

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT NAIROBI
ELC NO. E004 OF 2025[OS]

JONATHAN GICHOYA MUIRURI	-	1ST	
PLAINTIFF/RESPONDENT			
CAROLINE MUKAMI MAINA	-	2ND	PLAINTIFF/
RESPONDENT			
LUCY MUKAMI	-	3RD	PLAINTIFF/RESPONDENT
AND 21 OTHERS			
	-VS-		
NATIONAL LAND COMMISSION	-	1ST	
DEFENDANT/RESPONDENT			
SOLAR PROPERTY DEVELOPERS LTD -			2ND
DEFENDANT/APPLICANT			

RULING

**(In respect of the 2nd Defendant's application dated
27/3/2025)**

1. Before the Court is the notice of motion dated 27/3/25, brought under the provisions of Sections 1A, 1B and 3A of the Civil Procedure Act, Section 26 (a) of the Limitation of Actions Act and Order 1 Rule 3, Order 1 Rule, Order 2 Rule 15 (1)(a), (b) and (d) of the Civil Procedure Rules 10 (2) of the Civil Procedure Rules. The 2nd Defendant/Applicant seeks for orders that;
 - a. Spent;
 - b. Spent;

- c. The Originating Summons dated be struck out.
 - d. Costs be provided for against the Plaintiffs/Respondents.
2. The application is premised on the grounds annexed thereto and the supporting affidavit of Leonard Nduati Kariuki, the Applicant's Director, sworn on 27/3/25, in which the deponent states that the 2nd Defendant is the registered proprietor of the properties known as LR No. 5982 [which includes subdivision plots LR No. 5982/32 -70]. The deponent avers that the Plaintiffs are strangers to the suit properties, as the Applicant has enjoyed exclusive, quiet possession and occupation of the suit properties since 1984. He contends that the Plaintiffs intend to defraud the Applicant of its properties. He avers that the Plaintiffs' cause of action is based on fraud and that they are not in adverse occupation of the suit properties, to warrant the issuance of the orders sought in the Originating Summons. The suit is an abuse of the court processes; hence, it ought to be struck out.
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 for parties to canvass the application by way of written submissions. However, by the time of writing the Ruling, only the Applicant had complied with the said directions and filed its submissions dated 30/7/2026.

The 2nd Defendant/Applicant's submission

5. The Applicant submits that the only issue for determination is whether the suit should be struck out. The Applicant submits that the suit ought to be struck out as it is legally incompetent, vexatious, an abuse of the court process, and for failing to disclose any reasonable cause of action. It cites Order 2 Rule 15(1) of the Civil Procedure Rules, which provides that the court may, at any stage of the proceedings, order that any pleading that discloses no reasonable cause of action or defence be struck out. It also cites the Court of Appeal case of Mtana Lewa -vs- Kahindi Ngala Mwangandi (2015) e KLR, where the conditions for a claim of adverse possession were stated, namely: a) Actual, open, continuous and uninterrupted possession of the land; b) such possession must be adverse to the interests of the registered proprietor; and c) that the possession has been for a period of at least 12 years.
6. The 2nd Defendant is in exclusive, quiet and uninterrupted possession of the suit properties. That the Plaintiffs have no possession, control or occupation of the properties and have failed to demonstrate dispossession or discontinuance of possession by the registered proprietor, a necessary ingredient for a claim in adverse possession. Consequently, no cause of action arises against the 2nd Defendant.
7. The 2nd Defendant submits that the present suit does not have a reasonable cause of action and should not be allowed to stand. That the suit is frivolous, vexatious and an abuse of court process. It argues that the suit a non-starter as the

Plaintiffs do not have the essential elements for adverse possession, the suit is therefore a non-starter and fatally defective in law. The 2nd Defendant cites the case of DT Dobie & Company (Kenya) Ltd -vs- Muchina (1982) KLR 1 that a suit should only be summarily dismissed if it appears is so hopeless that it plainly and obviously discloses no reasonable cause of action, as is the case in the instant suit.

Analysis and Determination

8. Notwithstanding the fact that the application is unopposed, the court will determine the application based on the material before it and, in any event, on its merits.
9. The issue for determination is whether the application is merited. Put differently, the question for determination is whether the suit should be struck out.
10. The Court's jurisdiction to strike out pleadings is found under Order 2 Rule 15 of the Civil Procedure Rules which provides thus;
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.

