

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT AT NAIROBI**

**ELC NO. E299 OF 2025**

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**ROSE WANGECHI NJOGU**

**(suing as the administrator of the Estate of**

**PAUL NJOGU NJUGUNA -**

**PLAINTIFF/RESPONDENT**

**VS**

**JOSEPH GICHUKI WAWERU - 1<sup>ST</sup> DEFENDANT**  
**/APPLICANT**

**JAPAN CHOCHAN TRADING LIMITED - 2<sup>ND</sup>**  
**DEFENDANT/RESPONDENT**

**RULING**

**[Notice of Motion dated the 24/6/25 filed by the 1<sup>st</sup> Defendant]**

1. Before the Court is the notice of motion dated 24/6/25, brought under Order 1 Rule 10 (2) of the Civil Procedure Rules and filed by the 1st Defendant, seeking orders that the 1st Defendant be struck out from the proceedings for misjoinder and for being improperly sued, and that his name be removed from the suit.
2. The application is premised on the grounds annexed thereto and the supporting affidavit of the applicant sworn on 24/6/25, in which the deponent states that he has no interest in the suit property, which, according to him, belongs to Ndaru Kungu Williams, as per the copy of the title deed annexed thereto. That he acquired the suit property from one Samwel Ikinya Muchemi, who had bought a portion of Dagoretti/Riruta/10 [suit land]. That he later leased  $\frac{1}{4}$  acre of the land, on which he constructed commercial structures for lease to tenants in the year 2000, and upon the expiry of the leases he issued a notice to the said

tenants to vacate. That he has since given vacant possession to Ikinya Muchemi Charles, the rightful beneficiary of the estate of Kungu Ndwaru. That he is neither in possession, use, or control of the suit land nor does he hold any proprietary or beneficial interest therein, hence no cause of action on his part in favour of the Plaintiff/Respondent, and the court was urged to strike out his name for that reason.

3. According to the record, the application was served on the Respondents, yet none of the Respondents filed any responses, despite the court granting them time to do so. Hence, the application is unopposed.
4. Directions were given on 18/11/25 by the parties to canvass the application by way of written submissions. However, by the time of writing the Ruling, none had complied with the said directions. Notwithstanding, the court will determine the application based on the material before it and, in any event, on its merits.
5. The issue for determination is whether the application is merited. Put differently, the question for determination is whether the name of the 1st Defendant/Respondent should be struck out of the suit.
6. The Civil Procedure Rules, 2020, provides the procedural framework that guides the court in determining issues of joinder, misjoinder, substitution, and/or the removal of parties in a suit. The provisions provide as follows.

**[Order 1, rule 9.] Misjoinder and non-joinder.**

10. (1) Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute

to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit

(2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added

**14. Practice [Order 1, rule 14.]**

Any application to add or strike out or substitute a plaintiff or defendant may be made to the court at any time before trial by chamber summons or at the trial of the suit in a summary manner.

**Order 2, rule 15.] Striking out pleadings.**

15. (1) 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. (2) No evidence shall be admissible on an application under sub rule (1) (a) but the application shall state concisely the grounds on which it is made. (3) So far as applicable this rule shall apply to an originating summons and a petition

7. A claimant is entirely at liberty to sue whomever he desires, provided he can demonstrate a cause of action against that person. Whether the cause of action will succeed is not for the

court to determine at the preliminary stage. Having staked a viable cause of action, the Plaintiff is entirely at liberty to pursue his claim to finality.

8. With respect to an application to strike out a party or a Plaintiff on the ground that it does not disclose a reasonable cause of action, at this stage the role of the court is to test the particulars of each averment to see whether they are sufficient to establish a reasonable cause of action. The court is not being called upon at this nascent stage to examine the evidence to see whether the Plaintiff has proven the case or to assess the prospects of his cause against the 1st Defendant. The court is therefore restricted to examining the pleadings on record to determine whether the application is merited.
9. Flowing from the above provisions of the law, it is clear that the Court may, on its own motion or on the application of any party to the proceedings, order the striking out of a party whom the Court finds was improperly joined. In the exercise of that discretion, the Court must undoubtedly have reasons to decide fairly and not according to its whims and caprice.
10. The question for determination is whether the 1st Defendant is a necessary party to this suit and, if so, whether any cause of action is disclosed against him. If the answer to the question is in the negative, the Court will not hesitate to invoke its discretionary powers and strike out his name.
11. According to the **Black's Law Dictionary 10<sup>th</sup> Edition** at page 266 the definition of cause of action is stated thus;  
“a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person.”
12. Further the Court of Appeal in the case of **Attorney General & another v Andrew Maina Githinji & Another [2016] eKLR** Waki JA. held that,

“A cause of action is an act on the part of the defendant, which gives the plaintiff his cause of complaint.”

