

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MALINDI**  
**ELC NO. 104 OF 2011**

**WOBURN      ESTATE      LIMITED      .....**  
**PLAINTIFF**

**VERSUS**

**LILLIAN      MARIGA      .....**  
**RESPONDENT**

**RULING**

1. The Notice of Motion dated 5<sup>th</sup> June 2025 is seeking orders that the plaintiff/respondent's written statement of defence to amended counterclaim dated 5<sup>th</sup> March 2025 filed together with the List of Witnesses, Witness Statements, List of Documents and Bundle of Documents, all dated 5<sup>th</sup> March 2025 be struck out from the court record. that following the grant of prayer number 1, the court be pleased to issue directions to the parties with respect to the filing of final written submissions to the defendants' applicant's Further Amended Counterclaim dated 14<sup>th</sup> February 2025, and that the costs of the application be provided for.
2. The grounds upon which the application has been brought is that the respondent has improperly filed the said documents thus introducing new facts which were never raised or canvassed during the hearing of this suit; that the actions of the respondent are tantamount to reopening its case through the back door, considering the fact that the respondent had withdrawn its plaint dated 3<sup>rd</sup> August 2011 with no orders as to costs sometime in the year 2013.
3. The application is opposed by the affidavit of Richard Otara, the Advocate having the conduct of the matter on behalf of the plaintiff respondent. In his replying affidavit dated 4<sup>th</sup> November 2025, he

has stated as follows: that the defendant applicant had filed a defense with a counterclaim which counterclaim had specific prayers which the plaintiff/respondent opted to defend through cross-examination without filing a defence to the same; that upon the close of the defendant's case on the counterclaim, the defendant has opted to amend her counterclaim and introduced more prayers; that the prayers introduced cannot be challenged without responding to them; that thus the plaintiff has all the right to act and respond to the amendments as introduced by the defendant applicant; that failing to accord the plaintiff a chance to respond to the amendments would amount to condemning the plaintiff on the amendments unheard.

4. On 8<sup>th</sup> October 2025 this court ordered parties to file submissions on the application. On 5<sup>th</sup> November 2025 the court again ordered the parties to file and serve their submissions and set the ruling date for 3<sup>rd</sup> February 2026.
5. No submissions were filed within the timelines the court gave.
6. The only manner in which the application was to be prosecuted was through submissions. The application dated 5<sup>th</sup> of June 2025 cannot be said to have been prosecuted in the absence of submissions by the applicant and the same is hereby dismissed with costs for want of prosecution.
7. This suit shall be mentioned on 11/3/2026 for further directions.

**Dated, signed and delivered at Malindi on this 3<sup>rd</sup> day of February 2026.**



**MWANGI NJOROGE,**

**JUDGE, ELC, MALINDI.**