



REPUBLIC OF KENYA



KENYA LAW
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**Kinungi v Kariuki & 11 others (Environment and Land Case
E094 of 2021) [2025] KEELC 8572 (KLR) (9 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8572 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E094 OF 2021
CA OCHIENG, J
DECEMBER 9, 2025**

BETWEEN

SAMUEL KINUNGI PLAINTIFF

AND

SPENCER KARINGA KARIUKI 1ST DEFENDANT

SALOME NJOKI KARINGA 2ND DEFENDANT

KAMITI FARMERS COMPANY LIMITED 3RD DEFENDANT

BONIFACE KIHIA MUNDERU 4TH DEFENDANT

ROBERT MWANGI GIKUNGU 5TH DEFENDANT

BENJAMIN MUCHEMI KIMANI 6TH DEFENDANT

AGNES MUGURE NGUGI 7TH DEFENDANT

CHARLES WERU KARIUKI 8TH DEFENDANT

BETTY NGENDO MUGO 9TH DEFENDANT

REGISTRAR FOR LAND NAIROBI 10TH DEFENDANT

ATTORNEY GENERAL 11TH DEFENDANT

NELSON NJAGI TANU 12TH DEFENDANT

RULING

1. What is before Court for determination is the 1st to 9th Defendants' Notice of Motion application dated the 15th May 2025 where they seek the following Orders:
 - a. That the plaint be struck out and suit be dismissed with costs.



- b. That the costs of this application be provided for.
2. The application is premised on grounds on its face and on the 6th Defendant's supporting affidavit. He avers that as pleaded at paragraph 4 of the plaint, this suit is filed on behalf of the Estate of the late Estone Njuguna Nganga and that as per the Confirmation of Grant dated 13th October 2020 from the succession cause filed in respect of the said estate, the only asset of the estate is LR No. Nairobi/Block 117/172. He insists that the said estate has no legal claim on LR No. Nairobi/Block 117/74, to which this suit relates and the Plaintiff has therefore no locus standi to sue the Defendants in respect of the suit property.
 3. He reiterates that the Plaintiff has not provided any particulars of fraud against the Defendants in the manner they have become owners of their respective parcels, thus the suit is frivolous and meant to vex the Defendants who are all owners of various plots derived from Nairobi/Block 117/74.
 4. The Plaintiff opposed the instant application by filing a replying affidavit sworn by Samuel Kinungi where he avers that the estate of Eston Njuguna Nganga (deceased) owned Nairobi/Block 117/74 (now subdivided to Nairobi Block 117/860 – 865). He contends that the property was allocated to the deceased by Kamiti Farmers Co. Ltd under Ballot No. 61, which forms part of his estate. He explains that the property could not be distributed as title deeds emanating therefrom had been transmitted to third parties. He insists that the Defendants have trespassed on the suit plots.

Analysis and Determination

5. I have considered the instant Notice of Motion application including the respective affidavits and the sole issue for determination is whether this suit should be struck out with costs.
6. Hearing of this suit was yet to commence, although the record indicates that on 27th October 2022, this Court (Okong'o J) issued an order of inhibition, inhibiting the registration of any other/further dealings with the properties known as Nairobi/Block 117/860-865.
7. On striking out of pleadings, the legal provisions governing the same are contained in Order 2 Rule 15 (1) of the Civil Procedure Rules, 2010 which provides inter alia:-

“At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that-

- (b) It is scandalous, frivolous or vexatious; or
- (c) It may prejudice, embarrass or delay the fair trial of the action; or
- (d) It is an abuse of the process of the court.”

