



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCLC CASE NO 2 OF 2023

ANGAZA REAL ESTATE LTD 1ST PLAINTIFF
CHOSEN BUILDERS INVESTMENT LTD 2ND PLAINTIFF
MARTIN KAMAU 3RD PLAINTIFF
VERSUS
FAMILY BANK LTD DEFENDANT

RULING

- (1) On 15-4-2026, this case came up for the hearing of the notice to show cause why it should be dismissed for failure by the Plaintiffs to comply with directions dated 6-5-2025. The directions required the Plaintiff to do two things. The first thing was to file a reply to the Defendant's defence addressing the issue of whether this Court has power to deal with a suit that relates to the charging of the suit land and the second one was whether indeed there is a related suit No. **HCCC E005/2023(OS) Family Bank Limited vs. Chosen Builders Investment Limited at Murang'a High Court** in relation to the same subject matter.
- (2) When Mr. Mutunga for the 1st Plaintiff addressed the Court, he said he wished to withdraw the suit for the 1st Plaintiff only as he does not represent the other Plaintiffs. Mr. Onsare for the Defendant urged that the 1st Plaintiff's counsel cannot withdraw the suit for One Plaintiff and leave it pending for the other Plaintiffs. He urged the Court to find that no cause has been shown by the Plaintiffs and the Court should therefore dismiss the suit for all the Plaintiffs and not just one of them.
- (3) The issues that arise in this case now are the following.
- (i) **Whether the Plaintiffs who have filed a joint plaint can be allowed to split?**

- (ii) **Whether the Court can strike out the suit for failure to comply with the directions dated 6-5-2025.**
- (iii) **Whether sufficient cause has been shown as to why this suit should not be dismissed or struck out.**

(4) On the first issue, I find that the Plaintiffs have filed only one joint plaint dated 13-4-2023. The plaint does not establish separate causes of action for each of the Plaintiffs. Their cause of action against the Defendant is joint in prayer (a) of the plaint. The only cause of action that is different is the one in prayer (b) which relates to,

“ lifting or deregistration of the 3rd Defendant under the Credit Reference Bureau (CRB).”

It is therefore my finding that the 1st Plaintiff is bound by the pleadings or record which join him with the other two Plaintiffs in a joint cause of action against the Defendant.

(5) Regarding the second issue this court has power under Order 2 rule 15 of the Civil Procedure Rules to strike out pleadings at any stage on various grounds including such proceedings being an abuse of the court process.

Even though the Plaintiffs filed a reply to the Defendant’s defence, the said reply to defence avoided mentioning the two issues that the Court had directed that they be addressed. All that the Plaintiffs did in that reply is to reiterate what was in the plaint. All the seven(7) paragraphs repeat the word “reiterate” seven times. What was required was to explain if there was a suit at the High Court relating to the same subject matter. This was necessary because of the averment in paragraph 11 of the plaint that there is no other suit pending between the parties over the same subject matter and the averment by the Defendant at paragraph 10 of the defence dated 15-9-2023 to the effect that there is a related suit being **E005 of 2023**.

Under Section 1A(3) of the Civil Procedure Act it is provided as follows.

“A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objectives 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.”

The preceding subsection gives the court wide powers to give effect to the overriding objective of the Act which is to facilitate the just, expeditious, proportionate and affordable resolution of Civil disputes.

The Plaintiffs have gone against the overriding objective of the Civil Procedure Act by refusing to comply with the directions issued by the Court, seeking to prolong the case by filing frivolous applications such as the one dated 10-9-2024, failing to prosecute their case and failing to come for hearing on a date taken by consent and also failing to inform the counsel for the Defendant that they will not attend court making the Defendant incur unnecessary costs.

(6) In answer to the third issue and for the reasons given in paragraph [5] above I find that sufficient cause has not been shown why the Plaintiff's suit should be struck out. Consequently, I strike out the Plaintiffs' suit under **Order 15 rule (1) (a)** of the **Civil Procedure Rules** for being an abuse of the Court process. Costs to the Defendant.

It is so ordered.

Dated, Signed and Delivered virtually at Murang'a this 29th day of April, 2026.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of; -

Court Assistant – Jackline

1st Plaintiff's Counsel - Miss Korir holding brief for 1st Plaintiff only.

2nd Plaintiff's Counsel - Absent

3rd Plaintiff's Counsel - Absent

Defendant's Counsel – Miss Mithi holding brief