



**Mulinge Residents Welfare Association v Development and Education Network Co-operative Savings & Credit Society Ltd & 16 others; Momanyi & 3 others (Defendant) (Environment & Land Case E002 of 2023) [2024] KEELC 3301 (KLR) (22 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3301 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE E002 OF 2023  
CA OCHIENG, J  
APRIL 22, 2024**

**BETWEEN**

**MULINGE RESIDENTS WELFARE ASSOCIATION ..... APPLICANT**

**AND**

**DEVELOPMENT AND EDUCATION NETWORK CO-OPERATIVE SAVINGS & CREDIT SOCIETY LTD ..... 1<sup>ST</sup> RESPONDENT**  
**OCHILLA RICHARD ASIYO ..... 2<sup>ND</sup> RESPONDENT**  
**LAWRENCE MWANGI WAIGWA ..... 3<sup>RD</sup> RESPONDENT**  
**WALWANDA JACK PHILEMON ..... 4<sup>TH</sup> RESPONDENT**  
**PAULINE NJOKA MRUTHIRI ..... 5<sup>TH</sup> RESPONDENT**  
**AHMED ISSA ..... 6<sup>TH</sup> RESPONDENT**  
**JOSEPH ODHIAMBO AKOTH ..... 7<sup>TH</sup> RESPONDENT**  
**BENSON OUMA ONAM ..... 8<sup>TH</sup> RESPONDENT**  
**PHOEBE BRENDANDAH ONYANGO ..... 9<sup>TH</sup> RESPONDENT**  
**STEPHEN PAUL OYUGI ..... 10<sup>TH</sup> RESPONDENT**  
**BONFACE NDEGE ..... 11<sup>TH</sup> RESPONDENT**  
**BEATRICE MANYISA ..... 12<sup>TH</sup> RESPONDENT**  
**ELLY OBONG'O OSEWE ..... 13<sup>TH</sup> RESPONDENT**  
**STEPHEN PAUL OYUGI ..... 14<sup>TH</sup> RESPONDENT**  
**RISPER ADHIAMBO ..... 15<sup>TH</sup> RESPONDENT**  
**JEMIMA ACHIENG ..... 16<sup>TH</sup> RESPONDENT**



