



REPUBLIC OF KENYA



KENYA LAW
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**Meroka & another v Matara & 23 others (Environment and Land Case
E011 of 2025) [2026] KEELC 2824 (KLR) (13 May 2026) (Ruling)**

Neutral citation: [2026] KEELC 2824 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT AND LAND CASE E011 OF 2025**

DO OHUNGO, J

MAY 13, 2026

BETWEEN

MOCHUMBE OSINYO MEROKA 1ST PLAINTIFF

MARY MOCHUMBE 2ND PLAINTIFF

AND

CHRISTOPHER MATARA 1ST DEFENDANT

JOHN OBAGA 2ND DEFENDANT

CHARLES KANIKI 3RD DEFENDANT

JANE KANIKI 4TH DEFENDANT

HELLENA KANIKI 5TH DEFENDANT

LYDIA MONYENYE 6TH DEFENDANT

NELSON MONYENYE 7TH DEFENDANT

WINNIE MONYENYE 8TH DEFENDANT

KIN OBAGA 9TH DEFENDANT

EGLA OBAGA 10TH DEFENDANT

SPENCER OBAGA 11TH DEFENDANT

LINDA OBAGA 12TH DEFENDANT

MORAA OBAGA 13TH DEFENDANT

VINCENT MATARA 14TH DEFENDANT

CLAIRE NYAMOITA MATARA 15TH DEFENDANT

IRENE MATARA 16TH DEFENDANT



THADEUS ONKUNDI MATARA	17TH DEFENDANT
EDWIN MBAKA MATARA	18TH DEFENDANT
FERDINAND MATARA	19TH DEFENDANT
RAFFAEL MATARA	20TH DEFENDANT
ANTONY MATARA	21ST DEFENDANT
PETER MATARA	22ND DEFENDANT
FELISTUS MATARA	23RD DEFENDANT
CATHERINE MATARA	24TH DEFENDANT

RULING

1. Proceedings in this matter commenced on 25th March 2025 when the Plaintiffs filed Plaintiff dated the same date. The initial Plaintiff was replaced with Amended Plaintiff amended on 12th July 2025 in which the Plaintiffs averred that at all material times they were the registered proprietors of land parcel number Manga/Settlement Scheme/964 (suit property) and that the Defendants trespassed into the suit property on 5th December 2022.
2. Consequently, the Plaintiffs prayed for judgment against the Defendants as follows:
 - a. A declaration that the Plaintiffs are the sole, exclusive owners and/or proprietors of the suit lands herein otherwise known as, Manga Settlement Scheme 964 entitled to exclusive rights of use and possession.
 - b. A declaration that the Defendant has no right or lawful interest over parcel of land otherwise known as Manga Settlement Scheme 964.
 - c. A permanent injunction restraining the Defendants herein, their agents, servants and/or employees either jointly and/or severally from, trespassing into, interfering with the Plaintiffs' peaceful use or occupation of the suit lands otherwise known as Manga Settlement Scheme 964, encroaching into or in any manner whatsoever meddling, curtailing or using violence to prevent the Plaintiffs from use and peaceful occupation of the suit lands, grazing thereon and/or destroying crops, trees or vegetation.
 - d. Damages for trespass.
 - e. Eviction as gains the Defendant, His Representatives, agents, servants or any person claiming under him.
 - f. That the Land Registrar (Nyamira County and the surveyor (Nyamira County) do re-establish, re-fix the boundary beacons in respect of land parcel number Manga Settlement scheme/964 and accordingly effect the necessary amendments to the area index map, if need be, to reflect the actual size and the ground size of the suit parcel.
 - g. An order directing the OCS Manga and/or Nyamira Police station to implement the Decree of this court by ensuring that the Defendant is permanently restrained from interfering with the suit land herein as decreed and/or ordered by this court and evicted therefrom.