11. The test for striking out pleadings is as reiterated in the case of Kenyariri -vs- Double Win Company Ltd and 2 others [2024] KEELC 1609 (KLR), the court held that;

“It is trite that striking out pleadings is a drastic remedy that should only be resorted to where a pleading is a complete sham.”

12. The Court of Appeal in Blue Shield Insurance Company Ltd -vs- Joseph Mboya Oguttu [2009] eKLR restated this principle thus;

“The principles guiding the Court when considering such an application which seeks striking out of a pleading is now well settled. Madan J.A. (as he then was) in his judgment in the case of D.T. Dobie and Company (Kenya) Ltd vs Muchina (1982) KLR 1 discussed the issue at length and although what was before him was an application under Order 6 Rule 13 (1) (a) which was seeking striking out a plaint on grounds that it did not disclose a reasonable cause of action against the defendant, he nonetheless dealt with broad principles which in effect covered all other aspects where striking out a pleading or part of a pleading is sought. It was held in that case inter alia as follows: -“The power to strike out should be exercised after the Court has considered all facts, but it must not embark on the merits of

the case itself as this is solely reserved for the trial Judge. On an application to strike out pleadings, no opinion should be expressed as this would prejudice fair trial and would restrict the freedom of the trial Judge in disposing the case."We too would not express our opinion on certain aspects of the matter before us.

In that judgment, the learned Judge quoted Dankwerts L.J in the case of Cail Zeiss Stiftung vs Ranjuer & Keeler Ltd and others (No.3) (1970) ChpD 506, where the Lord Justice said: -"The power to strike out any pleading or any part of a pleading under this rule is not mandatory; but permissive and confers a discretionary jurisdiction to be exercised having regard to the quality and all the circumstances relating to the offending pleading."We may add that like Madan J.A, said, the power to strike out a pleading which ends in driving a party from the judgment seat should be used very sparingly and only in cases where the pleading is shown to be clearly untenable."

13. The Plaintiffs filed the current Originating Summons seeking a declaration that they acquired the suit property through adverse possession. The Plaintiffs contend in their pleading that they have lived continuously and without interruption on the land parcel LR No. 5982/32 up to LR No. 2982/70 for several years, from 2000 to the present.

14. A claim for adverse possession is brought on the strength of section 38 of the Limitation of Actions Act that section provides;

“38.Registration of title to land or easement acquired under Act.

(1) Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this Act, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.”

15. For a party to succeed in a suit for adverse possession, the following circumstances must arise as considered by the Court of Appeal in the case of Mtana Lewa vs. Kahindi Ngala Mwangandi [2015] eKLR:

“Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title to it omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya, is twelve (12) years. The process springs into action essentially by default or inaction of the owner. The essential prerequisites being that the possession of the adverse possessor is neither by force or stealth or under the licence of the owner. It must be adequate in

continuity, in publicity and in extent to show that possession is adverse to the title owner.”

16. From the pleadings herein, the Plaintiffs have alleged that they have been in occupation of the subject property for more than 12 years, as required by statute for a claim of adverse possession to succeed. The burden of proof lies with the Plaintiffs to prove their case at trial by adducing evidence. On the face of it, the Originating Summons raises triable issues and therefore a reasonable cause of action has been disclosed .
17. I find that there are issues of law and fact arising from the pleadings in this case that cannot be summarily determined by an application. Evidence should be adduced and tested at trial. The Applicant has failed to demonstrate that the plaintiffs’ suit is scandalous, frivolous, vexatious or an abuse of the court process.
18. By and large, striking out a suit is a draconian and drastic step in litigation, which should be resorted to sparingly as a last resort. It is only where a pleading cannot be sustained by an amendment that the court will resort to this procedure, hence the use of the word “May”, meaning it is discretionary.
19. Consequently, the Court holds that the Applicant has not satisfied this Court that it warrants the grant of the orders sought and that he is therefore not entitled to the prayers sought.

20. The upshot of the foregoing is that the Notice of Motion Application dated 27/3/2025 is not merited, and the same is dismissed entirely with no orders as to costs.
21. It is so ordered.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS
19TH DAY OF FEBRUARY 2026 VIA MICROSOFT
TEAMS.**

**J. G. KEMEI
JUDGE**

Delivered Online in the presence of:

1. N/A for the Plaintiffs
2. N/A for the 1st Defendant
3. Mr Wahome for the 2nd Defendant
4. CA- Ms Yvette Njoroge