



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELC LAND CIVIL SUIT NO. E072 OF 2023

SIMON NJAU NJOROGE.....	1ST
PLAINTIFF	
RICHARD MAKAU MBITHI.....	2ND
PLAINTIFF	
PATRICK MUTUA KYENGO.....	3RD
PLAINTIFF	
ANGELINA CAROLINE MUENI MUTULAI.....	4TH
PLAINTIFF	
TITUS MUSEMBI MAKAU.....	5TH
PLAINTIFF	
MARY NDUNGWA NDELEVA.....	6TH
PLAINTIFF	
DAVID NTHUNZU MBALUKA.....	7TH
PLAINTIFF	
CHRISTINE MUKULU KATITI.....	8TH
PLAINTIFF	
JOSEPH MUINDE MUTETI.....	9TH
PLAINTIFF	
CHRISTINA NTHAMBI MUSAU.....	10TH
PLAINTIFF	

MICHAEL MUTUOTA MUTUA.....	11 TH
PLAINTIFF	
MICHAEL MUTOTE MUTHUKUI.....	12 TH
PLAINTIFF	
MATHEWS MUTUKU MAILU.....	13 TH
PLAINTIFF	
JOSEPH MULINGAH MAINGI.....	14 TH
PLAINTIFF	
FRANCISCA MUMO MUSYOKA.....	15 TH
PLAINTIFF	

VERSUS

**MUKA MUKUU FARMERS' CO-OPERATIVE SOCIETY
LIMITED.....DEFENDANT**

RULING

1. The substance of the determination before this court is the defendant's notice of motion dated 24/01/2025, which has been brought within the provisions of **Sections 4(1)(a)** and **7** of the **Limitation of Actions Act, Order 2 Rule 15(b), (c), and (d)** of the **Civil Procedure Rules**, and all other enabling provisions of the law. Although the defendant has ostensibly made the following prayers to this court, most of them are merely statements: -

a) That the plaintiff's suit herein is time-barred by dint of Section 4(1) (a) of the Limitation of

Actions Act, as the same is predicated on contracts purportedly concluded in the year 2000 up to 2003.

b) That the suit for recovery of land herein is time-barred by dint of Section 7 of the Limitation of Actions Act, having been instituted at least 22 years from the date the cause of action is alleged to have arisen.

c) That the entire suit herein is bad in law as it is incompetent, sham, vexatious, malicious and an abuse of the due process of this court.

d) That the costs of the suit and this motion be provided for.

2. The motion is premised on the grounds listed on its face and Stephen Kariuki Kiania's supporting affidavit, sworn on the instant date. A summary of the grounds supporting the motion are similar to prayers one to three of the motion. Additionally, he avers that: (a) the present suit is barred by time as it is founded on contracts allegedly entered into during the years 2000-2003; (b) the defendant never legally or procedurally sold the land to the purported plaintiffs, with the purported sale being declared null and void by the defendant's members in a special general meeting ("**SGM**") held on 11/10/2007; and
3. (C)The instant suit is a sham, as some of the persons allegedly named as plaintiffs have denied any involvement in giving

instructions to an advocate to institute the suit. Others have not tendered any plausible documentary evidence to support their allegations and lack the necessary *locus standi*, particularly the 6th, 9th, and 10th plaintiffs, who never issued instructions to the defence counsel, and the 15th defendant, who is reportedly deceased.

4. On service, the plaintiffs opposed the motion by the replying affidavit of the 2nd plaintiff, deposed on 20/03/2025, where, in brief, he contends that: a) their claim is genuine, meritorious and made in good faith, as all the plaintiffs' herein are rightful members of the defendant, a cooperative society, and have an interest in the subject plots of land; b) the plaintiffs' herein who are the defendant's members have been actively engaging in negotiations with its management regarding the dispute; and
5. C) If, indeed, the special meeting held on 11/10/2007 revoked the earlier decision to sell the subject plots to the plaintiffs, the defendant's management had a duty to formally notify them of such revocation and cease any actions that reinforced the plaintiffs' proprietary interests over the said plots; d) an inquiry report was conducted by the Office of the Commissioner for Cooperative Development in October 2008, which expressly acknowledged the sale of the subject plots to the plaintiffs herein and that this report also provided details on how the defendant utilised the proceeds from the sales; e) the 5th plaintiff signed a witness statement, while the other issues

raised regarding the other plaintiffs are premature, misconceived and made in bad faith.

6. Upon the court's directions, both parties filed their respective submissions on the motions, with **Ms Janet, Jackson & Susan LLP** for the defendant filing theirs dated 11/04/2025 and counsel **Ms Jerusha Kabata** for dated 12/05/2025. Accordingly, the court has considered these submissions and the arguments within them, together with the relevant legal provisions and judicial precedents cited, which will be regarded in this court's analysis and determination.
7. Consequently, after carefully reviewing the motion, its grounds, affidavits, and submissions, the two issues for determination are: **(a) whether the motion is competent** and **(b) whether the motion is merited**. These two issues will be addressed in sequence.

a) Whether the motion is competent

8. It is unfortunate that none of the parties addressed it in their submissions; nonetheless, it is imperative to address the reliefs sought in the defendant's motion. As previously articulated, all prayers save for the one concerning costs are incapable of being granted, as they are merely statements that would ordinarily support a relief as envisaged by **Order 51 Rule 4** of the **Civil Procedure Rules ("CPR")**, which stipulates that every notice of motion shall broadly state the grounds of the

application. Moreover, respecting prayer (d), it is the humble opinion of this court that this prayer cannot constitute a standalone relief, as it is trite law that costs follow the event.

9. Therefore, in the absence of substantive prayers being sought in the motion, this court concludes that the motion is incompetent and it is hereby struck out. This finding renders a determination on issue (b) unnecessary. As this court concludes, and after considering the documents as presented, it is its humble opinion that the appropriate order that the defendant should have sought is the striking out of the suit. In the end, the court hereby issues the following final orders: -

a. The defendant's notice of motion dated 24/01/2025 is hereby struck out with costs being in the cause.

b. There shall be no further filings of applications in this matter except with leave of the court.

c. A mention date shall be given for purposes of pretrial directions.

Orders accordingly.

Delivered and Dated at Machakos this 2nd day of December, 2025.

HON. A. Y. KOROSS

JUDGE

02.12.2025

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms. Kanja Court Assistant.

Miss. Kabata for the Plaintiffs.

No appearance for the Defendant.

ORIGINAL