

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT SIAYA**

**ELC LAND CASE NO. E009 OF 2025 (OS)**

**ELIZABETH ATIENO OTIENO.....1<sup>ST</sup>**  
**APPLICANT**

**CHRISTOPHER GARO NYAWADE.....2<sup>ND</sup>**  
**APPLICANT**

**-VERSUS-**

**MARK MBOK OGONJI**

**sued as the intended administrator of the Estate of Lawi**

**Okweso Aluodo alias Kweso**  
**Aluodo.....RESPONDENT**

**RULING**

1. The Respondent Mark Mbok Ogonji has brought the Notice of Motion application filed on 4/7/2025 seeking to strike out the suit commenced by way of Originating Summons on the grounds that it discloses no cause of action him as the respondent and he stands to suffer irreparable harm in expending legal fees on a matter that discloses no reasonable cause of action to his prejudice.
2. The application is supported by his affidavit sworn on 2/06/2025 where he depones that he is no longer the intended administrator nor the administrator of the Intestate Estate of Lawi Okweso Aluodo alias Kweso

Aluodo including but not limited to **UYOMA/KATWENGA/1215** as the same has already been administered.

3. That by virtue of such administration, the suit property is no longer under his care and neither is it under his ownership and he can neither defend nor protect its interests under any capacity.
4. That by virtue of such administration, legal and beneficial ownership inclusive of physical possession of UYOMA/KATWENGA/1215 has been transferred to MATTHEW OGETA WIMBO; JARED OSEWE OKWESO; and MOLLY ATIENO OUKO. That consequently any claim laid against the respondent is misplaced and overtaken by events and there being no relationship and or links between the Respondent/ Applicant herein the suit fails to disclose any cause of action against him.
5. THAT, no prejudice or loss shall be occasioned to or suffered by the 1<sup>st</sup> and 2<sup>nd</sup> Applicant in the Originating summons herein should the suit be dismissed.
6. THAT it is in the interests of justice and proper utilization of precious judicial time and the doctrine of litigation coming to an end that the application be allowed.
7. The application is opposed by the replying affidavit jointly sworn by the 1<sup>st</sup> and 2<sup>nd</sup> applicants in the Originating summons on 29/07/2025. They allege that they filed the

present suit against the applicant as intended administrator for orders of adverse possession against UYOMA/KATWENGA/1215 prior to completion of the succession process for the estate of the deceased herein.

8. That despite the pendency of the present suit which he failed to disclose in the said proceedings completed the succession and sold the suit property to third parties. Therefore Applicant/Respondent acted in bad faith and in total disregard of the due process of the law, by unilaterally proceeding to distribute the estate, including the subject parcel of land, while well aware of an active dispute before a court of law concerning ownership and occupation of the same.
9. The third parties are namely 1. Mathew Ogeta Wimbo , 2. Jared Osewe Okweso and 3. Molly Atieno Ouko.
10. It is deponed that the Applicant/Respondent's conduct amounts to an abuse of court process, an intentional act to render the ongoing suit nugatory, and is a clear demonstration of his intention to defeat legitimate claims through underhand tactics and misrepresentation. The deponents believe that the succession proceedings and resulting distribution were tainted with material non-disclosure, dishonesty, and procedural irregularities, and any transactions arising therefrom ought to be revoked, reversed, or stayed, pending the outcome of the suit for adverse possession.

11. The deponents call on the court to take judicial notice of the pending suit and the unjust and prejudicial conduct of the Respondent in order to safeguard the interests of justice and protect the integrity of the judicial process.

### **Further Affidavit**

12. The respondent in response to the above swore a further affidavit dated 11/09/2025 where he outlines the events on the succession of the deceased estate before the Court in Madiany Magistrates Court prior to the filing of the present summons. That the 1<sup>st</sup> and 2<sup>nd</sup> applicants in the OS were aware of the succession proceedings but did not object to the same. Instead, they proceeded to file the present suit. That there has been no orders stopping him from performing his duties as administrator of the estate inclusive of the suit property herein. That equity aids the vigilant. That the distribution of the suit property to the beneficiaries was not illegal.

### **SUBMISSIONS**

13. The application was disposed by way of written submissions. The applicants submissions are dated 18/9/2025 and the applicants in the OS 29/07/2025.

