

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ELCOS NO. E026 OF 2023**

**JOHN** **NGUNJIRI**  
**NGUGI.....PLAINTIFF/RESPONDENT**

**VERSUS**

**KULDEEP SINGH NAYER(Being sued**  
**as executor of the estate of TRILOK SINGH NAYER).....1<sup>ST</sup>**  
**DEFENDANT**

**SANN** **LIMITED.....2<sup>ND</sup>**  
**DEFENDANT/APPLICANT**

**RULING**

**1.** Before this court for determination is the notice of motion dated 17<sup>th</sup> October, 2025 filed by the 2nd defendant/applicant and it is expressed to be brought under **Order 2 Rule 15(1)(a) and (d), Order 51 Rule 1** of the **Civil Procedure Rules** and **Sections 1A, 1B and 3A** of the **Civil Procedure Act**, seeking the following orders:-

***1. The plaintiff's amended originating summons dated 16 June, 2025 be struck out for disclosing no reasonable cause of action, being scandalous, frivolous, vexatious, and otherwise an abuse of the process of this honourable court.***

***2. In the alternative, and without prejudice to (1) above, that Milimani CMELC No. E793 of 2023-SANN Limited v John Ngunjiri Ngugi & Others be transferred and consolidated with this matter***

***for hearing and final determination by this honourable court.***

***3. The costs of this application and the entire suit be awarded to the defendants.***

2. The application is premised on the grounds *inter alia* that the plaintiff's originating summons is premature and discloses no reasonable cause of action within the meaning of **Section 38** of the **Limitations of Actions Act**.

3. The application is further supported by the affidavit of Firozali Kassam, the director of the 2<sup>nd</sup> defendant/applicant sworn on even date. It was deposed that the plaintiff/respondent took occupation of the suit property LR. No. 209/359/15 under a written tenancy agreement on 9<sup>th</sup> October, 2012 and that the originating summons was filed on 27<sup>th</sup> November, 2023 after a period of 11 years. Further, no statutory right of action matured by the time this suit was instituted, and thus this court lacks jurisdiction to entertain the claim.

4. The 2<sup>nd</sup> defendant/applicant further deposed that the plaintiff/respondent's entry into the suit property was permissive arising out of the tenancy relationship and paid rent as late as 2016. For this reasons, the plaintiff/respondent's cause of action

has not crystallised in law as at the date of filing. In addition, the plaintiff/respondent failed to disclose the existence of Milimani CMELC No. E793 of 2023 Sann Limited v John Ngunjiri Ngugi & Others which concerns the same properties and parties. The 2nd defendant/applicant deposed that the existence of parallel suits offend **Section 6** of the **Civil Procedure Act** and amounts to forum shopping which is a gross abuse of the court process.

5. The plaintiff/respondent filed his replying affidavit sworn on 28th November, 2025. He deposed that he has been in occupation of the suit property for more than 12 years and it is only during the hearing of the suit that these issues can be ventilated. Further, that even after filing this suit, it is clear that the 2nd defendant/applicant is not the owner of the suit property. The plaintiff/respondent deposed that the claim before the chief magistrates court is on an alleged debt of rent unpaid hence different from the instant suit which is on a claim of ownership. He deposed that the causes of action are different, and this suit is merited and should be heard to its conclusion.
6. The plaintiff/respondent deposed that it would be unfair to have this suit dismissed at this juncture without giving him a chance to

be heard. Further, that the 1st defendant has not furnished authority granting representation to the 2nd defendant/applicant.

7. The instant application was canvassed by way of written submissions. I have considered the application and the replying affidavit filed by the parties. The issue for determination is whether the application has merit. On whether the suit is frivolous for failing to disclose a reasonable cause of action, the Court of Appeal in **Kivanga Estates Limited v National Bank of Kenya Limited [2017] KECA 591 (KLR)** stated as follows:-

*“It is not for nothing that the jurisdiction of the court to strike out pleadings has been described variously as draconian, drastic, discretionary, a guillotine process, summary and an order of last resort. It is a powerful jurisdiction, capable of bringing a suit to an end before it has even been heard on merit, yet a party to civil litigation is not to be deprived lightly of his right to have his suit determined in a full trial. The rules of natural justice require that the court must not drive away any litigant from the seat of justice, without a hearing, however weak his or her case may be. The flip side is that it is also unfair to drag a person to the seat of justice when the case brought against him is clearly a non-starter. The exercise of the power to strike out pleadings must balance these two rival considerations.”*

8. I have read the amended originating summons dated 16th June 2025. The plaintiff claims ownership of LR 209/359 Maisonette 5 by virtue of adverse possession. From the application, there is nothing that can be considered as unreasonable or reckless that is a gross abuse of the court process. In the case of **D.T. Dobie and Company (Kenya) Ltd vs Muchina (1982) KLR 1**, it was held:-

***“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.”***

9. I note that the 2nd defendant/applicant placed alot of emphasis on the subject of adverse possession and the facts of the case through affidavit evidence. In my view, the best way to determine whether the plaintiff/respondent has acquired this right is through trial where the parties are given the chance to ventilate their issues. Striking out the pleadings on this ground alone would be unfair and unjust to the plaintiff/respondent.

10. On whether in the alternative, this suit ought to be consolidated with Milimani CMELC No. E793 of 2023-SANN Limited v John

Ngunjiri Ngugi & Others, the plaintiff/respondent contended that the causes of action between the two suits are different. However, he did not comment on the consolidation or the non-disclosure of the matter before before the subordinate court.

**11. Section 6 of the Civil Procedure Act** provides as follows:-

***“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”***

**12. In Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties [2020] eKLR)**, the Supreme Court of Kenya stated as follows:-

***“The term ‘sub-judice’ is defined in Black’s Law Dictionary 9th Edition as: “Before the Court or Judge for determination.” The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of courts, with competent jurisdiction,***

***issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.”***

13. From the above provision of the law and the cited authority, it is necessary to prevent the multiplicity of suits between the same parties, as such processes clog our judicial system creating case backlog. Where it is found that a similar suit has been filed, the court in its endeavor to ensure that there is justice, stay the proceedings in one matter to await the determination of the previously filed suit. In this case, the 2<sup>nd</sup> defendant/applicant filed CMELC No. E793 of 2023 seeking the court’s intervention as a result of plaintiff/respondent and others breach of the tenancy agreement dated 9<sup>th</sup> October, 2012. The subject in issue in that suit is similar to this suit. While the orders sought are not similar, the orders sought in both suits are with respect to the suit

property. Further, no solid arguments have been advanced on the consolidation of both suits.

14. In my view, I find the instant suit *sub judice* for the reason that there is pending another suit touching on the same property before the subordinate court. For this reason, the reasonable remedy to grant will be to stay these proceedings instead of striking out the same as we await the outcome in the former suit.
15. From the above, this court finds no merit in the notice of motion dated 17<sup>th</sup> October, 2025. Instead, and bearing in mind the existence of CMELC No. E793 of 2023 before the magistrates court, the proceedings in this suit are hereby stayed pending final determination of CMELC No. E793 of 2023. Each party to bear its own costs.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY  
THIS 22<sup>ND</sup> DAY OF APRIL, 2026.**

**HON. MBOGO C.G.  
JUDGE  
22/04/2026.**

**In the presence of:**

*Ms. Benson Agunga - Court assistant*

*Mr. Mwaura for the Plaintiff/Respondent*

*No appearance for the Defendants/Applicants*

ORIGINAL