



**Doshi & another v County Government of Mombasa & others (Environment and Land Case 33 of 2019) [2026] KEELC 1914 (KLR) (12 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1914 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE 33 OF 2019**

**A OMBWAYO, J  
MARCH 12, 2026**

**BETWEEN**

**ASHOK LABSHANKER DOSHI ..... 1<sup>ST</sup> PLAINTIFF**

**PRATIBA ASHOK DOSHI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**COUNTY GOVERNMENT OF MOMBASA & OTHERS ..... DEFENDANT**

**RULING**

1. The application by 2nd defendant
2. The 2nd defendant has come to this court under the provisions of Order 1 Rule 10 and 14, Order 22 Rule 22, and Order 51 Rule 1 of the Civil Procedure Rules, 2010 Section IA, 1B and 3A of the Civil Procedure for orders that the name of the 2nd Defendant, Benard Ochieng Ogotu, be struck out as a Defendant in his personal capacity in this suit. That in the alternative and without prejudice to Prayer (2), the pleadings herein be amended to reflect the 2nd Defendant as sued strictly in his official capacity as the Member of the County Assembly for Changamwe Ward, and not in his personal capacity. That the Plaintiffs do bear the costs of this Application.
3. This Application is made on the grounds that the 2nd Defendant is Member of the County Assembly for Changamwe Ward, an office established under Article 176 of *the Constitution*.
4. The acts complained of by the Plaintiffs, if any, are alleged to have occurred in the course of public duties, oversight, or representation relating to matters of public land within Changamwe Ward. The Plaintiff does not plead or particularize any personal, private, or ultra vires acts committed by the 2nd Defendant outside his official mandate.
5. That a public officer should not be held personally liable for acts done in good faith in the course of official duty unless malice or personal benefit is specifically pleaded and proved. The joinder of the 2nd



- Defendant in his personal capacity is therefore misconceived, improper, and amounts to a misjoinder of parties.
6. The continued prosecution of the suit against the 2nd Defendant personally is prejudicial, oppressive, and an abuse of the court process.
  7. It is in the interest of justice that the pleadings be corrected at this stage to reflect the proper party, if any, liable in law.
  8. The application is based on a supporting affidavit of the 2nd defendant who states that he is a duly elected Member of the County Assembly of Mombasa representing Changamwe Ward. The applicant laments that he has been sued in his personal capacity in respect of matters alleged to have occurred within Changamwe Ward, yet the Plaintiff does not plead or demonstrate any personal, private, or ultra vires acts on his part,
  9. That at all material times, his involvement, if any, in matters touching on the suit property was strictly in the course of his official duties as a Member of the County Assembly, including representation and oversight on matters of public concern. That he has never held, any executive, administrative, enforcement, demolition, land administration, or arrest powers within the County Government of Mombasa. The Plaintiffs have not pleaded any facts demonstrating that acted for personal gain, maliciously, outside the scope of my official mandate or in a manner warranting personal liability in law.
  10. The actions complained of by the Plaintiffs, if any, fall squarely within the statutory mandate of the County Executive departments, and not that of an individual Member of the County Assembly. That he neither issued, served, authored, nor authorized any Enforcement Notice relating to the suit property, nor did he direct the arrest, intimidation, or harassment of the Plaintiffs or their agents. The joinder of his name in this suit in his personal capacity is therefore improper, prejudicial, and amounts to a misjoinder of parties. That unless this Honourable Court intervenes and corrects the pleadings at this stage, he stands to suffer undue prejudice by being subjected to personal liability for acts not attributable in law.
  11. The applicant submits that he has not been properly sued since the acts complained of are against the 2nd Defendant "in person." the Plaintiff itself pleads that the alleged acts occurred in the context of engagement over land claimed to be public land and in the presence of county officers and other public representatives.
  12. This is a case of selective joinder which underscores the Applicant's position that the alleged presence of the 2nd Defendant was within the context of public representation and oversight, not personal trespass. Moreover, The Plaintiff discloses no pleaded personal benefit, private motive, or independent unlawful enterprise detached from public office.

### **The Plaintiffs Reply**

13. According to the plaintiff, the application by the 2nd Defendant dated 6th February 2026 is misguided. First and foremost, the orders sought in the application are not clear. The plaintiff poses the question:- What does the Applicant mean by "the name of the 2nd Defendant, Benard Ochieng Ogutu, be struck out as a Defendant in his personal capacity in this suit?" is the Applicant suggesting that there are other times when the name of the 2nd Defendant can be struck out in his official capacity in the suit? The prayer is ambiguous and cannot be granted.
14. On the alternative prayer for amendment, the 2nd Defendant cannot order the Plaintiff on how to plead his case. The case as pleaded by the Plaintiff is against the 2nd Defendant in person. The 2nd



Defendant wishes that the Plaintiff sued him in his official capacity. Such a wish cannot be granted. The 2nd Defendant should defend the suit as brought against him, not as he imagines.

