



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Abdirahman v Radhod & 3 others (Environment and Land Case
145 of 2021) [2025] KEELC 5502 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5502 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE 145 OF 2021**

**JO OLOLA, J
JULY 24, 2025**

BETWEEN

HADIJA ABDIRAHMAN PLAINTIFF

AND

BHUPENDRA RADHOD 1ST DEFENDANT

AUTOLAND AUCTIONEERS 2ND DEFENDANT

COUNTY GOVERNMENT OF MOMBASA 3RD DEFENDANT

LAND REGISTRAR MOMBASA 4TH DEFENDANT

RULING

1. By the Notice of Motion dated 25th February 2025, Bhupendra Rathod (the 1st Defendant) prays for the following orders:
 - a. That this Honorable Court be pleased to strike out the Plaintiff's statements dated 26.6.2024 and 27.7.2021 for being scandalous, frivolous and vexatious in form and content;
 - b. That this Honorable Court be pleased to dismiss this suit for being an abuse of the court process;
 - c. That the Honorable Court be pleased to enter judgment in favour of the Defendant; and
 - d. That the costs of this application and the entire suit be borne by the Plaintiff
2. The application is supported by an Affidavit sworn by the 1st Defendant and is premised on the grounds that:
 - i. The Plaintiff filed her statement dated 27th July 2021 accompanying the Plaintiff;



- ii. On 27th June 2024, the 1st Defendant was served with the Plaintiff's Supplementary List of Witnesses dated 26th June, 2024 with Mohamed Hussein Shabura as the witness;
 - iii. The witness statement dated 26th June, 2024 is clearly not that of Mr. Mohamed Hussein Shabura. The introductory name and the content are different from that which the Plaintiff testified on 12th March, 2024;
 - iv. The statement dated 27.7.2021 and 26.6.2024 are scandalous, frivolous and vexatious in form and content and are meant to embarrass and prejudice the court;
 - v. The oral statement of Mohamed Hussein Shabura clearly gave cases of bad practice and procedure that cannot be cured by operation of Article 159 of the Constitution; and
 - vi. The entire suit is an abuse of the court process.
3. Hadija Abdirahman (the Plaintiff) is opposed to the application. By her Grounds of Opposition dated 26th March, 2025, the Plaintiff objects to the application on grounds listed thereon as follows:
1. That the application is brought in bad faith and is an abuse of the process of the Honorable Court;
 2. That the statement that the 1st Defendant is seeking to have struck out are documents that are part of the court record and form part of the Plaintiff's evidence together with the oral evidence of the Plaintiff in court;
 3. That the duty of the court is to evaluate all the evidence of the parties herein and give a just determination on merit;
 4. That striking out the suit herein is a drastic and draconian way of determining the matter especially since it is part-heard and has a date for hearing;
 5. That this matter is an Environment and Land Court matter which is an emotive issue more so because both the Plaintiff and the 1st Defendants have title to the same property and the court needs to make a determination on the same on merit;
 6. That the 1st Defendant is trying to circumvent the cause of justice by filing this application yet he shall have his day in court;
 7. That this Honorable Court (cannot) enter judgement in favour of the 1st Defendant in the absence of a Counter-Claim and without the 1st Defendant being heard on merit; and
 8. That it is in the interest of justice that the application be dismissed with costs.
4. I have carefully perused and considered both the application as well as the grounds filed in opposition thereto. I have similarly perused the submissions and authorities filed by the Learned Counsel for the 1st Defendant. I was unable to find any submissions filed by the Plaintiff.
5. By this application before the court, the 1st Defendant has urged the court to strike out the Plaintiff's statements for being scandalous, frivolous and vexatious. The 1st Defendant has also urged the court to dismiss the Plaintiff's suit for being an abuse of the court process and to proceed to enter judgment in favor of the 1st Defendant.



6. The power of the court to strike out pleadings is provided for under Order 2 Rule 15 of the Civil Procedure Rules, 2010 which provides thus:

- “(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;
 - b. it is scandalous, frivolous or vexatious;
 - 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.”

7. It is trite law that a suit can only be struck out in the clearest of the cases where the statement of claim looks so hopeless and no life can be breathed into it. Courts of law are often called upon to endeavor to sustain suits rather than strike them out.

