 1<sup>st</sup> Defendant was contacted by the Plaintiffs' counsel, he stated that the suit property belonged to him and that his counsel would be dealing with the matter. He proceeded to enter appearance and file a statement of defence in this matter dated 8<sup>th</sup> July 2024.
7. The Plaintiffs accuse the 1<sup>st</sup> Defendant of seeking to get an escape route after being cornered for fraudulently participating in transfer of the suit property. Additionally, they avow that the 1<sup>st</sup> Defendant only swore an affidavit disowning the fraud when he was arrested.
8. Accordingly, the s pray for dismissal of the Application with costs because it is unmerited, frivolous, and an afterthought.

#### **1<sup>st</sup> Defendant's Further affidavit**

9. The 1<sup>st</sup> Defendant in his further Affidavit sworn on 5<sup>th</sup> June, 2025, claims that he had sworn an affidavit dated 24<sup>th</sup> August, 2024 formally requesting the 2<sup>nd</sup> Defendant to expunge his name from the register of the suit property because it was incorporated without his knowledge and consent. The 1<sup>st</sup> Defendant denies ever being arrested and instead deposes that he voluntarily presented himself to the Directorate of Criminal Investigation. Thus, he pleads with the court to allow his Application as prayed as he is a stranger to this suit.

### **Court directions**

10. On 8<sup>th</sup> May, 2025, the court directed parties to file written submissions. Both sides complied. The court has considered the submissions in the writing of this ruling.

### **Issue for determination**

11. Upon cautious examination of the Application, the response thereto as well as the submissions by the parties, the only issue for determination is whether the 1<sup>st</sup> Defendant's application is merited.

### **Determination**

12. The power of court to struck a wrongly enjoined party from a suit is entrenched in Order 1 Rule 10(2) of the Civil Procedure Rules which provides as follows

***“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, be added.”***

13. What makes a person to be classified as an necessary party in a claim was expounded in the dictum of **Devlin, J** in **Amon v Raphael Tuck & Sons Ltd (1956) 1 All ER 273** alluded to in **Pizza Harvest Limited v Felix Midigo [2013] KEHC 57 (KLR)** where **Havelock J** stated as follows;

***“What makes a person a necessary party? It is not of course, merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance and is afraid that the existing parties may not advance them adequately ...the Court might often think it convenient or desirable that some of such persons should be heard so that the court could be sure that it had found the complete answer, but no one would suggest that it would be necessary to hear them for that purpose. 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.**

14. The 1<sup>st</sup> Defendant's application however is brought under the provisions of Order 2 rule 15 of the Civil Procedure Rules and therefore ought to have been framed differently. The 1<sup>st</sup> Defendant contends that he ought to be struck out from the proceedings because no cause of action has been disclosed against him. He further claims that he has never had any dealings in respect of the suit property with the Plaintiffs neither is he aware that the suit property belongs to Jason Nyariki Orwenyo. Concerning why the suit property was fraudulently registered in his name, his explanation is that it was undertaken without his knowledge and consent.

15. Amongst the prayers sought by the Plaintiffs include one for a permanent injunction restraining the 1<sup>st</sup> Defendant from interfering with the suit property, cancellation of his title deed and declaration that the registration and transfer of suit property to 1<sup>st</sup> Defendant was fraudulently undertaken.

16. Going by the Plaintiffs assertions and prayers sought, undoubtedly, a rational cause of action has been disclosed against the 1<sup>st</sup> Defendant as was held in **Attorney General & another v Andrew Maina Githinji &**

**another [2016] KECA 817 (KLR)**, where ***the Court of Appeal*** stated as follows;

***“A cause of action is an act on the part of the defendant, which gives the plaintiff his cause of complaint.”***

17. That definition was given by **Pearson J.** in the case of **Drummond Jackson vs. Britain Medical Association (1970) 2 WLR 688 at pg 616.** In an earlier case, **Read vs. Brown (1889), 22 QBD 128,** Lord Esher, M.R. had defined it as follows:-

***“Every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgement of the court”.***

18. The 1<sup>st</sup> Defendant entered appearance on 19<sup>th</sup> June, 2024 through a memorandum of appearance dated 18<sup>th</sup> June, 2024. Prior to filing this Application which is the subject of this Ruling, the 1<sup>st</sup> Defendant filed his statement of Defence on 8<sup>th</sup> July, 2024 which was sequentially responded to the Plaintiff.

19. Going by the assertions raised by the Plaintiffs, the participation of the 1<sup>st</sup> Defendant in these proceedings is not only significant but also inevitable given there indeed exists a title to the suit property in his name. The Plaintiffs definitely have a reason to complain against him in spite of his assertion that the title was mistakenly issued in his name without his knowledge and consent.

20. Taking the aforementioned factors into consideration, I find that the Plaintiffs were justified to sue 1<sup>st</sup> Defendant in this suit.

21. Accordingly, I find that 1<sup>st</sup> Defendant Notice of Motion dated 24<sup>th</sup> March, 2025 is not merited and proceed to dismiss it with costs to the Plaintiffs.

It is so ordered.

**Dated Signed and Delivered at Kajiado Virtually this 14<sup>th</sup>  
Day of October 2025.**

**M.D. MWANGI  
JUDGE**

**In the virtual presence of:**

Mr. Orondo Tuli for the Plaintiffs/Respondents

Ms. Muema h/b for Mr. Njeru for the 1<sup>st</sup> Defendant/Applicant

N/A by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants

Court Assistant: MPoye

**M.D. MWANGI  
JUDGE**

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