



REPUBLIC OF KENYA



**Ebrahim & 3 others v Ebrahim & another (Land Case E030 of 2024)
[2025] KEELC 7780 (KLR) (12 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7780 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
LAND CASE E030 OF 2024
SM KIBUNJA, J
NOVEMBER 12, 2025**

BETWEEN

**REHANA ESSA EBRAHIM 1ST PLAINTIFF
EBRAHIM ABDUL KADER 2ND PLAINTIFF
SAJID ABDUL KADER 3RD PLAINTIFF**

AND

ZAINAB NOORMOHAMED KHEDIWALLA INTENDED PLAINTIFF

AND

**SAYEED NOORMOHAMED EBRAHIM 1ST DEFENDANT
CHIEF LAND REGISTRAR MOMBASA 2ND DEFENDANT**

RULING

1. The plaintiffs filed the notice of motion dated 3rd April 2025, seeking for the following orders:
 - i. “The applicants be granted leave to amend their plaint as set out in the draft amended plaint annexed hereto.
 - ii. This court be pleased to grant an order joining Zainab Noormohamed Khediwalla as the 4th plaintiff.
 - iii. The draft Further amended plaint attached to the application be deemed as duly filed and served upon payment of the requisite fees.
 - iv. Costs be in the cause.”

The application is based on the eleven (11) grounds on its face and supported by the affidavit of Zainab Noormohamed Khediwalla, the intended 4th plaintiff, sworn on 3rd April 2025, in which she inter alia



deposed that she is the widow of the late Noormohamed Khediwalla, and sole administrator of his estate, and that parcel L.R Mombasa Block XVII 681, suit property, forms part of the estate; that she is the biological mother of the 1st defendant and is a beneficiary together with the other plaintiffs; that she has lived with the 1st plaintiff on the suit property for over 50 years; that the 1st defendant issued them with notice to vacate from the suit property dated 19th January 2024, which will directly affect her, and that as the sole administrator of the estate of the late Noormohamed Khediwalla, she should be joined in the suit to avoid a multiplicity of suits, if she was to file a separate one.

2. The application is opposed by the 1st defendant through the replying affidavit she swore on 22nd April 2025, deposing inter alia that Zainab Noormohamed Khediwalla, is not a party to the suit, and does not have authority to swear the supporting affidavit on behalf of the other plaintiffs; that the supporting affidavit is fatally defective under Order 19 Civil Procedure Rules; that amending the plaint under section of 100 *akn ke act 1924 3 Civil Procedure Act* and Order 8 (5) Civil Procedure Rules is limited to addressing real issues, and not at the behest of a non-party; that the intended plaintiff has not demonstrated any justifiable reason for bringing the application late; that allowing this application would encourage forum shopping and procedural abuse.
3. The 1st plaintiff filed a supplementary affidavit sworn on 20th June 2025, deposing inter alia that the intended plaintiff has full authority of the other plaintiffs to swear the affidavit, and attached a copy of the said authority; that he adopted all the averments in Zainab's affidavit and reattached the draft amended plaint attached in Zainab's affidavit; that a party wishing to be joined as a plaintiff can make an application and swear an affidavit of oath for statements within one's knowledge; that Order 19 Civil Procedure Rules does not prevent the intended plaintiff from making this application; that the intended plaintiff is the sole administrator and attached a certificate of confirmation of grant dated 24th March 2017; that the intended plaintiff's presence will help to effectually and completely adjudicate upon and settle all questions in this suit; that this court has authority to entertain joinder of parties and amendment applications at any stage of the proceedings; that the 1st defendant has not demonstrated what prejudice he will suffer if the application is allowed.
4. On his part the 1st defendant filed the notice of motion dated 4th July 2025, seeking for the following orders:
 1. "Spent.
 2. That the suit instituted vide the plaint dated 9th April 2024 and the amended vide a plaint dated 20th June 2024 be struck out for having been instituted by parties lacking legal capacity and or locus standi to institute the suit hence making the suit improperly instituted before this Honourable Court and amounting to an abuse of court process.
 3. That the Honourable Court lacks jurisdiction to entertain, hear and determine an incompetent suit filed vide a plaint dated 9th April 2024 and amended vide a plaint dated 20th June 2024.
 4. That costs of this application and the entire suit be awarded to the 1st defendant applicant."