**MICHAEL KABORA NDERITU ..... 17<sup>TH</sup> RESPONDENT**

**AND**

**ALFRED NYAKUNDI MOMANYI ..... DEFENDANT**

**DANCUN NDAGONA ..... DEFENDANT**

**JAMES MWANZIA ..... DEFENDANT**

**ERICK MAILU MUTUKU ..... DEFENDANT**

## **RULING**

1. What is before Court for determination is the Applicant's Chamber Summons Application dated the 2<sup>nd</sup> February, 2023 where he seeks the following Orders:-
  1. That this Honourable Court does issue an order striking out the Plaint herein for having been filed without proper and valid instructions from the 2<sup>nd</sup> Plaintiff.
  2. That in the alternative, the court does issue an order striking out the Applicant/purported 2<sup>nd</sup> Plaintiff's name from the suit.
  3. That the costs of this Application be provided for.
2. The Application is premised on the grounds on the face of it and the Supporting Affidavit of Alexander Makau Muema who deposes that he is the Chairman of the Applicant. He claims the 2<sup>nd</sup> Plaintiff neither issued instructions to the firm of Messrs Rachier & Amolo Advocates to institute this suit on its behalf. He avers that the Respondents herein have maliciously misrepresented facts indicating that they are members of the Applicant herein, yet they are not. He denies that the Respondents have ever owned and or purchased land from the Applicant herein. He explains that the properties described in the purported suit are owned by members of the Applicant herein and not the Respondents. Further, the alleged plot numbers do not exist since titles were issued to the owners and the remaining few, do not belong to the Respondents. He contends that LR Number 25131 belongs to Chyulu Hills Developers Limited and neither is it known as plot number 769 nor does it belong to Benson Ouma Onam. Further, LR Number 29520 belongs to Bharti Anupkumar and neither is it known as Plot 816 nor is it owned by Michael Kabora Nderitu. He avers that LR number 28661 belongs to Simon Ngizulu Makiese and is not known as plot number 820 and neither does it belong to Beatrice Manyisa. Further, LR Number 32113 belongs to Kenneth Kiptala Kamuren and neither is it known as plot number 858 nor does it belong to Stephen Paul Oyugi as alleged by the Respondents. He states that, the Applicant has already lodged a police report with regards to the Respondents' interference and an OB number 11 was issued. He reiterates that they instructed their lawyers to write to the firm of Messrs Rachier & Amolo to cease implementation of any instructions purportedly emanating from the Respondents and directing them to withdraw this suit but this has been in vain.
3. The Respondents opposed the instant application by filing a Replying Affidavit sworn by Richard Ochillah where he deposes that he is the Chairman of Mulinge Residents Welfare Association and has authority of the members to swear the said Affidavit. He contends that the Application is devoid of merit, a waste of the court's time, replete with falsehood and misrepresentations. He explains that, *vide* an Annual General Meeting (AGM) held on the 13<sup>th</sup> January, 2023, James Ngului was elected Chairman of the Association taking over from Kennedy Mochere Kaburi. He highlights the dates of the elections including officials of the Mulinge Residents Welfare Association. He avers that on 18<sup>th</sup>



February, 2023, the said association held its AGM wherein he was elected Chairman to work alongside Amos Ochieng Okoyo as Secretary and Lawrence Mwangi as Treasurer. Further, they issued a Notice to the Registrar of Societies in accordance with Section 17 of the Societies Act confirming the election of the new officials. He reiterates that on 16<sup>th</sup> March, 2023, the Registrar of Societies confirmed the leadership of the Mulinge Residents Welfare Association to be Richard Ochilla Asiyo (Chairman), Amos Ochieng Okoyo (Secretary) and Laurence Mwangi Waigwa as Treasurer. He insists that Mr. Alexander Makau Muema who is the deponent in the affidavit dated the 2<sup>nd</sup> February, 2023 is a stranger to both the membership and leadership of Mulinge Residents Welfare Association.

4. The Application was canvassed by way of written submissions.

#### **Analysis and Determination**

5. Upon consideration of the instant Chamber Summons Application including the respective Affidavits, annexures and rivaling submissions, the only issue for determination is whether the Plaintiff should be struck off with costs.
6. The Applicant in its submissions reiterated its averments as per the Supporting Affidavit and contended that the instant Application is merited. To support its averments, it relied on the following decision: Irene Chepkosgei Rop v Samuel Kibowen Towett (2017) eKLR.
7. The Plaintiffs/Respondents in their submissions relied on the averments as per their Replying Affidavit and argued that the Applicant has not met the conditions set out in Order 2 Rule 15(1) of the Civil Procedure Rules on striking out of pleadings. They insist that the instant Application is an unnecessary afterthought which has ostensibly been crafted to embarrass, prejudice and delay the trial. To buttress their averments, they relied on the following decisions: D T Dobie & Company (K) Ltd v Muchina (1982) KLR 1; Blue Shield Insurance Company Ltd v Joseph Mboya Oguttu [2009] eKLR; Wenlock v Moloney (1965) 2 All ER 871 at page 874; Madison Insurance Company Limited v Augustine Kamanda Gitau (2020) eKLR; Prafulla Enterprises Ltd v Norlake Investments Ltd, Kisumu High Court Civil Case No. 145 of 1997; LLR 7412 (HCK) and Francis Kamande v Vanguard Electrical Services Ltd. Civil Appeal No. 152 of 1996 LLR 4914 (CAK).
8. On striking out of pleadings, Order 2 Rule 15(1) of the Civil Procedure Rules, 2010 stipulates that:-

