



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT THIKA**

**ELCLC NO. 122'B' OF 2024**

**ALBERT KIGERA KARUME.....1<sup>ST</sup>  
PLAINTIFF**

**KENNETH WATHUGE KARUME.....2<sup>ND</sup>  
PLAINTIFF**

**SAMUEL WANJEMA KARUME.....3<sup>RD</sup>  
PLAINTIFF**

**VERSUS**

**JOSEPH KAMAU  
MUCHINA.....DEFENDANT**

**RULING**

1. There are two Notice of Motion Applications both dated 15/05/2025. The first Application is filed by the Plaintiffs and they are seeking the following orders from Court:

- 1) **THAT** this Honorable Court be pleased to grant the Plaintiffs leave to amend the Plaint dated 9th August 2023.
- 2) **THAT** the Land Registrar Ruiru and The Attorney General be enjoined in these proceedings as the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, respectively.

- 3) **THAT** upon leave being granted, the Amended Plaintiff be deemed as duly filed and served upon payment of the requisite Court fees.
- 4) **THAT** the costs of this application be in the cause.
2. Which application is based on the grounds on the face of the Application and supported by the Affidavit sworn by Albert Kigera Karume, the 1<sup>st</sup> Plaintiff.
3. The Defendant Joseph Kamau Muchina in response filed Grounds of Opposition dated 10/07/2025 opposing the application. He is opposing the application based on two specific legal technicalities.
4. Firstly, the Defendant argues that the application violates Section 13A (1) of the Government Proceedings Act which requires a mandatory 30-day notice to be served upon the Government through the Attorney General before filing a suit or application against them.
5. Secondly the Defendant claims additionally that the application violates Section 3(1) and (2) of the Public Authorities Limitation Act (Cap 39) which sets a very strict time limit for bringing legal actions against public authorities.
6. The Second Application has been filed by Defendant and it is also dated 15/05/2025. It is brought under Section 1A, 1B, 3 and 3A of the Civil Procedure, and Order 2 Rule 15 (b), (c) and (d) of the Civil Procedure Rules. The Defendant seeks the following orders:

**1. THAT the Plaintiff be struck out with costs.**

**2. THAT the costs of this application be provided for.**

7. The Application is based on the grounds provided in the application and supported by the Affidavit of Joseph Kamau Muchina sworn on even date. The grounds listed by the Defendant in the application are:

- i. That the Plaintiff herein is frivolous and vexatious.
- ii. That the filing of the Plaintiff herein is meant to thwart the Court from achieving its objectives and duties as set out in Section 1A and 1B of the Civil Procedure Act as the said filing will delay the fair trial of the action.
- iii. That the granting of the orders herein will not prejudice the Defendant in any way.

8. The 1<sup>st</sup> Plaintiff with authority from the rest of the Plaintiffs filed a Replying Affidavit sworn on 30/05/2025. The Replying Affidavit is sworn in vehement opposition to the Defendant's application dated 15/05/2025. The Deponent deposes that he is duly authorized by his co-Plaintiffs to represent their interests and maintains that the Defendant's Motion is a grossly misconceived and legally untenable attempt to subvert the ends of justice. He further asserts that the application is a premature abuse of the Court process, strategically calculated to delay a fair determination of the

suit on its substantive merits through the use of procedural technicalities.

9. Regarding the substratum of the suit, the Deponent clarifies that the Plaintiffs are the rightful beneficiaries of the Estate of the late Joseph Njenga Karume, who was the beneficial owner of the suit property known as **Title No. Ruiru East Block 1/103**. He categorically denies the Defendant's allegation that the property is non-existent, terming such claims as blatant misrepresentations. To substantiate the existence of the land, the Deponent refers the Court to a copy of the Green Card marked as exhibit **"AKK-01"**, noting that the Defendant has failed to provide any official documentation from the Ruiru Land Registry to support his sweeping allegations.
10. The Deponent further deposes that any attempts to subdivide the suit property are unlawful, which necessitated the Plaintiffs' proactive application to enjoin the Ruiru Land Registrar and the Attorney General to the proceedings. He explains that the land was lawfully purchased by the Plaintiffs' predecessor and was subsequently sold to Makaoplus Properties Limited on 30/06/2022 for a consideration of Kshs 10,000,000. He confirms that the said Company has enjoyed quiet possession and occupation of the land until the Defendant began a campaign of threats, trespass, and interference, which compelled the filing of the

current suit to protect the interests of both the beneficiaries and the third-party purchasers.

