

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ELCLC NO. E231 OF 2023**

**REDEMPTA M KONDI.....1<sup>ST</sup>**  
**PLAINTIFF/RESPONDENT**

**GEOFFREY ONGORO.....2<sup>ND</sup>**  
**PLAINTIFF/RESPONDENT**

**SELINA MAKOKHA.....3<sup>RD</sup>**  
**PLAINTIFF/RESPONDENT**

**ROSE WANJIRU NGANGA.....4<sup>TH</sup>**  
**PLAINTIFF/RESPONDENT**

**DOLPHINE N. MACHIO,  
MARIA N. NAMUYE &  
MATAYO M. NAMUYE (Suing as the  
representative of the estate of  
PROFESSOR SILVESTER NAMUYE).....5<sup>TH</sup>**  
**PLAINTIFF/RESPONDENT**

**ADDAH ADHIAMBO ODERO,  
IAN LOMO ONYIMBO (Suing as the  
Representative of the estate of  
PETER ONYIMBO LOMO).....6<sup>TH</sup>**  
**PLAINTIFF/RESPONDENT**

**VERSUS**

**SAUTI SAVINGS & CREDIT  
COOPERATIVE SOCIETY LIMITED  
.....DEFENDANT/APPLICANT**

**RULING**

1. Before the court for determination is the notice of motion dated 15<sup>th</sup> September, 2025 filed by the defendant/applicant and it is expressed to be brought under **Order 2 Rule 15, Order 3 Rule 2, Order 5 Rule 1, Order 52 Rule 1** of the **Civil Procedure Rules**,

**Sections 1A, 1B, 3A, and 63(e)** of the **Civil Procedure Act** seeking the following orders:-

***a. The plaint herein dated 1<sup>st</sup> December 2023, the amended plaint dated 8<sup>th</sup> May 2025 and the Plaintiffs' entire suit be struck out.***

***b. Costs of this application and the entire suit be awarded to the defendant/Applicant.***

2. The application is premised on the grounds *inter alia* that the plaint and verifying affidavit both dated 1<sup>st</sup> December, 2023 have been filed in breach of the express mandatory provisions of the law.
3. The application was further supported by the supporting affidavit of David Elly Ndwiga the chairperson of the defendant/applicant which is sworn on even date. The defendant/applicant deposed that the plaintiffs/respondents filed the plaint and the verifying affidavit both dated 1<sup>st</sup> December, 2023 and neglected to take out the summons to enter appearance within 30 days contrary to **Order 5 Rule 1** of the **Civil Procedure Rules**. Further, that no service was effected upon the defendant/applicant pursuant to the said plaint, and that the purported summons to enter appearance dated 26<sup>th</sup> May, 2025 were issued on 28<sup>th</sup> May, 2025 more than 17 months after the filing of the said plaint.

4. The defendant/applicant deposed that the said plaint and verifying affidavit is incurably and fatally defective. Further, that the omission to file a list of witnesses, and witness statements is contrary to **Order 3 Rule 2** of the **Civil Procedure Rules** and the suit cannot be sustained.
5. The application was opposed vide the replying affidavit of Keith Wesonga, the learned counsel which is sworn on 24<sup>th</sup> October, 2025. The learned counsel deposed that the instant application seeks to delay and deny the plaintiffs/respondents their rights to compensation and/or right to property being the owners of the various plots within L.R. No. Nairobi Block 82/8760.
6. The learned counsel further deposed that the suit was filed and the defendant/applicant was duly served on the 18<sup>th</sup> January, 2024 whereby they declined to receive the pleadings on the pretext that they were to forward the same to their lawyers who were to file appropriate response. Further, that the defendant/applicant was again served on the 28<sup>th</sup> May, 2025 with an amended plaint whereupon they declined to receive on the same pretext that their lawyers will revert.
7. The learned counsel deposed that the defendant/applicant's counsel sought for more time and failed to file a response following the Deputy Registrar's direction, and only filed the

instant application much later when the matter was coming to confirm filing of defence and further direction on hearing of the suit.