That definition was given by Pearson J. in the case of Drummond Jackson vs Britain Medical Association (1970) 2 WLR 688 at page 616. In an earlier case, Read vs Brown (1889), 22 QBD 128, Lord Esher, M.R. had defined it as: -

“Every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgement of the court.”

Lord Diplock, for his part in Letang vs Cooper [1964] 2 All ER 929 at 934 rendered the following definition: -

“A cause of action is simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person.”

13. In the Plaint dated 13/6/25, the Plaintiff sued the Defendant jointly, inter alia, for a permanent injunction restraining them from entering, occupying, and/or interfering with the Plaintiff's use and quiet enjoyment of the suit land, Dagoreti/Riruta/10, as well as for declaratory orders that the Plaintiff is the rightful owner of the legal and equitable estate of the suit land.
14. It is the Plaintiff's case that the 1st Defendant, inter alia, trespassed upon the Plaintiff's land in May 2025, demolished structures, and entered into an agreement with tenants on terms for vacating the property without justification. That the suit lands, whose title is claimed by the Defendants, were illegally transferred to the Defendants, and particulars of fraud have been pleaded under Paragraph 8 of the Plaint, one of which is that the Defendants transacted on the suit lands without her knowledge and consent.
15. According to the record, the suit land claimed by the Plaintiff and the land the 1st Defendant claims to have leased bear the same title, namely Dagoretti/Riruta/10. The applicant also admits that he occupied a portion of the land and constructed

structures which he rented out to third parties. The Plaintiff claims that in May 2025, some of her tenants informed her that the 1st Defendant approached them and forced them to sign an agreement with the area chief to move out at the end of the month, as he had signed a Lease Agreement with the 2nd Defendant to take over the suit premises without her consent or knowledge. The issues for inquiry by the court arising therefrom will be; whether the subject matter, namely Dagoretti/Riruta/10, is owned by different parties; the relationship between the ownership of the estate of Kungu Ndwaru and the estate of Paul Njogu Njuguna, represented by the Plaintiff in the instant suit; it is to be noted that the land subject to administration in the estate of Kungu Ndwaru is particularized as Dagoretti/Riruta/10 [portions A-D] while that of the estate of Paul Njogu Njuguna is only described as Dagoretti/Riruta/10; and who between the Plaintiff and the 1st Defendant constructed the structures that were rented out to third parties.

16. The totality of the above facts leads to but one conclusion, namely that the Plaintiff has disclosed a reasonable cause of action against the 1st Defendant. It is rather obvious that it may be premature for the court to allow the application, especially given that the 1st Defendant has yet to file a Defence. All in all, from the material before the court, I find that the court has not found this to be a clear case warranting the removal of the 1st Defendant at this stage of the proceedings.

17. It is clear to the court that the 1st Defendant is likely to be affected by the court's orders, whichever way the court decides, given that he has admitted being in occupation of the land as at May 2025. The question therefore is whether the occupation was fraudulent and/or in trespass.

18. The merits or otherwise of the Plaintiff's case, however, cannot be determined at this interlocutory stage. Thus, the matter must proceed to a full hearing. At that point, the parties

will be at liberty to ventilate their rival positions and tender evidence before the Court renders its verdict.

19. In the upshot and for the foregoing reasons I find the application lacks merit.

20. **Final orders for disposal;**

a. The application dated 24/6/25 is unmerited. It is dismissed.

b. I make no orders as to costs.

21. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup>  
DAY OF JANUARY 2026 THROUGH MICROSOFT TEAMS.**

**J G KEMEI  
JUDGE**

**Delivered in the presence of;**

1. Onkangi for the 1st Defendant
2. N/A for the Plaintiff and the 2nd Defendant
- 3.
4. C/A - Ms Yvette Njoroge