



**Morop Distributors (K) Limited & another v Nairobi County Government  
(City County of Nairobi) & 4 others (Environment and Land Case Civil  
Suit 178 of 2009) [2025] KEELC 7154 (KLR) (22 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7154 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 178 OF 2009  
CA OCHIENG, J  
OCTOBER 22, 2025**

**BETWEEN**

**MOROP DISTRIBUTORS (K) LIMITED ..... 1<sup>ST</sup> PLAINTIFF**

**REGENT AUTOMOBILE VALUERS AND ASSESSORS LIMITED .... 2<sup>ND</sup>  
PLAINTIFF**

**AND**

**NAIROBI COUNTY GOVERNMENT (CITY COUNTY OF  
NAIROBI) ..... 1<sup>ST</sup> DEFENDANT**

**JOB KIPNANDI CHEBON ..... 2<sup>ND</sup> DEFENDANT**

**N.K BROTHERS LIMITED ..... 3<sup>RD</sup> DEFENDANT**

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

**STEP AHEAD LIMITED ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. What is before the Court for determination is the 1<sup>st</sup> Plaintiff's Notice of Motion application dated the 7<sup>th</sup> May 2025, where it seeks the following Orders:
  - a. Spent.
  - b. That the 2<sup>nd</sup> Plaintiff's amended plaint dated 19<sup>th</sup> April 2012 and filed in Court herein be struck out.
  - c. That the 2<sup>nd</sup> Plaintiff's further amended plaint dated 18<sup>th</sup> October 2018 and filed on 18<sup>th</sup> October 2018 be struck out.



- d. That the 2<sup>nd</sup> Plaintiff be enjoined as 6<sup>th</sup> Defendant in the suit.
- Alternative
- e. That the 2<sup>nd</sup> Plaintiff be ordered to furnish security for costs of this suit of ksh.2,000,000/= or such sum as this Honourable court may deem just and until the furnishing of security all further proceedings herein be stayed.
- f. That in the event of the 2<sup>nd</sup> Plaintiff failing to provide security as ordered within Twenty-one (21) days of the order, or such other time as this Honourable court may deem just, the 2<sup>nd</sup> Plaintiff's case do stand struck out with costs.
- g. That the costs of the suit and application be awarded to the 1<sup>st</sup> Plaintiff/Applicant.
2. The application is premised on grounds on its face and on the supporting, and supplementary affidavits of Dickson Kipkemboi Boiywo a director of the 1<sup>st</sup> Plaintiff. He claims that the 1<sup>st</sup> Plaintiff is the legal owner of LR No. 209/13548, hereinafter referred to as the 'suit plot', pursuant to an allotment letter issued in 1996. Further, that at the time of allotment, the parcel had already been developed with a servant's house and it started utilizing it, in 1996. He deposes that on 26<sup>th</sup> April 2009, the 1<sup>st</sup> Defendant sent its employees to serve an enforcement notice upon the 1<sup>st</sup> Plaintiff, ordering it to remove alleged illegal developments thereon and vacate the said plot, of which the 1<sup>st</sup> Plaintiff appealed against the said enforcement notice and filed the instant suit.
3. He insists that the 1<sup>st</sup> Plaintiff has never sold the suit plot to the 2<sup>nd</sup> Plaintiff, 2<sup>nd</sup>, 3<sup>rd</sup> or 5<sup>th</sup> Defendants and that it has never been served with any application seeking to join the 2<sup>nd</sup> Plaintiff to the suit. Further, that the 2<sup>nd</sup> Plaintiff ought to be joined as the 6<sup>th</sup> Defendant since it still holds the title to the suit plot, which was obtained fraudulently as determined in Criminal Court No. 956 of 2009, where the 2<sup>nd</sup> Plaintiff's director and the 5<sup>th</sup> Defendant were convicted of forgery, with the said director also being convicted for the offence of forcible detainer. He contends that, they did not Appeal the judgement in the matter thus they served the sentence imposed therein in full. He claims, after completing his sentence, the 2<sup>nd</sup> Plaintiff sneaked to join the suit and brought in the 5<sup>th</sup> Defendant without leave of the court and without notice to the 1<sup>st</sup> Plaintiff. Further, that it amended the plaint and further amended it.
4. He contends that the 2<sup>nd</sup> Plaintiff's claim is completely different from the 1<sup>st</sup> Plaintiff's claim, being that their cause of action does not relate thus the 2<sup>nd</sup> Plaintiff lacks locus standi to be part of this suit as a Plaintiff.
5. The application is opposed by the 2<sup>nd</sup> Plaintiff vide the replying affidavit of its director, John Gathama Maingi. He avers that the 1<sup>st</sup> Plaintiff does not have the right to take part in these proceedings since the 1<sup>st</sup> Plaintiff's claim was dismissed by this Court on 13<sup>th</sup> April 2017. Further, upon reinstatement of the suit on the 2<sup>nd</sup> Plaintiff's instance, the Court directed as follows in its orders of 13<sup>th</sup> November 2017:
- “..... the Plaintiffs shall file and serve bound, paginated and indexed bundles of the pleadings, witness statements, documents and issues within 30 days. In default, the suit of any defaulting Plaintiff shall stand dismissed”
6. He avers that the aforementioned orders were served upon Triple OK Law Advocates who were then on record for the 1<sup>st</sup> Plaintiff but the 1<sup>st</sup> Plaintiff did not comply with the said orders thus its suit was duly dismissed. He also denies the allegation that a director of the 2<sup>nd</sup> Plaintiff was convicted of forgery and avers that in previous averments, the 1<sup>st</sup> Plaintiff expressly averred that it sold the suit land to the 5<sup>th</sup> Defendant who ultimately sold it to the 2<sup>nd</sup> Plaintiff.