11. In addressing the legal threshold for striking out of a suit, the Deponent avers that such a move is a draconian measure that should be reserved only for frivolous cases that disclose no cause of action. He maintains that the Plaintiffs have raised significant triable issues that deserve a full hearing and that the Defendant has failed to demonstrate any prejudice he would suffer if the matter proceeds. Finally, the Deponent invokes the Court's mandate under Article 159(2)(d) of the Constitution to administer justice without undue regard to procedural technicalities, urging the Honorable Court to dismiss the Defendant's application with costs and allow the suit to be determined on its merits.
12. On 17/07/2025 when the parties appeared in Court, they proposed to canvass the two applications by way of written submissions and they were granted leave to do so within 45 days and a Ruling date reserved.
13. The written submissions filed by the Plaintiffs are dated 24/11/2025 against the Defendant's application seeking to strike out the Plaint. At the same time the Plaintiff also filed written submissions of even date in opposition to the Defendant's Notice of Motion dated 15/05/2025. The Defendant had earlier filed their submission dated 29/08/2025 in opposition to the Plaintiff's suit and the application. Further the Defendant filed another set of

submissions of even date in support of his application dated 15/5/2025.

14. I have considered the two sets of the submissions filed while writing my Ruling.
15. In adjudicating upon the rival Notices of Motion both dated 15<sup>th</sup> May 2025, this Honourable Court is seized of a typical jurisdictional conflict wherein the imperatives of substantive justice, as enshrined under Article 159(2)(d) of the Constitution, must be balanced against the dictates of statutory technicalities and the strictures of the Government Proceedings Act.
16. The Plaintiffs seek leave to amend their Plaint and enjoin the Land Registrar, Ruiru, and the Attorney General to the proceedings, asserting that these parties are necessary for a conclusive determination of the dispute regarding Title No. Ruiru East Block 1/103. Conversely, the Defendant, Joseph Kamau Muchina, moves the Court to strike out the Plaint under Order 2 Rule 15 of the Civil Procedure Rules, characterizing the suit as frivolous, vexatious, and an abuse of the Court process. The Defendant further raises a preliminary shield through Grounds of Opposition, citing non-compliance with Section 13A(1) of the Government Proceedings Act and the limitation periods prescribed under the Public Authorities Limitation Act, Cap 39.
17. The primary issue for determination is whether the Plaintiffs' suit discloses a reasonable cause of action and

whether the intended amendments and joinder of parties are necessary for the effectual adjudication of the matter.

**Black's Law Dictionary** defines;

***"cause of action as a set of facts sufficient to justify a right to sue to obtain money, property, or the enforcement of a right against another."***

18. The Plaintiffs have deponed that they are beneficiaries of the Estate of the late Joseph Njenga Karume and have provided a Green Card marked as Exhibit **"AKK-01"** as prima facie evidence of the suit property's existence. In the landmark case of **D.T. Dobie & Company (Kenya) Limited v Joseph Mielo Muchina & another [1982] KLR 1**, the Court of Appeal held that the power to strike out a pleading is a draconian measure that should be exercised with greatest care and only in the clearest of cases. The Court emphasized that if a pleading reveals a triable issue, it should not be struck out. Given the Plaintiffs' claim of ownership and the alleged trespass by the Defendant, there exists a substantive controversy that warrants a trial on the merits.

19. Furthermore, the Defendant's reliance on the Government Proceedings Act and the Public Authorities Limitation Act to block the joinder of the Land Registrar and the Attorney General must be weighed against the overriding objective of the Civil Procedure Act Sections 1A and 1B. While Section 13A(1) of the Government Proceedings Act

requires a 30-day notice, the Supreme Court of Kenya in **Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others [2012] eKLR** reminded the Judiciary that while jurisdiction is everything, procedural hurdles should not be used to bury the truth.

20. Additionally, it was held, in **Niazons (K) Ltd v China Road & Bridge Corporation & 4 Others [2016] eKLR**, that the joinder of a party is proper where their presence is necessary to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the suit. The Land Registrar's presence is indispensable here to clarify the status of the "non-existent" title alleged by the Defendant.