- h. Costs of the suit and interests.
 - i. Any such further and/or other relief as the Honourable Court may deem fit and expedient so to grant.
3. The Eighteenth Defendant responded to the suit by filing Notice of Preliminary Objection dated 17th September 2025. The following grounds are raised in the objection:
1. That this Honourable Court lacks jurisdiction to entertain and determine this suit.
 2. That the issue of possession and ownership of the land forming the subject matter of this suit is sub Judice, as it is directly and substantially in issue in Nyamira ELCLOS No. E006 of 2024. An order of prohibition was issued on 23rd October 2024 by Hon. Justice Mugo Kamau. J. restraining the 1st and 2nd Plaintiffs herein, Mochumbe Onsinyo Meroka and Mary Mochumbe, from dealing in any manner whatsoever with the said parcel of land.
 3. That the continued prosecution of this suit amounts to an abuse of the court process, as it is intended to re-litigate issues pending before another court, and to circumvent the lawful orders of that court, thereby undermining the authority of the judicial process.
 4. That this suit offends the doctrine of sub judice under Section 6 of the *Civil Procedure Act*, and ought to be struck out.
 5. That Plaintiffs' suit is incurably defective, frivolous, vexatious, and a blatant abuse of court process, lacking legal merit and brought with the ulterior motive of forum shopping and harassment of the Defendants. The Defendants seeks to use the Honourable court for intimidating the Defendants by naming all family members as Defendants without showing any nexus between them and subject matter before the court.
 6. That allowing this suit to proceed would be contrary to the overriding objectives of the court under section 1A and 1B of the *Civil Procedure Act* which seeks to facilitate the just expeditious, proportionate and affordable resolution of civil disputes.
4. The Sixteenth, Seventeenth, and Nineteenth to Twenty Fourth Defendants filed Notice of Motion dated 26th October 2025. The application is stated to be brought under Sections 1A, 1B and 3A of the *Civil Procedure Act* as well as Order 1 Rule 10 (2) and Order 2 Rule 15 (1) (a), (b) and (d) of the Civil Procedure Rules. The following orders are sought in the application:
1. That the names of the 16th, 17th, 19th, 20th, 21st, 22nd, 23rd, and 24th Defendants be struck out from these proceedings for being improperly, unjustifiably, and frivolously joined, the suit as framed disclosing no reasonable cause of action against them.
 2. That the costs of this Application and of the suit as against the said Defendants be borne by the Plaintiffs.
 3. That this Honourable Court grants such further or other orders as it may deem just and expedient in the circumstances.
5. The application is based on the grounds listed on its face and is supported by an affidavit sworn by the Nineteenth Defendant. He deposed that the Amended Plaint disclosed no claim or cause of action against him and his co-applicants and that the Plaintiffs were complete strangers to them. He added that he and his co-applicants had no claim in respect of the suit property or any other parcel mentioned in the suit and that their inclusion in the suit was based solely on their family relationship with the First Defendant.



