

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC LC CASE NO. E003 OF 2024

KENNETH

MUNGAI

NGANGA.....PLAINTIFF

VERSUS

JULIUS MWANTA NTIAPUYUK & 13

OTHERS.....DEFENDANTS

RULING.

1. This Ruling is in respect to the **Notice of Motion** application dated **21st February 2025** brought pursuant to **Section 4(1) and (3) of the Government Proceedings Act; Section 8 (5) of the Land Laws Amendment Act; Order 1 Rule 10(2) and Order 51 of Civil procedure Rules 2010; Section IA, 2A and 3A of the Civil Procedure Act** and all other enabling provisions of the law.

2. It seeks orders that;

i. **This Honourable Court be pleased to strike out the 9th and 10th Defendants/Applicants from this suit.**

ii. **The costs of this application be in the cause.**

3. The grounds are on the face of the application as set out in paragraphs a to 1 to 12. It is supported by the sworn Affidavit of **Paul Tonui, the Land Registrar Kajiado West Land Registry (Kisamis)** the 10th defendant herein. He depones that between 2018 and 2023 he was the Land Registrar, Kajiado Central and South but had since moved to Kajiado West (Kisamis). The 9th Defendant was the District Land Surveyor Kajiado before he was transferred to Bomet in the year 2023.

4. He states that he together with the 10th Defendant have been sued in their personal capacity despite being government agents and as per **Section 12 of the Government Proceedings Act**, proceedings by/against the Government should be through the office of the

Attorney General. He added that **Section 8(5) of the Land Laws Amendment Act** provided that a Land Registrar shall not be held personally liable for acts discharged in their official capacity. It is his position they could appear as Government witnesses when required although the offices they held have perpetual succession and there were officers who could provide records in relation to the suit parcels.

5. He averred that the Plaintiff would not suffer prejudice if the 9th and 10th defendants are struck out because the 11th and 12th defendants are still parties to the suit. He urged the court to allow the application.
6. The Plaintiff, in his **Replying Affidavit** dated 4th June 2025 contested the application stating that Section 4 and 12 of the Government Proceedings Act could not shield officers who acted unlawfully and/or maliciously or outside the limits of their official duty. He claimed that as per his Plaintiff, he had particularised fraud and illegality perpetrated by the 9th and 10th defendants which was an abuse of office and their presence in the suit was

necessary because they did not enjoy immunity from litigation. He further deponed that if they were wrongly enjoined, they would have a day in Court to defend themselves. He deponed that their removal from the suit would prejudice him because he would not have an opportunity to hold to account persons who participated in the fraudulent actions against the suit property. He urged that the Application be dismissed.

7. The application was canvassed by way of written submissions.

Submissions of the 9th and 10th Defendants

8. At the time of writing this Ruling, these submissions had not been filed.

Submissions of the Plaintiff

9. Counsel made the following submissions.
10. On whether the 9th and 10th defendants should be struck out for being sued in their personal capacity, it was submitted that **Section 4 of the Government Act** only

shielded officers who acted lawfully and within their capacity. However, officers who acted unlawfully or illegally are not immune from legal proceedings as held in **Langat v Shikondi & 4 Others [2023] KEHC 25301 (KLR)** and **Maina v Nyangweso & 5 others [2024] KEELC 13816**. It was submitted that since fraud had been claimed against the 9th and 10th defendants, they should be held liable for their actions which were contrary to **Article 10 and Chapter Six** of the **Constitution** and their inclusion in the suit was essential for its fair determination.

11. As such, the application should be dismissed with costs to the Plaintiff because striking them out would be unjust.

Analysis and determination

12. I have considered the Notice of Motion , the Affidavit in support, and the response thereto, the written submissions and authorities cited.. I find that the issues for determination are:

i. Whether the 9th and 10th Defendants should be struck out from the suit for being sued in their own capacity.

ii. Who should bear costs of the Application?

13. This Application seeks to strike out of the 9th and 10th defendants from the suit on grounds that they acted in their official capacity and should therefore not be sued in their personal capacity.

14. The Plaintiff contested this arguing that the 9th and 10th defendants acted illegally and unlawfully contrary to their official duties and should therefore be held liable in their personal capacity and striking them out at the preliminary stage would be unjust to the Plaintiff's case.

15. In the Plaint, the Plaintiff claims that the 9th and 10th defendants fraudulently conspired with the other defendants to amend the area map and alter the green card thus disposing off a huge chunk of the Plaintiff's land in contravention to **Article 40 of the Constitution**.

16. It is not in dispute that **Section 4 (3) of the Government Proceedings Act** provides: "**Where any**

functions are conferred or imposed upon an officer of the Government as such either by any rule of the common law or by any written law, and that officer commits a tort while performing or purporting to perform those functions, the liabilities of the Government in respect of the tort shall be such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the Government.”

17. There is no reason as to why the 9th, 10th Defendants they were sued in their personal capacity. They acted, owing to the offices they hold. The documents contested are in the office.

18. I find merit in this application and the same is allowed in the following terms;

i. That the 9th and 10th Defendants/Applicants are hereby struck out from being parties in this suit.

ii. That there shall be no orders as to costs.

**Dated, Signed and Delivered virtually at Kajiado this
30th day of October 2025.**

L. KOMINGOI

JUDGE.

IN THE PRESENCE OF:

Ms. Wanjiru for Ms. Wanja for the Plaintiff.

N/A for 1st -8th, 11th, 12 Defendants.

Ms. Wangari for Ms. Nduta for the 9th, 10th Defendants.

Peter – Court Assistant.