8. In the case of Jubilee Insurance Company Limited –vs- Grace Anyona Mbinda (2016) eKLR, the court quoted with authority the celebrated case of Saudi Arabian Airlines Corporation –vs- Premium Petroleum Company Limited (2014) eKLR where the court held thus:

“I need not re-invent the wheel on the subject of striking out a defence. A great number of judicial decisions have now settled the legal principles which should guide the Court in determining whether to strike out a pleading. The power to strike out a suit or defence should be used sparingly and only on the clearest of cases where the impugned pleading is ‘demurer or something worse than a demurer’, beyond redemption and not curable by even an amendment. Thirdly, in case of a defence, the court must be convinced upon looking at the defence, that it is a sham; it raises no bona fide triable issue worth a trial by the court...”

9. In Blue Shield Insurance Company Ltd –vs- Joseph Mboya Oguttu (2009) eKLR, the Court of Appeal established that striking out of pleadings is a drastic remedy that should only be resorted to where a pleading is a complete sham. Similarly, in the case of Crescent Construction Co. Ltd –vs- Delphis Bank Ltd (2007) eKLR the same court 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.”

10. In D.T. Dobie & Company (Kenya) Ltd –vs- Muchina (1982) KLR 1, the court held as follows:

“....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.”



11. Applying the above principles to the matter before me, I was unable to find any basis for the 1st Defendant's application. While the application has been made under the provisions of Order 2 Rule 15 of the Civil Procedure Rules, 2010, the 1st Defendant has not applied for the suit or any pleadings to be struck out. Instead, the 1st Defendant has urged the court to strike out the statement filed by the Plaintiff dated 27th July, 2021 and that of her witness Mohamed Hussein Shabura dated 26th June, 2024 on account that the same were scandalous, frivolous and vexatious.
12. From the record, the Plaintiff testified herein on 12th March, 2024 and relied on the statement which was admitted as her evidence-in-chief. Similarly, the Plaintiff's witness testified in court on 30th July 2024 placing reliance on the same statement which again was admitted as his evidence before the court. On both occasions, Counsel for the 1st Defendant was present in court and had occasion to cross examine the Plaintiff and her witness on the same.
13. In support of his application to strike out the statement, the 1st Defendant avers as follows at Paragraph 6, 7 and 8 of the Supporting Affidavit:
 6. That I am further informed by my advocate on record, which information I verily believe to be true that on re-examination, Mr. Mohamed Husein Shabura confirmed that his wife did not have a problem with him signing the documents. The plaintiff was given an opportunity to produce a Power of Attorney, but none was placed or filed in Court. This is a clear acceptance of wrongdoing;
 7. That the plaintiff's witness testimony given on 12th March 2024 clearly contradicted that of the plaintiff. The plaintiff on her statement and affidavit dated and deponed on 27th July 2021 stated that she did the search and transferred the property to her name. Mr. Mohamed Husein Shabura, the plaintiff's witness, also stated that he is the one who did the search, signed the documents on behalf of the plaintiff and facilitated the transfer; and
 8. That the averments on plaint, which is verified by the plaintiff, and the plaintiff's copy Statements dated 26/6/2024 and 27/7/2021 are scandalous, frivolous and vexatious in form and in content. The plaint and statements as drawn are incurable and meant to embarrass and prejudice this Honourable Court.
14. With respect, I was unable to find any basis for the foregoing averments. The statement sought to be struck out were documents that were part of the record and that form part of the Plaintiff's evidence together with the oral testimonies given by the Plaintiff and her witness in court. The duty to analyze and evaluate the same and to find out if there are contradictions therein now lie with the court. The 1st Defendant who is yet to testify herein cannot at this stage arrogate unto himself the role to evaluate the same and purport that given certain perceived shortcomings thereon, the Plaintiff's suit should now be summarily dismissed and judgment be entered in favour of the Defendant.
15. In the premises, I was not persuaded that there was any merit in the Motion dated 25th February, 2025. I dismiss the same with costs to the Plaintiff.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 24TH DAY OF JULY, 2025

.....

J.O. OLOLA

JUDGE

In the presence of:



- a. Ms. Firdaus Court Assistant.
- b. Mr. Ondieki holding brief for Shimaka Advocate for the Plaintiff
- c. Mr. Munyithia Advocate for the 1st Defendants/Applicant
- d. Ms. Takah holding brief for Mutubia for the 2nd Defendant

