



Thomas v Mungai & another (Sued as the Personal Representatives of the Estate of Stephen Mungai S Kamau (Deceased)) (Environment and Land Case 1293 of 2015) [2025] KEELC 7391 (KLR) (24 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7391 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 1293 OF 2015
TW MURIGI, J
OCTOBER 24, 2025**

BETWEEN

BETTY ASHITIVA THOMAS PLAINTIFF

AND

GEORGE MACHEHO MUNGAI 1ST DEFENDANT

ELIZABETH NJOKI KARIUKI 2ND DEFENDANT

**SUED AS THE PERSONAL REPRESENTATIVES OF THE ESTATE OF
STEPHEN MUNGAI S KAMAU (DECEASED)**

RULING

1. Before me for determination is the Notice of Motion dated 28th April 2025 brought under Sections 1A, 1B, and 3A of the [Civil Procedure Act](#), Order 2 Rule 15 (1) (a) (b) (c) and (d) and 51 Rule 1 of the Civil Procedure Rules in which the Defendants/Applicants seek the following orders:
 - a. Spent.
 - b. That this suit be struck out/dismissed.
 - c. That this Honourable Court grants any further orders it deems fit.
 - d. That the costs of this application and suit be borne by the Plaintiff.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of George Macheho Mungai sworn on even date.



The Applicants' Case

3. The deponent averred that the subject matter of the suit involves two properties sold by the Plaintiff to his father in 2000. He further averred that the requisite transfers were registered on 13th March 2001 and 24th October 2000. He asserted that, by the time the instant suit was filed on 18th December 2015, more than 12 years had lapsed, and consequently, the suit is barred by statute.

The Defendant/respondent's Case

4. The Plaintiff filed a replying affidavit dated 16th June 2025 in opposition to the application. She denied ever selling the suit properties to the Defendants' father. She also denied signing the documents relied upon by the Defendants in support of the alleged sale. She stated that the Defendants' reliance on Section 7 of the *Limitation of Actions Act* was misplaced. In conclusion, she noted that she had consistently checked her parcels of land and had filed the suit as soon as she discovered the fraud committed by the Defendants.

Analysis And Determination

5. Having considered the application, the respective affidavits, and the rival submissions, the only issue that arises for determination is whether the instant suit should be struck out.
6. Order 2 Rule 15(1) of the Civil Procedure Rules provides as follows:
 - (1) 1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—
 - (a) it discloses no reasonable cause of action or defence in law; or
 - (b) it is scandalous, frivolous or vexatious; or
 - (c) it may prejudice, embarrass or delay the fair trial of the action; or
 - (d) it is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.
7. In the case of *Co-operative Merchant Bank Ltd v George Fredrick Wekesa* (Civil Appeal No. 54 of 1999) the Court of Appeal held that:

“Striking out a pleading is a draconian act, which may only be resorted to, in plain cases...Whether or not a case is plain is a matter of fact...Since oral evidence would be necessary to disprove what either of the parties says, the appellant's defence cannot be said to present a plain case of a frivolous, scandalous, vexatious defence, or one likely to prejudice, embarrass or delay the expeditious disposal of the respondent's action, or which is otherwise an abuse of the process of the court.”
8. Striking out a pleading is a draconian act which may only be resorted to in plain cases. The court must therefore exercise the powers to strike out a suit with the greatest care.
9. The Defendants argued that the instant suit is statute-barred and constitutes an abuse of the Court process. The Plaintiff pleaded that the suit property was fraudulently transferred to the Defendant. She argued that the documents the Defendants relied on to support their claim that the suit is statute-barred were forged.



10. It is not in dispute that both parties are claiming ownership of the suit properties. In my considered view, the issues of ownership and fraud should be determined in a full trial. In the circumstances, this court finds and holds that the grounds for striking out the instant suit have not been established.
11. The upshot of the foregoing is that the application dated 28th April 2025 is devoid of merit and the same is hereby dismissed with costs.

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 24TH DAY OF OCTOBER, 2025

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HON. T. MURIGI
JUDGE

In The Presence Of: -

Ms Muthee holding brief for Kirimi for the Plaintiff

Mbatha holding brief for Mburugu for the Defendants

Ahmed – Court Assistant