21. The Defendant's application to strike out the suit on the grounds that it is frivolous and vexatious appears to be a premature attempt to litigate the merits of the case through an interlocutory motion. **Halsbury's Laws of England (4th Edition, Vol. 37)**, describes a vexatious proceeding is one that is frivolous, harassing, or manifestly groundless, where there is clearly no cause of action in law or equity. Such proceedings are considered a serious abuse of process and are typically dismissed, as they should not be allowed to continue as one where the litigant is not acting bona fide and the action has no reasonable prospect of success. However, the Plaintiffs have raised heavyweight issues regarding the validity of a Sale Agreement with Makaoplus

Properties Limited and the lawful devolution of the estate. These are not sham pleadings.

22. In **Musyoki & Another v Milemba & 2 Others [2026] KEELC 200**, the Court affirmed that a suit should only be dismissed if it is truly hopeless and beyond redemption, rather than merely technically flawed, noting that such an action is a draconian measure that should be a last resort. The Ruling emphasized that if a claim shows any potential for success or can be cured through amendment, it should be allowed to proceed. By seeking to amend their Plaint, the Plaintiffs are attempting to perfect their pleadings rather than abandon them.

23. In conclusion, the overarching principle remains Article 159(2)(d) of the Constitution of Kenya, which dictates that justice shall be administered without undue regard to procedural technicalities. The Plaintiffs' quest to protect the interests of the beneficiaries and a third-party purchaser involves substantive property rights protected under Article 40 of the Constitution. Therefore, the key issues for the Court's determination are whether the joinder of the state parties is essential for a conclusive outcome, whether the statutory notice period can be cured or waived in the interest of justice, and whether the Plaint disclose triable issues that override the Defendant's plea for a summary dismissal. The weight of the jurisprudence in our Courts starting from the Apex Court suggests that where a scintilla of a cause of

action exists, the parties should be allowed to have their day in Court.

24. Upon considering the principles of substantive justice under Article 159(2)(d) of the Constitution vis-à-vis the draconian nature of striking out pleadings as established in **D.T. Dobie & Company (Kenya) Limited v Joseph Mielo Muchina (supra)** the Court makes the following Orders;

- i. That the Defendant's Notice of Motion dated 15/05/2025 seeking to strike out the Plaintiff be and is hereby dismissed in its entirety, as the suit discloses substantial triable issues that warrant a determination on the merits.***
- ii. That the Plaintiffs' Notice of Motion dated 15/05/2025 be and is hereby granted, and leave is hereby accorded to the Plaintiffs to amend their Plaintiff dated 9/08/2023.***
- iii. That the Land Registrar, Ruiru and The Attorney General be and are hereby enjoined in these proceedings as the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, respectively, to facilitate the effectual and complete adjudication of the dispute regarding Title No. Ruiru East Block 1/103.***
- iv. That the Amended Plaintiff, having been filed pursuant to these orders, be and is hereby deemed as duly filed and served upon the 1<sup>st</sup>***

***Defendant, subject to the payment of requisite Court fees within seven (7) days of this Order.***

- v. That the Plaintiffs are directed to serve the Amended Plaint upon the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants namely the Land Registrar and the Attorney General within fourteen (14) days, notwithstanding the technicalities of Section 13A(1) of the Government Proceedings Act, in the interest of justice and to prevent the burying of the truth through procedural hurdles.***
- vi. That the Defendants shall be at liberty to file and serve their respective Amended Statements of Defence or Replying Affidavits within fourteen (14) days from the date of service of the Amended Plaint.***
- vii. Pre-trial Conference before the Deputy Registrar on 4/06/2026.***
- viii. That the costs of both Applications shall be in the cause.***

Those are the Court's orders.

**DATED SIGNED AND DELIVERED VIRTUALLY AT THIKA VIA VIDEOLINK THIS 23<sup>RD</sup> DAY OF APRIL, 2026.**

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**MOGENI J  
JUDGE**

**In the presence of:**

Mr. Dedan Chege for 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs

Mr. Luise Wahome for the Defendant/Respondent

Mr. Melita - Court Assistant

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**MOGENI J**

**JUDGE**

ORIGINAL