



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kianda Foundation Educational Trust v Fit Tight Fasteners Ltd & 3 others (Environment and Land Case E006 of 2023) [2025] KEELC 5765 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5765 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**  
**ENVIRONMENT AND LAND CASE E006 OF 2023**  
**MD MWANGI, J**  
**JULY 31, 2025**

**BETWEEN**

**KIANDA FOUNDATION EDUCATIONAL TRUST ..... PLAINTIFF**

**AND**

**FIT TIGHT FASTENERS LTD ..... 1<sup>ST</sup> DEFENDANT**

**KATHOZ AND CONSTRUCTION CO. LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**LAND REGISTRY KAJIADO ..... 3<sup>RD</sup> DEFENDANT**

**HON ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

(In respect of the notice of motion dated 14<sup>th</sup> April, 2025 seeking to strike out the 1<sup>st</sup> and 2<sup>nd</sup> Defendant Defence and its accompanying documents.)

**Background**

1. This Ruling is in respect of the Plaintiff/Applicant's Notice of Motion dated 14<sup>th</sup> April, 2025 brought under Article 159 of *the Constitution*, Sections 1A, 1B, 3A & 3B of the *Civil Procedure Act* as well as Order 2 Rules 15, 5 & Rule 1 seeking for the following orders;
  - a. That this honorable court be pleased to strike out the defence and all its accompanying documents filed in this honorable court on 17<sup>th</sup> February, 2025 and served on the Applicant/Plaintiff's counsel by email on the 18<sup>th</sup> February, 2025.
  - b. Notice of appeal filed in this court by the Respondent out of time without leave of this honorable court, and dated 17<sup>th</sup> March, 2025 but lodged in this honorable court on 2<sup>nd</sup> April, 2025.



- c. Costs of the Application be provided for in any event.
2. The Application is premised on the grounds that the Plaint, witness statement and list of documents dated 31<sup>st</sup> January, 2022 and filed on 2<sup>nd</sup> February, 2022 were served upon the Defendants on 3<sup>rd</sup> February, 2023. On 18<sup>th</sup> February, 2025, the Plaintiff was served with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' defence and its accompanying documents filed on 17<sup>th</sup> February, 2025. According to the Plaintiff, the documents should be struck off from the court's record because they were served outside the statutory period.
  3. The Application is supported by the Affidavit of the Winfrida Teresa Chepkoech sworn on 14<sup>th</sup> April, 2025 who deposes that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants act of sneaking a statement of defence and accompanying documents out of time must be stopped by this court because it is malicious and unjustified. This is because they have not explained why it took two years to file their defence.

### **1<sup>st</sup> and 2<sup>nd</sup> Defendant's response**

4. The Application is opposed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants through the Supporting Affidavit sworn on 13<sup>th</sup> April, 2025. The deponent prays for its dismissal with costs for being defective, bad, flawed, erroneous and unconstitutional. He deposes that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have never filed or served any notice of appeal neither has any Ruling/Judgment been rendered by this court to necessitate an appeal.
5. It is asserted that following the institution of the Plaintiff's suit together with Certificate of Urgency dated 31<sup>st</sup> January, 2023, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed a Memorandum of Appearance and Replying Affidavit on 10<sup>th</sup> February, 2023. When the Application came up for hearing on 22<sup>nd</sup> May, 2023, parties consented to have the Land Registrar determine the boundary and subsequently a report be tabled in court. On 9<sup>th</sup> November, 2023, the court was informed that the survey exercise would take place on 21<sup>st</sup> November, 2023. Even though the Surveyor report was not ready on 20<sup>th</sup> March, 2024 when the matter was listed for mention due to the Registrar illness, the court directed that the matter to be listed for pre-trial conference on 27<sup>th</sup> June, 2024 and that the pleadings would be open.
6. The deponent states that the matter was mentioned on 11<sup>th</sup> July, 2024 instead because the court was on leave on 27<sup>th</sup> June, 2024. Summons was issued to the Kajiado Land Registrar to appear on 19<sup>th</sup> November, 2024 and explain why he had not filed the report. Upon receipt of the Land Registrar and Surveyor's reports through the Deputy Registrar on 14<sup>th</sup> November, 2024, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed their Defence and Counterclaim dated 12<sup>th</sup> February, 2025 together with a list of documents and witnesses and witness statements.
7. It is contended that during the pre-trial conference on 18<sup>th</sup> February, 2025, the matter was re-scheduled for mention on 22<sup>nd</sup> April, 2025 because the Plaintiff sought 14 days to respond to the Defence and counterclaim. According to the Deponent, prior to 18<sup>th</sup> February, 2025, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' pleadings and accompanying documents were in compliance with Order 7 Rule 1 and Order 11 of the Civil Procedure Rules because the pleadings were still open.
8. It is further alleged that the Application offends Article 159(2)(d) of *the Constitution* and the oxygen principles because interlocutory or summary judgment has never been sought. In addition, the application seeks to defeat justice yet the 1<sup>st</sup> and 2<sup>nd</sup> Defendants pleadings and documents seeks to help the court render a just decision on ownership of the disputed property.