### **ANALYSIS AND DETERMINATION**

14. I have read the affidavits sworn in support of the application and those sworn in reply. I have also given due consideration to the submissions of the learned counsels appearing. The main issue for determination is whether this suit should be struck out by the court for failure to disclose a course of action against the Respondent in the OS.

15. The application has been brought under the provisions of Order 1 Rule 3; 10 and 14; Order 2 Rule 15 and section 1 of the Traffic Act and which I must state has no relevancy at all to the application before court.

16. The substantive orders sought in the application is for striking out of the present suit.

Order 2 Rule 15 is on striking out of pleadings and provides as follows;-

*“Rule 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.”

17. Arising from the above provisions it is clear that the court should examine the impugned pleading and whether it discloses a reasonable cause of action. A court in its determination should steer off interrogating the evidence.

18. But what is a reasonable cause of action. In **DT Dobie & Co (K) Ltd vs Muchina, [1982] KLR**, the Court of Appeal defined the term;

**“reasonable cause of action” to mean**

*“an action with some chance of success when allegations in the plaint only are considered. A cause of action will not be considered reasonable if it does not state such facts as to support the claim prayer”*

19. The courts have taken the view that the power to strike out pleadings must be invoked sparingly in favor of having the party to be heard on merit and in the interest of justice.

20. In **Jubilee Insurance Co. Ltd v Grace Anyona Mbinda [2016] eKLR**, the court stated; -

*“The power of the court to strike out pleadings under Order 6 Rule 13 (1) (b) (c) & (d) is discretionary .... Striking out a pleading is a draconian act, which may only be resorted to, in plain cases.*

21. The Court of Appeal in the **Crescent Construction Limited vs Kenya Commercial Bank Limited [2019] eKLR**, stated as follows:

*“However, one thing remains clear, and that is that the power to strike out a pleading is a discretionary one. It is to be exercised with the greatest care and caution. This comes from the realization that the rules of natural justice require that the court must not drive away any litigant however weak his case may be from the seat of justice. This is a time-honoured legal principle. At the same time, it is unfair to drag a person to the seat of justice when the case purportedly brought against him is a non-starter.”*

22. I will therefore focus on the question of whether there is a reasonable cause of action against the Applicant sued as the respondent in the present proceeding. I will also seek to answer whether the suit is a non starter to warrant a finding that the Respondent is being dragged to court unfairly.
23. My view of this matter is that it is clear from the depositions by both parties that the suit property UYOMA/KATWENGA/1215 was part of the deceased estate as at the time the Originating Summons herein was filed. It formed part of the estate of the deceased and thus the succession proceedings that alleged to have been going

on prior to the filing of the suit. It is also not in dispute that at the time of filing these proceedings the land was intact and had not been subdivided and or distributed to the three individuals alleged in the pleadings and or beneficiaries.

24. It therefore cannot be argued that the suit has been overtaken by events following the succession proceedings, confirmation of grant and distribution thereof. For me the claims of adverse possession that was pending could pass for an overriding interest on the suit property if proved successfully by the 1<sup>st</sup> and 2<sup>nd</sup> Applicants in the OS. The same runs with the land. To me the claimants have a sustainable cause of action against the initial registered proprietor of the suit property and his estate is answerable for overriding interests.
25. There have been very strong arguments that the succession proceedings were irregular for the failure to disclose the pending proceedings before this court. I think I must steer off these arguments. I say so because the right forum to question the proceedings of how the grant of administration was issued is before the Magistrates court in Ukwala. Section 76 of the Law of Succession Act is very clear. I have no jurisdiction to enter that arena at all.
26. For the above reasons the court finds that the application to strike out the suit is unjustified and has no merit. It is hereby dismissed with no orders as to costs.

Orders accordingly

**Dated, signed and delivered at Siaya this 5<sup>th</sup> day of  
February 2026**

**HON. A. E. DENA**

**JUDGE**

**05/2/2026**

**Judgement delivered virtually through Microsoft  
Teams Video Conferencing Platform in the Presence  
of:**

Mr. Omore for 1<sup>st</sup> & 2<sup>nd</sup> Applicants/Respondents

Mr. Ondabu for Applicant/Respondent

Court assistant: Elisha Mboya