8. In the case of *Civicon Limited V Kivumatt Limited & 2 Others* (2015) eKLR, the Court of Appeal observed as follows:

“Under Order 1 of the Civil Procedure Rules, the trial court has wide discretionary powers to make necessary amendments as to the parties to a suit by adding, substituting or striking them out and to make all such changes in respect of parties as may be necessary to enable an effectual adjudication to be made concerning all matters in dispute between them. The court has a separate, independent duty from the parties themselves to ensure that all necessary and proper parties, and no others, are before it so that it may effectually and completely determine and adjudicate upon all matters in dispute. For this reason, at any stage of the proceedings, the court may on such terms as it thinks just and either on its own motion or



on application, order for the joinder of a party where the party is a person who ought to have been joined as a party or; whose presence before the court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon. the party is any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed which in the court's opinion it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

9. While in the Court of Appeal in *Ramji Megji Gudka Ltd –Vs- Alfred Morfat Omundi Michira & 2 Others* [2005] eKLR provided parameters on striking out of pleadings and stated thus:

“In our view, the power to strike out pleadings must be sparingly exercised. It can only be exercised in clearest of cases. The issue of summary procedure and striking out of pleadings was given very careful consideration by this Court in *DT Dobie & Company (Kenya) Ltd. v. Muchina* [1982] KLR 1 in which Madan J.A. at p. 9 said:-

“The Court ought to act very cautiously and carefully and consider all facts of the case without embarking upon a trial thereof before dismissing a case for not disclosing a reasonable cause of action or being otherwise an abuse of the process of the court. At this stage, the court ought not to deal with any merits of the case for that is a function solely reserved for the judge at the trial as the court itself is not usually fully informed so as to deal with the merits “without discovery, without oral evidence tested by cross-examination in the ordinary way.” (Sellers LJ (supra). As far as possible indeed, there should be no opinions expressed upon the application which may prejudice the fair trial of the action or make it uncomfortable or restrict the freedom of the trial judge in disposing of the case in the way he thinks right.”

10. In this instance the Plaintiff filed this suit vide the plaint dated the 15th March, 2020 which was amended on the 8th May, 2023 where they seek judgement against the Defendants jointly and severally for:
- a. A permanent injunction injuncting and restraining the defendants by themselves and/or their agents or servants not to perform any act of trespass on land parcel Nairobi/Block 117/74 (now subdivided to Nairobi Block 117/860 – 865) and any illegal sale be cancelled.
 - b. An order directed to the Registrar for lands Ardhi house to cancel all the sub – titles issued out of Nairobi/Block 117/74 (now subdivided to Nairobi Block 117/860 – 865).
 - c. Costs of this suit.
 - d. Any other order this Honourable Court may deem fit to grant.
11. The 1st to 9th Defendants contends that the Certificate for Confirmation of Grant produced by the Plaintiff did not include their respective properties, hence this suit should be struck off. The Plaintiff has explained that the 1st to 9th Defendants properties could not be included in the Certificate for confirmation of Grant since the titles emanating from the suit property were issued to third parties. On perusal of the 1st to 9th Defendants Amended Statements of Defence, I note they confirm that their respective parcels of land were resultant subdivisions of LR No. Nairobi/ Block 117/74 (now subdivided to Nairobi Block 117/860 – 865), which parcel of land belonged to Nelson Njagi Tanu who sold them their plots. I note the Plaintiff also claims that LR No. Nairobi/ Block 117/74 (now



subdivided to Nairobi Block 117/860 – 865), belonged to the deceased Eston N. Nganga. Further, that the said property was allocated to the deceased by Kamiti Farmers Co. Ltd under Ballot No. 61 which forms part of his estate.

12. It is my considered view that since the dispute herein revolves around LR No. Nairobi/ Block 117/74 (now subdivided to Nairobi Block 117/860 – 865), it is pertinent to determine its root and proprietorship.
13. Based on the facts as presented including the legal provisions cited as well as associating myself with the decisions quoted and applying them to the circumstances at hand, I find that this suit is not a clear case warranting a summary procedure of striking out of pleadings and is not within the circumstances envisaged under Order 2 Rule 15 (1) of the Civil Procedure Rules, 2010. I will hence decline to strike it out.
14. In the foregoing, I find the instant Notice of Motion application unmerited and will dismiss it with costs.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF DECEMBER, 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Wahome for 1st – 7th Defendants

Court assistant: Vena