6. The Nineteenth Defendant further deposed that the Plaintiffs had neither demonstrated any nexus between them and the alleged acts of trespass nor adduced any evidence implicating them in the dispute. That their continued participation in the matter was unnecessary and that it was in the interest of justice that their names be struck with costs to them.
7. The Plaintiffs opposed Notice of Motion dated 26th October 2025 through a Replying Affidavit sworn on 14th November 2025 by the Second Plaintiff. She deposed that the Sixteenth, Seventeenth, and Nineteenth to Twenty Fourth Defendants were properly joined in this suit since all the Defendants were acting in common and through proxies to interfere with the Plaintiffs' use of the suit property.
8. The Plaintiffs also filed Notice of Motion dated 14th November 2025 seeking the following orders:
 1. That the Honourable court be pleased to consolidate the suit herein, to wit, Nyamira ELC No. E011 of 2025 with Nyamira ELCLoS No. E006 of 2024, and have the said suits to be heard together and/or simultaneously.
 2. Costs of this application be in the cause.
 3. Such further and/or other orders be made as the court may deem fit and expedient.
9. Notice of Motion dated 14th November 2025 is premised on the grounds listed therein and is supported by an affidavit sworn by the Second Plaintiff. She deposed that justice in the two cases touching on the same subject matter and similar parties claiming in the same capacity demanded that the two suits be consolidated to facilitate expeditious and just disposition of the matter.
10. The Eighteenth Defendant responded to Notice of Motion dated 14th November 2025 through Grounds of Opposition dated 21st November 2025.
11. On their part, the Sixth, Seventh and Eighth Defendants responded to Notice of Motion dated 14th November 2025 through Grounds of Opposition dated 20th February 2026.
12. This ruling is in respect of Notice of Motion dated 26th October 2025, Notice of Motion dated 14th November 2025, and Notice of Preliminary Objection dated 17th September 2025.
13. Directions were given that both applications and the preliminary objection be canvassed through written submissions. Timelines within which parties were to file and serve responses and submissions were also given. When there was non-compliance with the initial timelines, final timelines were given, with an order that any response or submissions filed beyond the given timelines would stand struck out.
14. The Sixteenth, Seventeenth, and Nineteenth to Twenty Fourth Defendants filed submissions dated 25th February 2026, the Plaintiffs filed submissions dated 27th February 2026 while the Sixth, Seventh and Eighth Defendants filed submissions dated 2nd March 2026.
15. I have carefully considered the applications and the submissions. The issues that arise for determination are whether this Court has jurisdiction and whether the orders sought in the applications should be granted.
16. Jurisdiction, as has repeatedly been held by the Courts, is everything. It is the entry point in any matter that a Court is called upon to determine. It is the very life and soul of any proceedings without which the proceedings come to a certain end. See *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR and *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR.



17. The Eighteenth Defendant has contended in his Notice of Preliminary Objection dated 17th September 2025 that this Court lacks jurisdiction to entertain and determine this suit in view of Section 6 of the [Civil Procedure Act](#).
18. The starting point is the nature and scope of preliminary objections. A preliminary objection consists of a pure point of law which is pleaded, or which arises clearly from the pleadings, and which if successful can dispose of the suit or proceedings in respect of which it is brought. See *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696*. Essentially, a preliminary objection raises an issue of jurisdiction.
19. It follows therefore that for a preliminary objection to be valid, it must raise a pure point of law which is argued on the assumption that all the facts pleaded by the party against whom it is raised are correct. A point cannot be raised as a preliminary objection if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. Ojwang, J. (as he then was) emphasised that aspect in *Oraro v Mbaja [2005] eKLR* thus:

I think the principle is abundantly clear. A “preliminary objection”, correctly understood, is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion which claims to be a preliminary objection, and yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the Court should allow to proceed. I am in agreement with learned counsel, Mr. Ougo, that “where a Court needs to investigate facts, a matter cannot be raised as a preliminary point.

20. Section 6 of the [Civil Procedure Act](#) provides:

Stay of suit

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.

Explanation.—The pendency of a suit in a foreign court shall not preclude a court from trying a suit in which the same matters or any of them are in issue in such suit in such foreign court.

21. A reading of the head note to Section 6 of the [Civil Procedure Act](#) refers to stay of suit. The effect of the provision is that it bars Courts from proceeding with trial of any suit in which the matter in issue is also in issue in a previously instituted suit between the same parties. The effect of the provision is not striking out of an offending suit but stay of that suit pending determination of the earlier suit. The infraction is also curable by other interventions such as consolidation. In effect, the Court has discretion in whether to stay the offending suit or to consolidate the suits and determine them together. It is trite that any matter that admits of exercise of discretion is not suitable for summary resolution through a preliminary objection. As will be manifest later in this ruling, the affected cases herein can be consolidated, thereby addressing any concerns under Section 6 of the [Civil Procedure Act](#). I find no merit in Notice of Preliminary Objection dated 17th September 2025 and I therefore dismiss it. This Court has jurisdiction to hear and determine this case.
22. I now turn to Notice of Motion dated 26th October 2025 which seeks an order that the names of the Sixteenth, Seventeenth, and Nineteenth to Twenty Fourth Defendants be struck out from these



proceedings for being improperly, unjustifiably, and frivolously joined and further for the reason that the suit as framed against them discloses no reasonable cause of action against them.

