



REPUBLIC OF KENYA



**Mbuti & 5 others v Malili Ranch Limited & 2 others (Environment and Land
Case 2 of 2010) [2025] KEELC 18400 (KLR) (18 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 18400 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE 2 OF 2010
NA MATHEKA, J
DECEMBER 18, 2025**

BETWEEN

**STEPHEN KING'OO MBUTI 1ST PLAINTIFF
JOSHUA MAWEU KILONZI 2ND PLAINTIFF
BENJAMIN KYALO MUTHOKA 3RD PLAINTIFF
RAJABU KITHUSI MOHAMED 4TH PLAINTIFF
SIMION MUIA MUINDI 5TH PLAINTIFF
MUTWIW'A MUTETEI 6TH PLAINTIFF**

AND

**MALILI RANCH LIMITED 1ST DEFENDANT
THE PERMANENT SECRETARY MINISTRY OF INFORMATION &
COMMUNICATIONS 2ND DEFENDANT
THE HON. ATTORNEY GENERAL 3RD DEFENDANT**

RULING

1. The application is dated 10th March 2025 and is brought under Order 2 rule 15(1) (b) (c) (d) Order 8 rule 6 of the Civil Procedure Rules 2010 and Section 3A of the [Civil Procedure Act](#) seeking the following orders;
 1. That the amended Complaint herein be struck out.
 2. That the costs of this application be provided for.
2. It is supported by the annexed affidavit of Leonard Kyania Kitua and based in the grounds that the Plaintiff did not amend and serve the amended Complaint dated 3rd April, 2019 within the statutory



required period. The amended Plaintiff is an abuse of the process of the court. The amended Plaintiff will prejudice, embarrass and delay the fair trial of the action.

3. The Respondent stated that the Plaintiffs were granted leave to amend their plaintiff in April 2019 but due to negligence and omission on the part of their advocate the said amended plaintiff was not filed or served within 14 days as prescribed under order 8 rule 6 of the Civil Procedure rules. The Plaintiff had entrusted the conduct of the matter to their former advocates in good faith and had no reason to suspect non compliance with the directions of the court until much later. That the Respondents took immediate corrective measures by instructing new advocates and ensuring the amended plaintiff was filed and served.
4. This court has considered the application and the submissions therein. Order 2 rule 15 of the Civil Procedure Rules which provides as follows;

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

- a) it discloses no reasonable cause of action or defence in law; or
- 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 otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.”

5. Order 2 Rule 15(2) of the Civil Procedure Rules provides that no evidence is admissible on an application under sub rule (1) (a) and therefore, it should be evident from the pleadings sought to be struck out that no reasonable cause of action has been disclosed without reference to further evidence. The court’s power to strike out pleadings therefore, is to be exercised sparingly and cautiously. In the case of *D.T. Dobie & Company (Kenya) Ltd. vs. Muchina* (1982)KLR 1 the court stated that;

"No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it.”

6. The main principle to be considered in an application for striking out a pleading therefore is, whether triable issues have been raised. The Plaintiffs/Respondents stated that they had entrusted the conduct of the matter to their former advocates in good faith and had no reason to suspect non-compliance with the directions of the court until much later. That the Plaintiffs/Respondents took immediate corrective measures by instructing new advocates and ensuring the amended plaintiff was filed and served.
7. In the case of *Utalii Transport Co. Ltd and 3 Others vs N.I.C. Bank and Another* (2014) eKLR, the court held that;

"It is the primary duty of the plaintiffs to take steps to progress their case since they are the ones who dragged the defendant to court.”

33. It is also the duty of the parties to assist the court to adjudicate on the matters brought before it expeditiously as was held in *Gideon Sitelu Konchella vs Daima Bank Limited* (2013)eKLR



where the court while citing the case of Mobil Kitale Service Limited vs Mobil Oil Kenya Limited, held that:-

“It is in the interest of justice that litigation must be conducted expeditiously and efficiently so that injustice by delay would be a thing of the past. Justice would be better served if we dispose of matters expeditiouslythe overriding objection of this Act and Rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.”

8. Be that as it may, Section 1A of the [Civil Procedure Act](#) provides for the overriding objective of the [Civil Procedure Act](#) and the rules made thereunder and provides as follows:

1A

- (1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
- (2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
- (3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.

Section 1B of the same Act, on the other hand provides for the duty of court and states:

- (1) For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims —
 - (a) the just determination of the proceedings;
 - (b) the efficient disposal of the business of the Court;
 - (c) the efficient use of the available judicial and administrative resources;
 - (d) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and
 - (e) the use of suitable technology.
9. The Respondents have explained what led to the failure to file the amended plaint on time was due to the negligence of the previous counsel on record. I find that this is not a case where there has been indolence on the part of the Respondents. This being a land matter, I find this a valid reason in the circumstances. In the case of Martha Wangari Karua vs IEBC Nyeri Civil Appeal No.1 of 2017 the Court of Appeal held as follows;

“The Rules of Natural Justice require that the court must not necessarily drive any litigant from the seat of justice without a hearing, however weak his or her case may be..”
10. Judicial precedent has established that the jurisdiction to strike out any pleadings or suit is one to be exercised with utmost caution and sparingly. I order that the amended plaint be deem to be properly filed and served. I find that the application is not merited and I dismiss it. Costs to be in the cause.
11. It is so ordered.



DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 18TH DAY OF DECEMBER 2025.

N.A. MATHEKA

JUDGE

