



REPUBLIC OF KENYA



**KENYA LAW**  
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**Watamu Sailfish Limited v Tinga & 2 others (Environment and Land  
Case 55 of 2021) [2025] KEELC 7492 (KLR) (29 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7492 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT AND LAND CASE 55 OF 2021  
EK MAKORI, J  
OCTOBER 29, 2025**

**BETWEEN**

**WATAMU SAILFISH LIMITED ..... PLAINTIFF**

**AND**

**EMMANUEL CHARO TINGA ..... 1<sup>ST</sup> DEFENDANT**

**CHIEF LANDS REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The 1st defendant filed this current application via a notice of motion dated May 14, 2025, supported by an affidavit sworn by himself on the same date.
2. The 1st defendant is seeking, among other orders, that: the suit and/or plaint dated June 2, 2021, against the defendants be struck out. The Plaintiff bear the costs of this application.
3. In response to the 1st defendant's application, the plaintiff filed a replying affidavit sworn by Joseph Josephe Ngumbao Kiponda on June 3, 2025, opposing the application.
4. The court directed that the application be resolved through written submissions. I acknowledge receipt of submissions from learned counsel, Ms. Mwani, for the plaintiff, and Mr. Mbura for the 1st defendant, with profound gratitude, as they significantly contributed to the court's understanding and resolution of the issues at hand.
5. Based on the materials and submissions before me, I identify the issues for this court's decision as whether to strike out the current suit and who should bear costs.
6. The 1st defendant argues that the plaintiff filed this suit with a plaint dated June 2, 2021, which was verified by a Verifying Affidavit sworn by Joseph Joseph Ngumbao Kiponda, an authorized attorney



of Andrea Giuseppe Giorgio Stramezzi and Lancoix Wasover Stephane Georges Marc. Furthermore, the said Joseph Joseph Ngumbao Kiponda was the attorney for the directors of the companies Andrea Giuseppe Giorgio Stramezzi and Lancoix Wasover Stephane Georges Marc, by virtue of the Power of Attorney dated July 23, 2020. The said Power of Attorney was not donated by the plaintiff to Joseph Joseph Ngumbao Kiponda, but was donated by the said directors.

7. The 1st defendant contends that the foregoing facts are also not disputed by the plaintiff, as they are admitted in the plaintiff's replying affidavit to the application, specifically at paragraph 3.
8. The 1st defendant argues that this suit, as it is currently framed and presented, is fundamentally defective and completely violates the clear provisions of Order 9 2 (a) of the Civil Procedure Rules. This is because it was initiated by a purported attorney of the plaintiff, Joseph Joseph Ngumbao Kiponda, without the court's permission or approval. Therefore, this suit is improper before this court, and it should be dismissed with costs awarded to the defendants.
9. On the other hand, the plaintiff argues that the grounds for the 1st defendant's application are as follows: the suit filed is legally defective, flawed, and in direct violation of Order 9, Rules 1 and 2(a) of the Civil Procedure Rules. The plaintiff contends that this matter be corrected through an amendment, and it is only fair and to allow the plaintiff to rectify its position. This court shared the same view in its ruling of March 13, 2025.
10. I agree with Ms. Mwanja for the plaintiff that the orders sought here are to strike out the suit because it is defective in violation of Order 9, Rules 1 and 1,2 (a) of the Civil Procedure Rules. The Court of Appeal, in the case of DT Dobie & Company (Kenya) Ltd v Muchina (1982) KLR, laid down the principles applicable in considering whether or not to strike out pleadings, and they were enunciated and summarized as follows:
  - i. The Court should not strike out suit if there is a cause of action with some chance of success;
  - ii. The power to strike out suit should only be used in plain and obvious cases and with extreme caution;
  - iii. The power should only be used in cases which are clear and beyond all doubt;
  - iv. The Court should not engage in a minute and protracted examination of documents and facts; and
  - v. If a suit shows a semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward.
11. This Court, in its ruling dated March 17, 2025, regarding the plaintiffs' application dated February 27, 2024, noted the illegality concerning the plaintiffs' suit in paragraphs 26 and 28, where the court stated as follows:
  26. Joseph Josseppe Ngumbao Kiponda's capacity remains shaky-it will seem that his capacity to represent the Plaintiffs in these proceedings remains the same as on 28th October 2021
  27. The expansive orders sought in the current application are then untenable. If allowed, they will totally blur the already lost substratum of the suit itself. The application is hereby dismissed with costs.
  28. The Plaintiff should perhaps seek to amend the plaint and introduce the other parties as intended by the current application, or withdraw and commence a new suit."
12. Order 9 Rule 1 and 2 (a) of the Civil Procedure Rules provides as follows:



1. Any application to or appearance or act in any court required or authorized by the law to be made or done by a party in such court may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by an advocate duly appointed to act on his behalf:  
Provided that-
  - a. any such appearance shall, if the court so directs, be made by the party in person; and
  - b. where the party by whom the application, appearance or act is required or authorized to be made or done is the Attorney- General or an officer authorized by law to make or to do such application, appearance or act for and on behalf of the Government, the Attorney-General or such officer, as the case may be, may by writing under his hand depute an officer in the public service to make or to do any such application, appearance or act.
2. The recognized agents of parties by whom such appearances, applications, and acts may be made or done are-
  - a. subject to approval by the court in any particular suit, persons holding powers of attorney or an affidavit sworn by the party authorizing them to make such appearances and applications and do such acts on behalf of parties.”
13. Joseph Joseppe Ngumbao Kiponda, who filed this suit on behalf of the plaintiff Company, did not obtain the court’s leave, permission, or approval before filing the suit in a representative capacity, which violates Order 9 Rule 2 (a) of the Civil Procedure Rules. As a result, the entire suit is therefore invalid.
14. I agree with the holding of Angote J. in *Tasmac Limited v Roberto Macri & 4 Others* [2017] eKLR that:
  33. There is no evidence before the court to show that, as at the time of filing the current Application, Mr. Matteo was an officer of the Applicant. Consequently, and in the absence of such evidence, this court finds that Mr. Matteo is not an authorized officer of the Applicant to swear an Affidavit on behalf of the Applicant.
  34. Regarding the power of Attorney that Mr. Matteo is relying on, the same was subject to approval by the court. Such an approval was not sought by the Applicant before the filing of the current Application and cannot pass as a power of attorney contemplated under Order 9 Rule 2 (a) of the Civil Procedure Rules.”
15. In my view, this suit is fundamentally legally incurable and so flawed that it cannot be rehabilitated or preserved in its current state, nor is it susceptible to amendment. The plaintiff does not contest that this suit was initiated by the alleged plaintiffs’ attorney without prior authorization from the court, constituting a procedural breach as detailed in Order 9 Rule 2 (a) of the Civil Procedure Rules. Courts have unequivocally established that procedural rules should not be considered merely technicalities, as articulated in Article 159 (2)(d) of *the Constitution* of Kenya. The failure of the attorney to obtain permission to file the suit on behalf of the plaintiff fundamentally undermines the integrity of the proceedings, rendering the entire suit null and void. This issue goes beyond mere procedural formality; relevant precedents include the decisions in *Speaker of the National Assembly v Karume* [2008] KLR 425 and *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 6 Others* [2013] eKLR.



16. Based on the foregoing, the 1st defendant has shown that this suit is not competent before this Court because it was improperly filed, and therefore, its only outcome should be that it is hereby dismissed with costs.

**DATED, SIGNED, AND DELIVERED VIRTUALLY AT MALINDI ON THIS 29TH DAY OF OCTOBER 2025.**

**E. K. MAKORI**

**JUDGE**

In the Presence of:

Ms. Mwanja for the Plaintiff

Mr. Mbura for the 1st Defendant.

Happy: Court Assistant