7. He explains that the 2<sup>nd</sup> Plaintiff became a party to this suit through an amendment of the plaint by an advocate acting for both plaintiffs on 19<sup>th</sup> April 2012, before close of pleadings and as such there was no requirement for leave, while further amendments made on 18<sup>th</sup> October 2018 were done with the leave of Court granted on 11<sup>th</sup> October, 2018. He contends that the 1<sup>st</sup> Plaintiff has endorsed the amendments to the plaint and points out that in an application dated 17<sup>th</sup> June 2021, it sought to further amend the further amended plaint dated 18<sup>th</sup> October 2018.
8. The application was canvassed by way of written submissions.

### **Submissions**

9. The 2<sup>nd</sup> Plaintiff did not file submissions.
10. In its submissions, the 1<sup>st</sup> Plaintiff reiterates that the 2<sup>nd</sup> Plaintiff has no locus standi to prosecute this case since it has no common interest with it. Further, that its claim is for an injunction and ownership of the suit plot while the 2<sup>nd</sup> Plaintiff's claim is for compensation of sale contract proceeds against the 5<sup>th</sup> Defendant. It insists that the sale was investigated and in CMCC CR Case No. 956 of 2010, the transaction was found to have been fraudulent in a judgement entered on 19<sup>th</sup> December 2011, which was not appealed against thus the Plaintiff cannot claim proceeds of fraud.
11. It also reiterates that the 2<sup>nd</sup> Plaintiff did not adduce evidence to prove how it got joined to the suit or what common interest it has with it. Further, that the alleged application to reinstate suit, which resulted in orders issued on 13<sup>th</sup> November 2017 were not served on its advocates, Messrs Omangi Musangi & Co. Advocates, who have been its advocates on record since 1<sup>st</sup> July 2010. It reiterates that Triple OK Law Advocates might have assumed instructions on its behalf and without authority, proceeded to amend the plaint.
12. To support its averments, the 1<sup>st</sup> Plaintiff relied on the following decisions: *Alberta Mae Gacie v Attorney General & 4 Others* [2006] eKLR and *DIM Agencies Limited v Kenya Airports Authority* [2021] eKLR.

### **Analysis and Determination**

13. Upon consideration of the instant Notice of Motion application including the respective affidavits and submissions, at this juncture the only issue for determination is whether the 2<sup>nd</sup> Plaintiff's amended plaints dated 19<sup>th</sup> April 2012 and 18<sup>th</sup> October 2018 respectively should be struck out.
14. The 1<sup>st</sup> Plaintiff seeks to strike out the 2<sup>nd</sup> Plaintiff's amended plaint dated 19<sup>th</sup> April 2012 and further amended plaint dated 18<sup>th</sup> October 2018 on grounds that the same were filed without leave or notice and that the parties do not have a common cause of action. It points out that its claim relates to ownership of the suit plot, while the 2<sup>nd</sup> Plaintiff claims, sale proceeds from the 5<sup>th</sup> Defendant under a transaction allegedly declared fraudulent by the Court in CMCC CR Case No. 956 of 2010, where the 5<sup>th</sup> Defendant and the 2<sup>nd</sup> Plaintiff's director were convicted of forgery.
15. The 2<sup>nd</sup> Plaintiff contends that it was joined by amendment before close of pleadings by Counsel on record for both Plaintiffs hence it did not require leave to file Amended Plaint dated 19<sup>th</sup> April 2012. Further, that the 18<sup>th</sup> October, 2018 amendment was with leave of Court. It insists that the 1<sup>st</sup> Plaintiff's suit was dismissed in 2017 thus it has no locus to file the application.
16. In response to the allegations, the 1<sup>st</sup> Plaintiff contends that its Counsel was not served with the alleged orders concerning reinstatement of suit and on the alleged amendments with leave. It avers that it



