Muguna v Mungai (Environment and Land Case E009 of 2025)
[2026] KEELC 115 (KLR) (20 January 2026) (Ruling)

Neutral citation: [2026] KEELC 115 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ENVIRONMENT AND LAND CASE E009 OF 2025

BM EBOSO, J

JANUARY 20, 2026

BETWEEN

VIRGINIA KAGENDO MUGUNA ..... PLAINTIFF

AND

JANET KAREGI MUNGAI ..... DEFENDANT

RULING

1. On 11/4/2025, the plaintiff, Virginia Kagendo Muguna, took out an unsigned originating summons dated 28/3/2025 against Janet Karegi Mungai under Section 37 of the *Limitation of Action Act*. She prayed for, *inter alia*, an order that she has, through adverse possession, acquired title to land parcel number Abogeta/Nkachie/679, measuring 4.8 hectares ["hereinafter referred to as "the suit land"]. Alongside the originating summons, the plaintiff filed an unsigned notice of motion dated 28/3/2025, seeking an interlocutory injunctive order restraining the defendant and her servants/agents against trespassing onto, encroaching upon or ploughing the suit land. The said application is the subject of this ruling.

2. The application was premised on the grounds set out in the motion and in the plaintiff's supporting and supplementary affidavits dated 28/3/2025 and 15/10/2025 respectively. The application was canvassed through written submissions dated 30/10/2025, filed by M/s Kathambi Rwito & Company Advocates. The case of the plaintiff/applicant is that, together with her siblings, they have lived on that suit land as adverse possessors since 1979. The suit land is currently registered in the name of the defendant and was previously registered in the name of the defendant's deceased husband, the late Julius Mathu Mungai. The defendant is one of the administrators of the estate of the late Mungai.

3. The defendant opposed the application through a replying affidavit dated 21/10/2025 and written submissions dated 21/10/2025. She controverted the allegation that the applicant and her siblings have been in adverse possession of the suit land, emphasizing that she [the respondent] has all along been in possession of the suit land which is currently leased to one Mbae and that the applicant is married and

resides in Nkubu Town with her husband. The court is invited to dispose the application on merits. However, it does appear there are no competent pleadings to provide the platform for a merit-based disposal of the application.

4. As pointed out in the opening paragraph, the originating summons which the applicant uploaded to initiate this suit is unsigned. Similarly, the notice of motion which is the subject of this ruling is unsigned.

5. The law on pleadings require that every pleading be signed by the litigant or his advocate or his recognized agent. Order 2 rule 16 of the *Civil Procedure Rules* provides as follows:

> " Every pleading shall be signed by an advocate or recognized agent (as defined by Order 9 rule 2) or by the party if he sues or defends in person".

6. In the past, the above framework existed as Order VI rule 16 in the repealed *Civil Procedure Rules* and was the subject of discussion by Kenya's superior courts in a line of decisions. In *Vipin Maganlal Shah & another v Investment & Mortgages Bank Limited & 2 others*; Civil Appeals Nos 13 & 19 of 2001 (Consolidated), the Court of Appeal interrogated the above framework and outlined the law as follows:

> " If a plaint is not signed by the plaintiff in person or his recognized agent or his advocate, what is the use of requiring that it contains an averment by the plaintiff that there is no other suit pending and so on? If the plaint is not signed as required by Order VI rule 14, these other requirements clearly become meaningless. Whatever may be the position in India or even in England, the position in Kenya seems to us to be that a party who files an unsigned plaint runs a very grave risk of having that plaint struck out as not complying with the law. In this appeal, we shall go no further than that because as we said earlier, we must deal with the issue of whether or not there was on record a copy of the signed plaint when the summons to strike out was lodged in the superior court. It is to that question that we must turn."

7. In Nairobi HCCC No. 367 of 2010; *Phoebe Wangui v James Kamore Njomo*, Odunga J [as he was then] analysed Order 2 rule 16 of the *Civil Procedure Rules* in the context of the prevailing jurisprudence and came to the following persuasive conclusion:

> " From the foregoing, it is clear that the position in Kenya as regards unsigned pleadings is the same, whether in the High Court or in the Court of Appeal. Consequently, such pleadings are rendered incompetent and are for striking out. It is therefore clear that the fate of the amended plaint filed herein on 25th October 2011 is sealed and the court has no option but to strike out the same."

8. In *Regina Kavenya Mutuku & 3 Others v Limited Insurance Company Limited* (2002)iKLR, Ringera J [as he was then] stated as follows:

> " An unsigned pleading has no validity in law as it is the signature of the appropriate person on the pleading which authenticates the same and an unauthenticated document is not a pleading of anybody. It is a nullity."

9. The originating summons on which the present application is anchored was taken out on 11/4/2025. Though dated 28/3/2025, the said originating summons was not signed. The legal consequence is that the suit having been initiated on the basis of an unsigned originating summons, it is incurably and

fatally defective. It cannot be sustained and it cannot be cured. It can not also provide the anchorage for an application such as the notice of motion under consideration

10. That is not all. The application under consideration, too, though dated 28/3/2025, was not signed. An application of this nature is a pleading within an existing cause. The law requires that all applications taken out in any suit be signed. Order 51 rule 13 of the *Civil Procedure Rules* provides thus:-

> " 1. An application taken out in any proceedings need only be signed by the advocate representing the applicant, or the applicant himself if acting in person, and need not be signed by or on behalf of the court.

11. The originating summons and the application under consideration were not signed and are for this reason fatally and incurably defective. Both of them stand to be struck out without venturing into the merits of the application. It is so ordered.

12. The general principle on costs is that costs follow the event. No special circumstances have been demonstrated to warrant a departure from the general principle. Consequently, the plaintiff shall bear costs of the suit.

DATED, SIGNED AND DELIVERED AT MERU THIS 20TH DAY OF JANUARY, 2026.

B M EBOSO [MR]

ELC JUDGE