8. The application was canvassed by way of written submissions. The defendant/applicant filed its written submissions dated 12<sup>th</sup> November, 2025. The plaintiffs/respondents filed their written submissions dated 18<sup>th</sup> November, 2025.

9. I have carefully analyzed and considered the application, the reply thereof, and the written submissions filed by both parties. The issue for determination is *whether the plaint dated 1<sup>st</sup> December, 2023 ought to be struck out.*

10. **Order 3 Rule 2** of the **Civil Procedure Rules** provides as follows:-

***“All suits filed under rule 1(1) including suits against the government, except small claims, shall be accompanied by—***

***(a) the affidavit referred to under Order 4 rule 1(2);***

***(b) a list of witnesses to be called at the trial;***

***(c) written statements signed by the witnesses excluding expert witnesses; and***

***(d) copies of documents to be relied on at the trial including a demand letter before action:***

***Provided that statement under sub rule (c) may with leave of court be furnished at least fifteen days prior to the trial conference under Order 11.”***

**11.** Further, **Order 5 Rule 1 (3)** of the said Rules provides that **every summons shall be accompanied by a copy of the plaint.** In the case of **Lee Mwathi Kimani v National Social Security Fund & another [2014] KEHC 7762 (KLR)**, it was held:-

***“It is my view that where no summons have been issued in accordance with Order 5 of the Civil Procedure rules there cannot be a competent suit against a defendant. The provisions of Order 5 Rule 1 are elaborate and comprehensive and are couched in mandatory terms and where for some reason a plaintiff has experienced difficulties in service of the summons Order 5 Rule 2 provides a reprieve in that a plaintiff can apply for the validity of the summons to be extended. Service of summons in my view is a vital step in initiating the litigation and thus until a summons is properly served the Defendant has no valid invitation to defend the suit.***

***Besides the plaintiff in initiating and commencing the suit ought to be prepared and ready to abide with the rules of engagement and the service of summons on the Defendant is one of the primary requirements.”***

12. I have perused the record in this file including the CTS, and I note that the plaintiffs/respondents filed their plaint and verifying affidavit both dated 1<sup>st</sup> December, 2023. There was no summons to enter appearance filed. Later in the month of May, 2025, they filed an amended plaint dated 8<sup>th</sup> May, 2025. **Order 5 Rule 1** of the **Civil Procedure Rules** is very clear that a plaint shall be accompanied by summons. Equally so, the said plaint must be accompanied by supporting documents unless otherwise with the leave of the court. The summons to enter appearance is a fundamental document that prompts the defendant to formally respond to the matter that is before the court. While the plaintiffs/respondents contend that they served the defendant/applicant with the said plaint, there is no evidence on record particularly on the CTS that shows that an affidavit of service was ever filed. In my view, the suit as it is cannot be sustained, and in fact the purported amended plaint filed by the plaintiffs/applicants is thus a non- starter, and a gross abuse of the court process. In other words, the plaintiffs completely began on a wrong footing,

and the law and the court's role of ensuring that justice is not denied cannot aid the plaintiffs/respondents at this stage.

- 13.** From the above, this court finds merit in the notice of motion dated 15<sup>th</sup> September, 2025. The plaint dated 1<sup>st</sup> December, 2023 and the amended plaint dated 8<sup>th</sup> May, 2025 are hereby struck out with costs to the defendant/applicant. The plaintiffs/respondents are at liberty to institute a fresh plaint.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY  
THIS 15<sup>TH</sup> DAY OF DECEMBER, 2025.**

**HON. MBOGO C.G.  
JUDGE  
15/12/2025.**

**In the presence of:**

*Mr. Benson Agunga - Court assistant*

*Mr. Wesonga for the Plaintiffs/Respondents*

*Mr. Sundeep Sarvia for the Defendant/Applicant*