15. Secondly, the issues raised in the application cannot be determined through an application. They are issues that can only be determined after full trial of the case. The orders sought cannot be granted because the issues complained of in this suit are against the 2nd Defendant in person and not the office of the Member of County Assembly. At paragraphs 6 – 8 of the plaint, the Plaintiff has made allegations as against the 2nd Defendant, BENARD OCHIENG OGUTU in person. Not the Member of County Assembly in Mombasa. The said paragraphs are pleaded as follows:
  - “6. On 25th February 2019, the 2nd Defendant accompanied by several officers, employees and agents of the 1st Defendant invaded the suit property and vandalized the gate and part of the perimeter wall.
  7. The 2nd Defendant and the 1st Defendant’s officers, employees and agents alleged that the Plaintiffs grabbed the suit property from Changamwe Secondary School and that they had come to repossess it.
  8. The 2nd Defendant and the 1st Defendant’s officers, employees and agents proceeded to arrest three security guards who were posted by the Plaintiffs to guard the suit property together with one member of the public and took them to the County court but later released them without preferring any charges against them.”
16. The Applicant’s allegation that the plaint does not plead or particularize any personal, private or ultra vires acts committed by the 2nd Defendant outside his official mandate is not a reason to remove the 2nd Defendant from the case. The acts pleaded against the 2nd Defendant are against him in person, not his office. There is no need to bring his official office to this matter.
17. The office of the Member of County Assembly cannot and did not step on the suit property. It is the 2nd Defendant in person who committed the acts of trespass complained of in the suit.
18. The acts complained of being trespass were not committed in the course of public duties. The 2nd Defendants is a rogue person who is not suitable to hold any public office. He cannot hide under the office of the Member of County Assembly for acts of trespass and hooliganism which he committed in his personal capacity.
19. Thus, the contention that the 2nd Defendant should be held liable for acts committed in his official capacity is baseless. The Plaintiffs did not complain against the 2nd Defendant in his official capacity.
20. The issues raised in the application ought to have been raised in the 2nd Defendant’s statement of defence and let for the court to determine at the full trial. The 2nd Defendant did not raise them. They cannot be raised through an application.
21. This is not a case of misjoinder as the applicant alleges in his written submissions. The 2nd Defendant was not mis-joined to the suit. He is the one who trespassed on the land that is why he has been sued in his personal capacity and not his office. Whether the acts complained of attract personal liability is a question that cannot be determined through an application. This court cannot determine liability without hearing the suit on merits.
22. The application has been filed by Advocate for the County Assembly who is not competent to represent the 2nd Defendant who has been sued in this case in his personal capacity and not as a



Member of the County Assembly. The application is not genuine and has been brought too late in the day to cause delay and obstruct the cause of justice.

23. This suit was filed in 2019. The application was filed in 2026, just a few days to the scheduled hearing date. It was brought seven years after the case was filed. It is not genuine but a ploy to delay this matter.

#### **Analysis and determination**

24. According to the pleadings by the plaintiff, on 25th February 2019, the 2nd Defendant accompanied by several officers, employees and agents of the 1st Defendant invaded the suit property and vandalized the gate and part of the perimeter wall.
25. It is alleged that the 2nd Defendant and the 1st Defendant's officers, employees and agents alleged that the Plaintiffs grabbed the suit property from Changanwe Secondary School and that they had gone to repossess. It is asserted that the 2nd Defendant and the 1st Defendant's officers, employees and agents proceeded to arrest three security guards who were posted by the Plaintiffs to guard the suit property together with one member of the public and took them to the County court but later released them without preferring any charges against them.
26. The plaintiffs contend that the Defendants have no legal basis to visit the Plaintiffs' property which is a private property and cause chaos and vandalism therein and to serve Enforcement Notice which does not relate to the Plaintiffs' property and is not addressed to the Plaintiffs.
27. The plaintiffs averred that the Defendants have trespassed on the Plaintiffs' property and caused serious damage to the gate thereby subjecting the Plaintiffs to loss. The Defendants' threat to invade the suit property and bring down the entire perimeter wall and the gate is illegal and amounts to trespass.
28. Discerning the pleadings by the plaintiffs, it is clear that they have chosen to bring suit against the 2nd defendant in his personal capacity.
29. It is trite law that parties are bound by their pleading and that the court cannot compel a party to alter its pleadings. The plaintiffs sued the 2nd defendant in his personal capacity alleging that he had trespassed on their suit premises and therefore the cause of action is trespass which is actionable personam and not in rem. This court finds that where a public officer enters private property without a warrant, court order or justification he can be sued in his personal capacity. The application has no merit and is dismissed.

**SIGNED BY/FOR:**

**HON. JUSTICE ANTONY O. OMBWAYO**

**THE JUDICIARY OF KENYA. MOMBASA ENVIRONMENT AND LAND COURT  
ENVIRONMENT AND LAND COURT**