## Directions of the Court

9. The Application was disposed of by way of written submissions. The court has carefully considered the Plaintiff's and 1<sup>st</sup> and 2<sup>nd</sup> Defendants' submission duly filed in compliance with its directions in writing this ruling.

## Issues for determination

10. The singular issue for determination upon careful consideration of the Motion, the response as well as parties' submissions is whether the Plaintiff's Notice of Motion is merited.

## Analysis and determination

11. The Plaintiff seeks to have the 1<sup>st</sup> and 2<sup>nd</sup> Defendant Defence and accompanying documents struck out because they were filed outside the statutory timelines without leave of the court. In their rejoinder, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants maintain that their Defence was duly filed in compliance with Order 7 Rule 1 of the Civil Procedure Rules. It is the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' case that the Defence shall guide the court in rendering a just decision on ownership of the suit property, this court must dismiss the Plaintiff's Application. This is because it violates Article 159(2)(d) of *the Constitution* and the oxygen principles.
12. While dealing with the issue of striking out pleadings, the Court of Appeal in *Uchumi Supermarkets Limited & another v Sidhi Investments Limited* [2019] KECA 851 (KLR) had this to say;  

“The striking out of a pleading, has time and time again been described as draconian and an order of last resort. A court will therefore only resort to it, in its discretion, where it has properly addressed itself on the principles enumerated under Order VI Rule 13(1) (b) and (d) of the Civil Procedure Rules (now repealed), and is satisfied, upon assessment of the material before it that any of the grounds enumerated exists or do not exist.”
13. Similarly, the Court of Appeal in *Crescent Construction Co. Ltd v Delphis Bank Ltd* [2007] KECA 500 (KLR) adopted the same approach by stating as follows;  

“However, one thing remains clear, and that is that the power to strike out a pleading is a discretionary one. It is to be exercised with the greatest care and caution. This comes from the realisation that the rules of natural justice require that the court must not drive away any litigant however weak his case may be from the seat of justice. This is a time-honored legal principle.”
14. From my perusal of the court's record, the Plaintiff instigated its claim on 2<sup>nd</sup> February, 2023 through a Plaint dated 31<sup>st</sup> January, 2023 alongside a Notice of Motion of even date. Upon considering the Motion, the court listed it for inter partes hearing on 15<sup>th</sup> February, 2023 and directed that it be served within 3 days. During the inter partes hearing, hearing of the Application was rescheduled to 22<sup>nd</sup> May, 2023 to enable the 1<sup>st</sup> Respondent respond and the Plaintiff to file a Supplementary Affidavit. On 22<sup>nd</sup> May, 2023, the directions of the court were to the effect that the Land Registrar visits the ground. When the suit came up for mention on 18<sup>th</sup> February, 2025, the Plaintiff's Counsel request for 30 days to respond to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' Defence was granted.
15. The court several issued directions which indicate that it re-opened the pleadings and granted the parties the liberty to file pleadings even after the statutory timelines. Case in point is the order of 20<sup>th</sup>



March 2024 when the court made an order to the effect that pleadings would remain open until the 27<sup>th</sup> June 2024. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants' simply took advantage of that window of opportunity.

16. A perusal of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' Defence and accompanying documents demonstrates that it raises serious issues relating to the history of the suit property. As submitted by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, the Defence will guide the court in asserting who is the true proprietor of the suit property.
17. The court declines the invitation to strike out the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' statement of Defence and accompanying documents for the aforesaid reasons.
18. With regard to prayer (2) which mentions a Notice of Appeal, I find that the same is misdirected. There is no notice of appeal on the record of this court.
19. Consequently, the application dated 14<sup>th</sup> April, 2025 is hereby dismissed. The costs shall be in the cause.  
It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 31<sup>ST</sup> DAY OF JULY 2025.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mrs. Owino for the Plaintiff/Applicant

Mr. Owiti for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants

Ms. Wanjiru h/b for the 3<sup>rd</sup> and 4<sup>th</sup> Defendants

Court Assistant: Edwin

**M.D. MWANGI**

**JUDGE**

