



REPUBLIC OF KENYA



KENYA LAW
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**Sila v Munywoki & 2 others (Environment and Land Case
E045 of 2023) [2026] KEELC 1797 (KLR) (25 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1797 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE E045 OF 2023**

NA MATHEKA, J

MARCH 25, 2026

BETWEEN

DANIEL NDAKA SILA PLAINTIFF

AND

KENNEDY MUNYWOKI 1ST DEFENDANT

DOLLY NZISA KENNEDY 2ND DEFENDANT

ZENON ENTERPRISES LIMITED 3RD DEFENDANT

RULING

1. The first application is dated 10th October 2025 and is brought under Sections 1A, 1B & 3A of the *Civil Procedure Act*, Order 1 Rule 10(2), Order 2 Rule 15(1)(a) and (b) and Order 51 Rule 1 of the Civil Procedure Rule seeking the following orders;
 1. That this Honorable Court be pleased to and hereby strikes out the suit against Dolly Nzisa Kennedy, the 2nd Defendant herein, for the grounds that it discloses no reasonable cause of action in law.
 2. That in addition or alternatively, this Honourable Court be pleased to and hereby strikes out the suit as against Dolly Nzisa Kennedy, the 2nd Defendant herein, for the grounds that the suit is improperly before the Court.
 3. That consequently, this Honourable Court be pleased to strike out the name of Dolly Nzisa Kennedy, the 2nd Defendant herein, from all proceedings.
 4. That the costs of the suit and the Application herein be provided for.
2. It is based on the grounds that that Plaintiff/Respondent instituted this suit vide a Plaint dated 18th October 2023 praying for Orders inter alia that the Plaintiff is the lawful owner of the suit



property known as Machakos/Nguluni/4036 and a permanent injunction restraining the 1st, 2nd and 3rd Defendants, either by themselves, their agents, servants and/or personal representatives from selling, charging, alienating, trespassing onto and/or in any other manner whatsoever interfering with or otherwise dealing with the property known as Machakos/Nguluni/4036. That this is a boundary was a boundary issue. That the present suit is improperly before the Court and unwarranted. That the 2nd Defendant/Applicant is the proprietor of L.R Machakos/Nguluni /4877 is not the subject matter of this suit at all and neither is the Defendant laying any claim on the suit property.

3. The second application is dated 24th October 2024 and is brought under Order 1 Rule 10(2), Order 1 Rule 14 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act seeking the following Orders:

1. That this Honourable Court be pleased to strike out the Plaintiff's suit against the 3rd Defendant.
2. That the cost of this application be provided for.

4. It is grounded on the following reasons that the 3rd Defendant/Applicant purchased its property known as L.R No. Machakos/Nguluni/4035 on 10th February 2016 from the 1st Defendant/Respondent, with no objection whatsoever and upon following the due process of having the property registered in their favour, the 3rd Defendant/Applicant was issued with a Title Deed on 2nd December 2019. That the suit property herein being L.R No. Machakos/Nguluni/4036 was registered in the name of the Plaintiff herein over a year later on 16th February 2021 and which property is totally different from that of the 3rd Defendant's property. That both the 3rd Defendant and the Plaintiff bought their parcels of land from the 1st Defendant herein, thus they were both exercised from the mother parcel previously known as L.R No. Machakos/Nguluni3971. That the Plaintiff upon acquiring the suit property, fenced his property contrary to the rightful demarcation. That a boundary dispute arose and the 1st Defendant involved the Land Registrar of Machakos County and the County Surveyor to advise and guide the disputing parties as to the appropriate position of beacons for each parcel of land. That during the several site visits and the meetings held to resolve the dispute, the plaintiff was represented by his brother. That the state Department of Lands and Physical Planning issued the parties with a survey report in which the County Lands Surveyor of Machakos confirmed that the Plaintiff had encroached onto the 3rd Defendant's land and that the County Surveyor has moved the respective beacons in order to reflect the actual true position. That the Plaintiff came to this court claiming that the 3rd Defendant had encroached on his property, a claim which is unfounded since the actual beacons of Plaintiff's property doesn't touch on those of the 3rd Defendant's property according to the survey report.

5. This court has considered both applications and the submissions therein. Order 2 Rule 15 of the Civil Procedure Rules which provides as follows;

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. “



6. Order 2 Rule 15(2) of the Civil Procedure Rules provides that no evidence is admissible on an application under sub rule (1) (a) and therefore, it should be evident from the pleadings sought to be struck out that no reasonable cause of action has been disclosed without reference to further evidence. The court’s power to strike out pleadings therefore, is to be exercised sparingly and cautiously. In the case of *D.T. Dobie & Company (Kenya) Ltd. vs. Muchina* (1982)KLR 1 the court stated that;

“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.”

7. The main principle to be considered in an application for striking out a pleading therefore is, whether triable issues have been raised.

Section 1A of the *Civil Procedure Act* provides for the overriding objective of the *Civil Procedure Act* and the rules made thereunder and provides as follows:

- 1A (1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
- (2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
- (3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.

Section 1B of the same Act, on the other hand provides for the duty of court and states:

- (1) For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims —
- (a) the just determination of the proceedings;
 - (b) the efficient disposal of the business of the Court;
 - (c) the efficient use of the available judicial and administrative resources;
 - (d) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and
 - (e) the use of suitable technology.

8. The Respondent stated that the application does not meet the threshold for striking out the suit under Order 1 Rule 10 or Order 2 Rule 15 of the Civil Procedure Rules 2010. That the issues raise in the applications are substantive matters and to go to full hearing. The Respondent maintains that their claim is one of trespass as against the 2nd and 3rd Defendants that the claim of encroachment is admitted by the 3rd Defendant and that they are responsible for the encroachment. That the Respondent bought and fenced his property way before the 3rd Defendant who now wishes to illegally take part of the Respondents property. I concur with the Respondents submissions that the plaint does raise triable issues and the issues raised by the Applicants are substantive and ought to go to full trial.



9. In the case of Martha Wangari Karua vs IEBC Nyeri Civil Appeal No.1 of 2017 the Court of Appeal held as follows;

“The Rules of Natural Justice require that the court must not necessarily drive any litigant from the seat of justice without a hearing, however weak his or her case may be.”

10. Judicial precedent has established that the jurisdiction to strike out any pleadings or suit is one to be exercised with utmost caution and sparingly, I hesitate to exercise that discretion in this matter. I find that the applications are not merited and I dismiss them. Costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 25TH DAY OF MARCH 2026.

N.A. MATHEKA

JUDGE