At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that-

  - (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 an abuse of the process of the court.”
9. In Civicon Limited v Kivumatt Limited & 2 Others (2015) eKLR, the Court of Appeal while dealing with striking out of pleadings observed that:-

"Under Order 1 of the Civil Procedure Rules, the trial court has wide discretionary powers to make necessary amendments as to the parties to a suit by adding, substituting or striking them out and to make all such changes in respect of parties as may be necessary to enable an effectual adjudication to be made concerning all matters in dispute between them. The court has a separate, independent duty from the parties themselves to ensure that all necessary and proper parties, and no others, are before it so that it may effectually and completely



determine and adjudicate upon all matters in dispute. For this reason, at any stage of the proceedings, the court may on such terms as it thinks just and either on its own motion or on application, order for the joinder of a party where the party is a person who ought to have been joined as a party or; whose presence before the court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon. the party is any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed which in the court's opinion it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.”

10. While in *Delphis Bank Limited v Caneland Limited* [2014] eKLR, the Court of Appeal while dealing with the issue of striking out pleadings held that:-

“The leading local case on interpretation of Rule 13 of Order VI of the Civil Procedure Rules on which the application striking the defences was based is perhaps *D.T. Dobie & company (Kenya) Ltd v Muchina* which counsel for the appellant referred to us. In the case, Madan JA, as he then was, opined in an obiter dictum that; “The power to strike out should be exercised only after the court has considered all the 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 opinions should be expressed as this would prejudice the fair trial and would restrict the freedom of the trial judge in disposing the case.”

See also the decision in *Blue Shield Insurance Company Ltd v Joseph Mboya Oguttu* [2009] eKLR.

11. In this instance, the Applicant has sought to strike out the Plaintiff contending that it did not instruct the Plaintiffs' Advocate to act for them. The deponent claimed to be the Chairman of the Plaintiff and insisted that some of the suit lands' named in the Plaintiff belonged to third parties. The Plaintiffs'/ Respondents' in their Replying Affidavit claim that on 18<sup>th</sup> February, 2023, it held an AGM where the following persons were elected: Richard Ochilla Asiyu (Chairman), Amos Ochieng Okoyo (Secretary) and Lawrence Mwangi as Treasurer. Further, that they issued a Notice to the Registrar of Societies in accordance with Section 17 of the *Societies Act* confirming the election of the new officials and the said Registrar on 16<sup>th</sup> March, 2023, confirmed the leadership of the Mulinge Residents' Welfare Association to be Richard Ochilla Asiyu (Chairman), Amos Ochieng Okoyo (Secretary) and Lawrence Mwangi Waigwa as Treasurer.
12. Looking at the documents presented by the respective parties moreso the letter from the Registrar of Societies, it does not indicate that the deponent Alexander Makau Muema as Chairman of Mulinge Residents' Welfare Association. Further, on perusal of the Plaintiff, I note it raises triable issues which have to be dealt with in a hearing and cannot be determined at an interlocutory stage. It is my considered view that since it is the validly elected officials who filed this suit, I am unable to make a finding that they lacked proper and valid instructions from the 2<sup>nd</sup> Plaintiff to institute it. Further, the Applicant did not furnish court with proof of this averment.
13. Based on the facts as presented while relying on the legal provisions I have cited including associating myself with the quoted decisions, I will decline to strike out the Plaintiff as sought by the Applicant.
14. It is against the foregoing that I find the Chamber Summons Application dated the 2<sup>nd</sup> February, 2023 unmerited and will dismiss it.
15. Costs will be in the cause.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 22<sup>ND</sup> DAY OF APRIL, 2024**

**CHRISTINE OCHIENG**

**JUDGE**

**In the presence of;**

Esilaba for Applicant

Wandati for 4<sup>th</sup> Respondent

No appearance for other Respondents

Court Assistant – Simon/Ashley

