

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ELC NO. 170 OF 2016

PAUL MWANGI NJOROGE-----1ST
PLAINTIFF/RESPONDENT

PHYLIS W. NJOROGE-----2ND
PLAINTIFF/RESPONDENT

SUSAN NYAMBURA NJOROGE-----3RD
PLAINTIFF/RESPONDENT

VERSUS

WAFULA SIKUTA-----
DEFENDANT/APPLICANT

RULING

- 1.** Before this court is an application dated **30/9/2025**. The applicant seeks to have the plaintiffs' claim struck out for being scandalous, frivolous, vexatious, and an abuse of the court process. The reasons are that the respondents are children of the late Wilson Njoroge, who passed on on **24/11/2000**. The applicant avers that before his demise, the deceased had filed **Kitale ELC Case No. 38 of 2000**, which the court dismissed for want of prosecution.
- 2.** The applicant avers that the respondents, as beneficiaries, filed a succession case, **Kitale HC Cause No. 39 of 2001**, yet the respondents have

illegally and unlawfully caused the registration of portions of the estate to themselves, through forged documents, yet the suit land has not been distributed in law.

3. The applicant avers that the respondents are now forum shopping, they lack *locus standi*, and are relitigating on a matter that was previously dismissed, which is an abuse of the court process.
4. In the affidavit sworn on **30/9/2025**, the applicant deposes that no appeal or reinstatement of the dismissed suit **HCC No. 38 of 2000** has been proffered. A copy of the dismissal order has been attached as **WS-1**, while the certificate of confirmation of grant is annexed as **WS-2**.
5. Again, the applicant deposes that Keziah Njeri Njoroge, the administrator of the estate of the deceased, passed on before the grant was implemented, necessitating the filing of an application dated **1/10/2012**, which some of the beneficiaries opposed. A copy of the application is annexed as **WS-3**, while the affidavit in opposition by Peter Gachoka Njoroge is annexed as **WS-4**.
6. The applicant deposes that despite filing an objection to the grant in the succession cause, as per annexure

marked **WS-5**, the deceased administrator was fraudulently registered as the owner, and a certificate of title was issued on **5/11/2012**, after which the deceased administrator subsequently transferred the suit land to the respondents. Copies of the transfer documents and the green card are annexed as **WS-6a** and **b**.

- 7.** The applicant deposes that the transfer of the title to the suit land is tainted in fraud and illegality, since it cannot belong to both the estates of Wilson Kamau, Keziah Njeri, and the respondents.
- 8.** Opposing the application, the 3rd respondent filed an affidavit sworn on **21/10/2025**, on her own behalf and of the 1st respondent, since the 2nd respondent is deceased. The respondents term the application as ill-conceived, malicious, and without any basis in law.
- 9.** The respondents depose that the import of the dismissal order of **21/1/2016** was to defeat the hearing scheduled for **2/10/2025**; the suit had abated by operation of the law; the grant of administration was issued to their now deceased mother, and that the applicant has failed to attach the determination of the court.

- 10.** The respondents depose that the annexures to the supporting affidavit from previous pleadings are far-fetched, as the applicant did not allude to or plead fraud, but only included the same in the amended defence and counterclaim, to which the respondents filed a reply to the defence and defence to the counterclaim.
- 11.** The respondents further depose that the application and the non-compliance on the part of the applicant show that he is not ready to prosecute the counterclaim. Further, the respondents depose that the suit land was initially granted to their deceased father, then later on transmitted to their now deceased mother, before being registered in their names.
- 12.** Equally, the respondents depose that they obtained title to the suit land on **14/8/2013**, before they filed this suit. Further, the respondent depose that this court lacks the jurisdiction to determine succession matters.
- 13.** The power to strike out pleadings under **Order 2 Rule 15(1)** of the Civil Procedure Rules provides;-

“ At any stage of the proceedings, the court may order to be struck out or amended any pleading on the ground that it discloses no reasonable

cause of action or defence in law; is scandalous, frivolous or vexatious; or it may prejudice, embarrass or delay the fair trial of the action; or it is otherwise an abuse of the process of the court."

- 14.** Courts have held that striking out of suits is a draconian step that drives out a party from the seat of justice; hence, it should be sparingly used. In **Co-operative Merchant Bank Ltd -vs- George Fredrick Wekesa Civil Appeal No. 54 of 1999** as cited with approval in **Jubilee Insurance Co. Ltd -vs- Grace Anyona Mbinda [2016] eKLR**, where the court said that the power of the court to strike out pleadings is discretionary and that striking out a pleading is a draconian act, which may only be resorted to, in plain cases. Whether or not a case is frivolous is a matter of fact.
- 15.** The applicant is seeking to strike out the respondent's suit under **Rule 15 of Order 2** of the Civil Procedure Rules, for being an abuse of the Court process. The Court of Appeal in **Evanson Jidraph Kamau Waitiki -vs- Kenya Power & Lighting Company Ltd [2017] KECA 526 (KLR)**, observed that the applicant was required to present evidence to show that the pending suit is an abuse of the court process. Striking

out of pleadings is resorted to very sparingly since courts are encouraged to have recourse to an amendment. An application for striking out pleadings does not require the court to engage in a mini-trial.

16. In the instant application, the applicant alleges that the suit is an abuse of the court process, since there was a previous suit which was dismissed for want of prosecution and a succession cause that is still pending. Dismissal of a suit for want of prosecution means that a suit was not heard and determined on the merits. Therefore, in such a case, it does not amount to *res judicata* under **Section 7** of the Civil Procedure Act. See **Enock Kirao Muhanji -vs- Hamid Abdalla Mbarak [2013] KEHC 6015 (KLR).**

17. The applicant has alleged that there was an illegal transfer of title to the suit land and subsequent registration in favour of the respondents. The burden is on he who alleges that the suit is an abuse of the court process. In **Muchanga Investments Limited -vs- Safaris Unlimited (Africa) Ltd & 2 Others Civil Appeal No. 25 of 2002 [2009] KLR 229**, the court observed that the concept of abuse of judicial process is imprecise; it implies circumstances and situations of infinite variety and conditions. One of its

features is the improper use of the judicial powers by a party in litigation to interfere with the administration of justice.

18. Whereas this court is not seized with jurisdiction to determine succession matters, which is a preserve of the Family Division of the High Court, the law is that any disputes post transmission, after a confirmed grant of letters of administration, fall for determination before this court. See **re Estate of Alice Mumbua Mutua (Deceased) [2017] eKLR.**

Disputes between the estate and non-beneficiaries, as well as creditors, also fall for determination by this court. I think the applicant has failed to demonstrate how this matter and the issues raised are not justiciable, are moot, or amount to an abuse of the court process.

19. The upshot is that the application is dismissed for want of merit.

Ruling dated, signed, and delivered via
Microsoft Teams/Open Court at **Kitale** on this
19th day of **November 2025**.

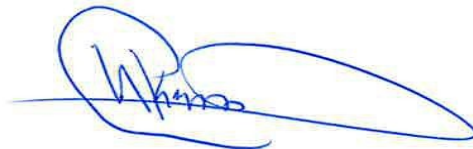
In the presence of:

Court Assistant - Dennis

1st and 3rd plaintiffs

Mr. Ngigi Mbugua for plaintiffs/respondents present

Serebe for the defendant/applicant present



**HON. C.K. NZILI
JUDGE, ELC KITALE.**