The application is based on the eight (8) grounds on its face and supported by the affidavit of Saeeda Noormohamed Ebrahim, the 1st defendant, sworn on 4th July 2025, in which she deposed inter alia that in the original and amended plaint, the plaintiffs have expressly admitted to being beneficiaries of the estate of the late Noormohamed Ebrahim Khediwalla, but they have come to court with unclean hands as they have not obtained letters of administration; that the administrators of the estate of the deceased as per the certificate of confirmation of grant dated 24th March 2017, are Amina Ebrahim Khediwalla and Zainab Noormohamed Khediwalla; that the 1st to 3rd plaintiffs lack locus standi under



section 82 (a) of the *akn ke act 1972 14 Law of Succession Act* Cap 160 of Laws of Kenya; that under the provisions of section 13 (7) *akn ke act 2011 19 Environment and Land Court Act* No. 19 of 2011 this court ought to down its tools as it does not have jurisdiction to determine this incompetent suit and this suit ought to be struck out with costs.

5. The application is opposed by the plaintiffs through the replying affidavit of Rehana Essa Ebrahim, the 1st plaintiff, sworn on 25th July 2025, in which she deposed inter alia that the application is a desperate attempt to drive them from the seat of justice to enable the 1st defendant to evict them, acquire their properties and force them to accept compensation without their input; that the estate of the deceased underwent succession and was distributed as per the certificate of confirmation of grant; that since the issuance of the grant the plaintiffs and the 1st defendant have owned their respective apartments and their proprietary rights over the suit property is well defined and undisputed; that the 1st defendant has threatened their rights to the property by requiring them to vacate from their properties and offering compensation that they deem inadequate; that they have the requisite capacity under Order 1 Rule 1 of Civil Procedure Rules to institute proceedings against the 1st defendant for the illegal and fraudulent eviction; that the power to strike out pleadings is discretionary and should be exercised judiciously, in the clearest of cases and not in this case, where the 1st defendant has admitted to the plaintiffs' ownership in his pleadings; that the application is an afterthought aimed at denying this court the opportunity to determine the substantive issues on merit; that the said application is frivolous, scandalous, vexatious and abuse of court process.
6. The learned counsel for the 1st defendant and the plaintiff filed their submissions dated 19th August 2025 and 7th October 2025 as well as 20th June 2025 respectively, which the court has considered.
7. The two applications raises the following issues for the court's determinations:
 - i. Whether the 1st to 3rd plaintiffs have locus standi to institute this suit.
 - ii. Whether the court has jurisdiction in this suit.
 - iii. Whether the intended 4th plaintiff applicant is a necessary party to be joined in this proceeding to help in effectually and completely adjudicate upon and settle all questions in this suit.
 - iv. Who bears the costs in each of the two applications?
8. The court has carefully considered the grounds on the applications, affidavit evidence by both sides, submissions by the learned counsel and come to the following determinations:
 - i. That as the 1st defendant's application challenges the plaintiffs' locus standi, and the court's jurisdiction, it is only right that it be determined first, as it has the potential of terminating the suit preliminarily. Locus standi is defined in Black's Law Dictionary, 9th Edition (page 1026) as "the right to bring an action or to be heard in a given forum". To determine whether or not, the plaintiffs have capacity to sue, the court has to address the issue of jurisdiction of this court. The court has perused the plaintiffs' plaint dated the 19th April 2024, and it is apparent they take the 1st defendant registration with the suit property to be as a trustee for all the beneficiaries, themselves included. Further, the declaratory prayers (a) to (c), and (d) are for cancellation of entries on the register, and the preservation of Mombasa Block XVII 681, the suit property, while the last prayer (e), is for costs.
 - ii. The court has also perused the 1st defendant's statement of defence and counterclaim dated the 7th May 2024, and while she disputes holding the suit property's in trust, averring it was transferred to her by the intended 4th plaintiff, she concedes that the plaintiffs are heirs and



occupants of flats on part of the suit property. She seeks at prayer (a) of the counterclaim for the plaintiffs' suit to be dismissed with costs, and at prayer (b) for an order for the plaintiffs to vacate from the suit property upon the rightful heirs being compensated for their flats thereon at current market rates. The last prayer (c) is for costs in the counterclaim. As the power to strike out pleadings should only be exercised in the clearest of cases, I find the plaintiffs herein have sufficient interests on parts of the suit property, and are with locus to file and prosecute their claims for a merit determination.