23. Striking out is a draconian remedy that must only be resorted to in the clearest of cases. It is also settled law that if a pleading raises a triable issue irrespective of whether it will succeed, the suit ought to be allowed to proceed to trial. Further, if some life can be injected into a pleading by way of amendment, the Court should allow the parties an opportunity to have their day in Court.
24. I find it necessary to reproduce, in extenso, the wise counsel of the Court of Appeal in *D.T. Dobie & Company (Kenya) Limited v Joseph Mbaria Muchina & another* [1980] eKLR:

“The court ought to act very cautiously and carefully and consider all facts of the case without embarking upon a trial thereof, before dismissing a case for not disclosing a reasonable cause of action or being otherwise an abuse of the process of the court. At this stage the court ought not to deal with any merits of the case for that 'is a function solely reserved for the judge at the trial as the court itself is not usually fully informed so as to deal with the merits "without discovery, without oral evidence tested by cross-examination in the ordinary way". (Sellers, L.J. (supra)). As far as possible, indeed not at all, there should be no opinions expressed upon the application which may prejudice the fair trial of the action or make it uncomfortable or restrict the freedom of the trial judge in disposing of the case in the way he thinks it right.

If an action is explainable as a likely happening which is not plainly and obviously impossible the court ought not to overact by considering itself in a bind summarily to dismiss the action. A court of justice should aim at sustaining a suit rather than terminating it by summary dismissal. Normally a law suit is for pursuing it.

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.”

25. The Court of Appeal held in *Crescent Construction Co Ltd v Delphis Bank Ltd* [2007] eKLR as follows:

“Be that as it may, in all cases brought under Order VI rule 13(1) (a), the court is obliged in law to look at no evidence i.e. no affidavit or any evidence from the bar in considering whether or not a plaint or a pleading raises a cause of action. The court must look at the pleadings only and not go beyond the pleadings. The predecessor to this Court stated in the case of *Jevaj Shariff & Co. v Chotail Pharmacy Stores* (1960) EA 374 as follows:

“The question whether a plaint discloses a cause of action must be determined upon a perusal of the plaint alone, together with anything attached so as to form part of it, and upon the assumption that any express or implied allegations of fact in it are true.”

This is proper because once the court incorporates evidence in its consideration of the pleading at this stage, then the aim of the rule which is to dispose of unnecessary and baseless litigation speedily will be defeated.”



26. The application for striking out is stated to be brought under Order 1 Rule 10 (2) and Order 2 Rule 15 (1) (a), (b) and (d) of the Civil Procedure Rules. Both provisions give the Court discretion on whether to order striking out.
27. A perusal of the Amended Plaintiff reveals that the Plaintiffs specifically pleaded at paragraph 10 thereof that the Defendants “have jointly and severally prevented the Plaintiffs from assuming use and taking possession of the suit property ...” At paragraph 12, the Defendants are accused of trespassing into the suit property while it is averred at paragraph that there is apprehension that the Defendants may repeat the encroachment. At paragraph 20, judgment is sought against the Defendants.
28. As I understand it, reference in the Amended Plaintiff to “Defendants” means all the Defendants including the Sixteenth, Seventeenth, and Nineteenth to Twenty Fourth Defendants. I am satisfied that the Amended Plaintiff discloses a cause of action against the Sixteenth, Seventeenth, and Nineteenth to Twenty Fourth Defendants. Whether the claim against them has a prospect of success is not for determination at this point. I find no merit in Notice of Motion dated 26th October 2025 and I therefore dismiss it.
29. Lastly, Notice of Motion dated 14th November 2025 seeks consolidation of this case and ELCLOS No. E006 of 2024 (Nyamira). In *Law Society of Kenya vs Center for Human Rights and Democracy and 12 others* [2014] eKLR, the Supreme Court held as follows regarding consolidation:
- “The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes, and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party that opposes it. In the matter at hand, this Court would have to be satisfied that the appeals sought to be consolidated turn upon the same or similar issues. In addition, the Court must be satisfied that no injustice would be occasioned to the respondents if consolidation is ordered as prayed.”
30. The Court of Appeal discussed the principles applicable in an application for consolidation in *Joseph Mzungu Nyoka v Vros Produce Limited & 525 others* [2015] KECA 902 (KLR) as follows:
- “On the issue of consolidation, the learned Judge applied *Stumberg & Another v Potgieter* (supra), and used his inherent powers under section 3A of the *Civil Procedure Act* in granting the orders to consolidate the suits. The ratio decidendi of *Stumberg & Another vs Potgieter* (supra), is that consolidation of suits is appropriate where there are common questions of law or facts cutting across the suits intended to be consolidated, and the common questions are of sufficient importance to justify the suits being disposed of at the same time. This is in line with the overriding objectives of the *Civil Procedure Act* and the Rules made thereunder as stated in section 1A of the *Civil Procedure Act*, that is, to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes. As noted by the learned Judge consolidation of suits is provided under Order 11 Rule 3(h) of the Civil Procedure Rules 2010 as a case management strategy. This supports the position taken by the learned Judge that the principle enunciated in *Stumberg & Another v. Potgieter* (supra) is good law. However, an order for consolidation presumes that the matters that are being consolidated are matters that are still pending and that there are common questions or issues which are yet to be determined. Thus, it is desirable that consolidation be made at the earliest opportunity. In a situation where the issue of consolidation arises at the tail end, as it did in this matter,



