



**Karani & another v Monari & 4 others (Environment & Land Case E001 of 2023) [2024] KEELC 1665 (KLR) (19 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1665 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE E001 OF 2023**

**M SILA, J**

**MARCH 19, 2024**

**BETWEEN**

**DAUDI KARANI ..... 1<sup>ST</sup> PLAINTIFF**

**BENARD MASESE ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**RICHARD MONARI ..... 1<sup>ST</sup> DEFENDANT**

**WILLIAM MIRERA OMBONGI ..... 2<sup>ND</sup> DEFENDANT**

**KENNEDY OKEMWA ABINCHA ..... 3<sup>RD</sup> DEFENDANT**

**LAND REGISTRAR, KISII ..... 4<sup>TH</sup> DEFENDANT**

**DISTRICT SURVEYOR, KISII ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. The application before me is that dated 19 November 2023 filed by the 3<sup>rd</sup> defendant. The application seeks orders that this suit be struck out for the following reasons :-
  - a. The suit is a nullity ab initio for want of capacity to sue as it relates to the estate of the late Johnson Morwanga.
  - b. The cause of action herein does not relate to the plaintiffs.
  - c. The suit offends Section 7 of the *Limitation of Actions Act*, Cap 22, Laws of Kenya as the cause of action arose before August 1995 when a restriction was placed against the land parcel No. 1294.
2. There is a supporting affidavit to the application which has been sworn by the applicant. Nothing was filed by the plaintiff to contest the application.



3. The record shows that this suit was commenced through a plaint filed on 22 August 2023 by two individuals being Daudi Karani and Benard Masese who filed the suit in person. The plaint is a torturous read to say the least and not easy to comprehend but I will do the best that I can to fish out what I think is pleaded. At paragraph 2 of the plaint, it is pleaded that the two plaintiffs are the legal representative of Johnson Matwanga. It is alleged that the said Johnson Matwanga bought a portion of land measuring 0.14 Ha from Moraa Omaa, the proprietor of the land parcel Central Kitutu/84. That the land was subdivided on 5 April 1979 and new numbers, being numbers 1293 for Moraa Omaa, and No. 1294 for Motwanga Ongeru, issued, though it is claimed that they were illegally registered in the names of the 1<sup>st</sup> and 2<sup>nd</sup> defendants and sold to the 3<sup>rd</sup> defendant. It is contended that the sale was fraudulent and concealed from Johnson Motwanga and his family. It is pleaded that the purchaser (probably meaning Johnson) has not been issued with a title deed because he was in hospital since 1980. At paragraph 14 of the plaint, it is pleaded that the matter delayed and their father waited until he died in hospital. The prayers in the plaint seek orders for the Land Registrar to cancel the title Central Kitutu/1294 and issue another title to the purchaser, Johnson Motwanga.
4. In his supporting affidavit, the 3<sup>rd</sup> defendant has pointed out that paragraph 14 of the plaint avers that James Motwanga died in hospital and that no letters of administration have issued to justify the filing of the suit. He avers that the plaintiffs have no interest in the subject matter of the case and that the suit is time barred because there was a restriction placed in August 1995.
5. As I earlier mentioned, nothing was filed towards the application.
6. I have given due consideration to the application and I have to allow it. In the plaint, the plaintiffs have pleaded that they have filed suit as legal representatives of Johnson Motwanga and in paragraph 14 they insinuate that he is deceased. If that is the case then they can only have capacity to file suit if they have been appointed as legal representatives of his estate but they have not presented anything to demonstrate this. Secondly, if at all the suit was filed while James Motwanga was alive, the suit would be incompetent because without a power of attorney, the plaintiffs would have no capacity. Thus, either way, the plaintiffs clearly have no capacity to file this suit and are busy bodies.
7. This application is brought under Order 2 Rule 15 which provides as follows :-  
Striking out pleadings :
  - (1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—
    - (a) it discloses no reasonable cause of action or defence in law; or
    - (b) it is scandalous, frivolous or vexatious; or
    - (c) it may prejudice, embarrass or delay the fair trial of the action; or
    - (d) it is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.
  - (2) No evidence shall be admissible on an application under subrule (1)(a) but the application shall state concisely the grounds on which it is made.
  - (3) So far as applicable this rule shall apply to an originating summons and a petition.
8. From the above, it will be seen that the court has discretion to strike out pleadings inter alia if the same do not disclose a cause of action and is an abuse of the process of court. I have no doubt in my mind that without capacity there is no cause of action that the plaintiffs can pursue. Keeping the matter pending



in court is only going to delay the trial of the suit yet the outcome will still end up being a striking out of the suit for want of capacity. There are arguments on limitation but it is not even necessary to go into these.

9. This suit has been filed by persons who have no capacity to present it and it is hereby struck out with costs to the defendants.
10. Orders accordingly.

**DATED AND DELIVERED THIS 19 DAY OF MARCH 2024**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