- iii. On the face of it, the disputes between the parties herein appear to be essentially in the nature of succession issues, but the pleadings have also raised matters on illegalities, which the court cannot ignore. The plaintiffs are claiming their share of their father's estate in the suit property, while the 1st defendant claims ownership of the said property. It is evidently apparent that there are mixed issues of succession and ownership of land. In the cases of *Suzanne Achieng Butler & 4 Others versus Redhill Heights Investments Ltd & Another* 2016 eKLR and *Cooperative Bank of Kenya Ltd versus Patrick Kangethe Njuguna & 5 Others* 2017 eKLR the court held that the court should apply the "predominant purpose test" or the "dominant issue test" whenever there are mixed issues such as in this case. The disputes in the plaintiffs' suit and 1st defendant counterclaim emanates from the transfer of the suit property to the 1st defendant, by Zainab Noormohamed Khediwalla, who seeks to be joined as the 4th plaintiff. The court is thus convinced that the alleged illegalities over the suit property registration and ownership are the dominant issues to be determined in this suit, which are matters under this court's jurisdiction. In any case, the distribution of the properties of the estate of the deceased has been done through Mombasa H. C Succession Cause No. 524 of 2014 as confirmed through the attached certificate of confirmation dated 24th March 2017.
- iv. It is trite that cause of action for the benefits of, or disputes over properties relating to estates of deceased persons, should be pursued by the person(s) holding a grant, as has been held in several decisions ad nauseum. See the decisions in the cases of *Elijah Makeri Nyangw'ra versus Stephen Mungai Njuguna & Another* [2013] eKLR and *Alice Chemutai Too versus Nickson Kipkurui & 2 Others* [2015] eKLR. The position is in line with the dictates of section 82 of the *akn ke act 1972 14 Law of Succession Act* chapter 160 of Laws of Kenya, and the court would no have had any difficulties striking out the names of the 1st to the 3rd plaintiffs from the suit. However, the dispute before the court is not prima facie about the property of the deceased estate, but over interests over the suit property, that was part of the estate, between the heirs of the deceased. Noting that the intended 4th plaintiff has expressed her interest to join the other plaintiffs in their cause, and is the one who reportedly transferred the suit property to the 1st defendant, I find it fair and just to let the suit proceed to hearing.
- v. Coming to the application dated 3rd April 2025, for joinder of Zainab Noormohamed Khediwalla, as 4th plaintiff, it has not been disputed that she is the deceased's estate's administrator and possesses the grant of letters of administration. Indeed, it has been averred by the 1st defendant that she is the one who transferred the suit property to her. These findings show that she is an important and pivotal person whose joinder will help the court to to effectually and completely adjudicate upon and settle all questions in dispute in this suit.
- vi. Under section 27 of the *akn ke act 1924 3 Civil Procedure Act* chapter 21 of Laws of Kenya, costs follow the event unless where the court find reasonable cause to direct otherwise. Though the plaintiffs and intended 4th defendant have succeeded in their joinder application, while the 1st defendant has failed in her striking out motion, and being aware of the relationship between the parties, and with a view of encouraging them to talk and see whether they could resolve the



dispute within their family set up, the court finds it fair and just for costs in both applications to abide the outcome of the suit and counterclaim.

9. From the foregoing conclusions, the court finds and orders as follows on the two applications;
- i. The 1st defendant's application dated 4th July 2025, is without merit and is hereby dismissed.
 - ii. The plaintiffs and intended 4th plaintiff application dated 3rd April 2025, has merit and is allowed in the following terms:
 - a. Prayer (2) is granted and Zainab Noormohamed Khediwalla is joined in the suit as the 4th plaintiff.
 - b. That the plaintiffs to file and serve the amended plaint in 21 days from today.
 - iii. That the costs in the two applications to abide the outcome of the suit and counterclaim.
- It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 12TH DAY OF NOVEMBER 2025.

S. M. Kibunja, J.

ELC MOMBASA.

In The Presence Of:

Plaintiffs : Mr Kago

Defendants : Mr Kalimbo for 1st Defendant

Nechesah-court Assistant.