the Judge cannot fold his hands but must use his inherent powers to achieve the overriding objective."

31. A perusal of pleadings in this case and ELCLOS No. E006 of 2024 (Nyamira) reveals that both cases concern the same property which is the parcel of land known as Manga Settlement Scheme/964. The parties are also common. The Plaintiffs herein are First and Second Defendants, respectively, in ELCLOS No. E006 of 2024. The Plaintiff in ELCLOS No. E006 of 2024 is the 18th Defendant herein.
32. The Plaintiff in ELCLOS No. E006 of 2024 is seeking to be declared to have acquired title to the parcel of land known as Manga Settlement Scheme/964 by adverse possession. In the present case, the Plaintiffs seek, inter alia, to be declared proprietors of Manga Settlement Scheme/964, an order permanently restraining the Defendants from trespassing into the parcel, damages for trespass and eviction.
33. I am satisfied that common questions of law or fact arise in both matters and that the reliefs claimed are in respect of the same suit property. In those circumstances, it is desirable to make an order for consolidation. I find merit in Notice of Motion dated 14th November 2025.
34. Regarding concerns as to the manner of managing the various claims and counterclaim instituted by way of adverse possession and plaint, suffice it to state that the divide that used to exist between adverse possession claims commenced through originating summons and claims by plaint is no longer there. Courts now focus on substantive justice and will render justice as appropriate. See Gulam Miriam Noordin v Julius Charo Karisa [2015] eKLR and Chevron (K) Ltd v Harrison Charo Wa Shutu [2016] eKLR. Parties will be at liberty to seek such further directions as are appropriate to facilitate hearing and determination of the consolidated causes.
35. In view of the foregoing, I make the following orders:
 - a. Notice of Preliminary Objection dated 17th September 2025 is dismissed.
 - b. Notice of Motion dated 26th October 2025 is dismissed.
 - c. ELCLC No. E011 of 2025 (Nyamira) and ELCLOS No. E006 of 2024 (Nyamira) are hereby consolidated.
 - d. Having been filed first in time, ELCLOS No. E006 of 2024 (Nyamira) shall be the lead file.
 - e. Costs shall be in the cause.

DATED, SIGNED, AND DELIVERED AT NYAMIRA, THIS 13TH DAY OF MAY 2026.

D. O. OHUNGO

JUDGE

Delivered in the presence of:

Mr Otieno for the Plaintiffs

Mr Okello for the 1st, 14th and 15th Defendants

Mr Kimaiyo for the 2nd to 5th, 9th to 13th Defendants

No appearance for the 6th to 8th Defendants

Mr Okundi for the 16th to 24th Defendants

Court Assistant: Edinah N