has its own advocate on record since 2010 thus the alleged amendments instigated by Triple OK Law Advocates, may have been without its authority.

17. In this instance, the Court will interrogate the record to determine whether the 1<sup>st</sup> Plaintiff's suit was dismissed, whether the 2<sup>nd</sup> Plaintiff's amendments were made with leave and whether the 2<sup>nd</sup> Plaintiff has a reasonable cause of action.
18. The principles which guide the court on its power to strike out a suit are provided under Order 2 Rule 15 of the Civil Procedure Rules. While reiterating the said principles, the Court of Appeal stated as follows in *Kivanga Estates Limited v National Bank of Kenya Limited* [2017] KECA 591 (KLR);  

“Striking out a pleading, though draconian, the court will, in its discretion resort to it, where, for instance, the court is satisfied that the pleading has been brought in abuse of its process or where it is found to be scandalous, frivolous or vexatious..”
19. On perusal of the Court record, I note on the 21<sup>st</sup> July, 2020, the Court noted that the 1<sup>st</sup> Plaintiff was not keen to prosecute this matter. Further, vide a Ruling delivered on the 26<sup>th</sup> May, 2022, the Judge directed the parties to file their pretrial bundles containing pleadings, comprehensive statements and documents in thirty (30) days. The Judge was categorical that the matter should be listed for hearing and shall not be adjourned at the instance of the 1<sup>st</sup> Plaintiff. The 1<sup>st</sup> Plaintiff thereafter sought for stay of proceedings vide its application dated the 26<sup>th</sup> July, 2022, claiming it has lodged an Appeal but the Judge dismissed the said application vide her Ruling dated the 26<sup>th</sup> January, 2023. The 1<sup>st</sup> Plaintiff has now sought to strike out the 2<sup>nd</sup> Plaintiff's Amended and further Amended Plaints or in the alternative that the 2<sup>nd</sup> Plaintiff be directed to offer security for costs.
20. I note way back in 2012, the 2<sup>nd</sup> Plaintiff was already a party to this suit, hence I find that the 1<sup>st</sup> Plaintiff's is not being candid. I note this is a very old matter and from the Court record it seems the 1<sup>st</sup> Plaintiff has not been keen to proceed. On striking out of the 2<sup>nd</sup> Plaintiff's Amended and further Amended Plaints, I opine that the same raises triable issues, which can only be determined once viva voce is adduced. Further, I find that for the further Amended Plaintiff dated 18<sup>th</sup> October 2018, the same was done with leave of court. It is my considered view that even if there was a related criminal case, which had been determined, the 2<sup>nd</sup> Plaintiff cannot be removed from the seat of justice. To my mind, I find that since the 2<sup>nd</sup> Plaintiff's claim revolves around the suit plot, it is immaterial whether they share the said claim with the 1<sup>st</sup> Plaintiff or not. Further, it would be proper if this Court makes a final determination of all the issues in dispute revolving around the said suit plot once and for all.
21. In the foregoing, I find the instant Notice of Motion application unmerited and will dismiss it with costs to the 2<sup>nd</sup> Plaintiff.
22. I further order that the Court shall not entertain any further interlocutory applications but direct the matter to be set down for hearing forthwith.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 22<sup>ND</sup> DAY OF OCTOBER, 2025**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

Ms Chesaro for 1<sup>st</sup> Applicant/ 1<sup>st</sup> Plaintiff

Kamau for 4<sup>th</sup> Respondent



Omolo for 2<sup>nd</sup> Plaintiff

Ms Awandu for 3<sup>rd</sup> Defendant / Respondent

Bosek for 2<sup>nd</sup> Defendant

Court Assistant: Joan

