



REPUBLIC OF KENYA



KENYA LAW
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Omar v Abdalla (Land Case E013 of 2025) [2026] KEELC 589 (KLR) (5 February 2026) (Ruling)

Neutral citation: [2026] KEELC 589 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
LAND CASE E013 OF 2025
YM ANGIMA, J
FEBRUARY 5, 2026

BETWEEN

MONA OMAR PLAINTIFF

AND

SULEIMAN ABDALLA DEFENDANT

RULING

1. By a notice of motion dated 12.08.2025 filed pursuant to Order 2 Rule 15 (1) (a) (b) (c) (d) Order 17 Rule 2 (1)& (5) of the Civil Procedure Rules, Sections 1A, 3A, 63 (e) of the [Civil Procedure Act](#) (the Act), and all other enabling provisions of the law, the defendant sought the striking out of the plaintiff's suit.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Suleiman Abdalla on 12.08.2025. It was the defendant's case that he bought a house without land on Land Parcel No. Mombasa/Block XII/ 534 from Abdalla Said Yislam. Soon after he was referred to the owner of the land the late Ahmed Omar, the plaintiff's father, to whom he paid the ground rent of Kshs 6,000/= per annum. The said ground rent was increased to Kshs 7,200/= per annum in 2016, which the plaintiff was paying until the same was rejected by the plaintiff on 27.01.2017. It was contended that the plaintiff wrote a demand letter to the defendant on 23.12.2016 claiming ownership of the suit property. The plaintiff demanded vacant possession from the defendant and in the alternative that he purchases the suit property for Kshs 15,000,000/=.
3. The defendant argued that although the plaintiff was the registered owner of the suit property, there was no evidence to show how the same was transmitted from her father's name into hers. It was contended that the plaintiff's acquisition of the suit property was fraudulent hence she had no reasonable cause of action to evict the defendant from the suit property. The court was urged to allow the application as prayed.



4. The plaintiff opposed the application vide grounds of opposition dated 22.10.2025. It was contended that the application lacked merit and was an abuse of the court process. The plaintiff argued that the suit raised weighty issues regarding ownership of land, alongside the defendant's counterclaim, which should be determined by the court on merit.
5. When the application was listed for inter partes hearing it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The defendant filed submissions dated 15.01.2026 while the plaintiff filed hers on 22.10.2025.
6. The court has perused the application, the response thereto and the material on record as well as the submissions made by counsel. The court is of the view that the following key issues arise for determination herein:
 - a. Whether the suit ought to be struck out.
 - b. Who shall bear the costs of the application.
7. The defendant submitted that the plaintiff's registration as the proprietor of the suit property was based on fraud, hence she could not have any reasonable cause of action against the defendant. Additionally, the defendant contended that the plaintiff had no authority to institute the suit on behalf of her late father without letters of administration to his estate. The defendant further argued that there were no triable issues to be determined between the parties and that the suit was an abuse of the court process.
8. The court is of the view that the plaint discloses a cause of action as presented. Whether this cause of action shall succeed or not is not an issue for determination at this preliminary stage. There is a trial stage whereby the parties shall be accorded an opportunity to prove their respective cases through evidence and the court will have a chance to decide the case on merit. The parties shall also have an opportunity to amend their respective pleadings at any stage before trial.
9. The Court of Appeal in *D.T. Dobie & Company (Kenya) Limited v Joseph Mbaria Muchina & another* [1980] eKLR held that:

“The court ought to act very cautiously and carefully and consider all facts of the case without embarking upon a trial thereof, before dismissing a case for not disclosing a reasonable cause of action or being otherwise an abuse of the process of the court. At this stage the court ought not to deal with any merits of the case for that 'is a function solely reserved for the judge at the trial as the court itself is not usually fully informed so as to deal with the merits "without discovery, without oral evidence tested by cross-examination in the ordinary way". (Sellers, L.J. (supra)). As far as possible, indeed not at all, there should be no opinions expressed upon the application which may prejudice the fair trial of the action or make it uncomfortable or restrict the freedom of the trial judge in disposing of the case in the way he thinks it right.

If an action is explainable as a likely happening which is not plainly and obviously impossible the court ought not to overact by considering itself in a bind summarily to dismiss the action. A court of justice should aim at sustaining a suit rather than terminating it by summary dismissal. Normally a law suit is for pursuing it.

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.”

10. The court is of the view that the allegations of fraud as made by the defendant cannot be determined in a summary way at this interlocutory stage. The effect of a pleading alleging fraud on the statutes of limitation was considered by the Court of Appeal in the case of Yasmin Anwar Yusuf vs Samuel Gatugi Maina and 2 Others [2021] eKLR as follows;

“It is important to note that this suit was filed against the Defendants based on fraud. In matters where fraud is alleged, time does not start running for purposes of limitation until the fraud is discovered. In the instant case, the Plaintiff discovered that the suit property had been fraudulently registered in the name of the 1st and 2nd Defendants in 2014 when she wanted to dispose of the suit property. She had gone to Ngong land registry where she was informed that the suit property no longer existed as the same had been sub-divided. It is therefore clear that this suit which was filed on 21st March 2014 is not statute barred. In the case of Margaret Wairimu Magugu Vs Karura Investment Limited & 4 Others, [2019] eKLR, the Court of Appeal while dealing with Section 26 of the Limitation of Actions Act stated as follows: -

“There is no doubt that under that provision, where the action is based on fraud, the period of limitation prescribed does not begin to run until the Plaintiff discovers the fraud. See for instance Kenya Ports Authority Vs Timberland (K) ltd [2017] eKLR”.

11. The court is of the view that the allegations of fraud raised by the defendant against the plaintiff can only be fully considered and determined during the trial. The court is not inclined to drive the plaintiff from the seat of justice by striking out her suit summarily. The case before the court does not appear hopeless or beyond redemption. The court is of the view that the plaintiff is entitled to be heard and her case determined on merit.
12. Regarding the issue of costs, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the Civil Procedure Act (Cap 21). A successful party should ordinarily be awarded the costs of an action unless the court, for good reason, directs otherwise. The court finds no good reason why the successful party should not be awarded the costs of the application. Accordingly, the plaintiff shall be awarded the costs of the application.
13. The upshot of the foregoing is that the court finds and holds that the defendant’s application dated 12.08.2025 is unmerited and is for dismissal. Accordingly, the court shall make the following orders for disposal thereof;
- i. The defendant’s application dated 12.08.2025 is hereby dismissed.
 - ii. The costs of the application shall be borne by the defendant.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 5TH DAY OF FEBRUARY 2026.

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Y. M. ANGIMA
JUDGE



In the presence of:

Gillian - Court assistant

Ms. Ruto for the plaintiff

Mr. Gichana for the defendant

