



**Shah (Suing in Her Capacity as Executor of the Estate of Amritral Rupshi Shah - Deceased) & another v Chief Land Registrar & 3 others (Environment & Land Case E069 of 2024) [2025] KEELC 786 (KLR) (25 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 786 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE E069 OF 2024  
FM NJOROGE, J  
FEBRUARY 25, 2025**

**BETWEEN**

**SUDHABEN AMRITLAL SHAH ALIAS SUDHA AMRITLAL SHAH (SUING IN HER CAPACITY AS EXECUTOR OF THE ESTATE OF AMRITRAL RUPSHI SHAH - DECEASED) ..... 1<sup>ST</sup> PLAINTIFF**

**JAIMIN VIPINKUMAR NATHALAL SHAH (SUING IN HIS CAPACITY AS EXECUTOR OF THE ESTATE OF VIPINKUMAR NATHALAL SHAH - DECEASED) ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**THE CHIEF LAND REGISTRAR ..... 1<sup>ST</sup> DEFENDANT**

**THE LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**THE HON ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**SANDY BEACH LIMITED ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. This is a ruling on the application dated 29/11/2024 filed by the 4<sup>th</sup> defendant seeking that the orders of 26<sup>th</sup> September 2024 be set aside ex debito justitiae and that the suit be struck out, and/or dismissed. The grounds on which the application is premised are that the applicant was condemned unheard, that the suit is statute barred, and that the suit is res judicata and there is nothing to proceed for full hearing on the merits; that the applicant has a good defence; that if the applicant had been served the court would not have issued the orders of 26/9/2024. The application is supported by the sworn affidavits of Ghenzo Renzo and Joseph Manzi Munyiithya.



2. The application was disposed of by way of written submissions which both the plaintiff and the 4<sup>th</sup> defendant filed.
3. What I understand by the provisions of Section 6(1) and Section 13(1) of the Electronic Case Management Practice Directions 2020 is that where any document is required to be served on a person, service may be effected by electronic means and through the address contained in the electronic system.
4. The applicant has relied on the case of Ramco Ltd Vs Mistry Jadva Parbat & Co Ltd (Citation not given) and also the case of Gulamhussein F Gulamhussein V Imperial Bank Ltd (In Receivership) & Another 2018 eKLR.
5. What emerges from the application, the supporting affidavits and the submissions is that on the first issue of service, the applicant acknowledges that the electronic mail address on the CR12 is the correct one.
6. Upon perusal of the copies of electronic mail employed in service, I find that the same electronic mail address in the CR12 was used. I am of the view that the applicant was properly served in those circumstances.
7. On the second issue of whether the suit ought to be struck out and/or dismissed at the present stage, the court ought to proceed with utmost caution because such an order is drastic and may shut out permanently a party from justice. In the case of D.T. Dobie & Company (Kenya) Limited v Joseph Mbaria Muchina & another [1980] KECA 3 (KLR) it was stated as follows:

"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."

8. In Kivanga Estates Limited v National Bank of Kenya Limited [2017] KECA 591 (KLR) the court held as follows:

Striking out a pleading, though draconian, the court will, in its discretion resort to it, where, for instance, the court is satisfied that the pleading has been brought in abuse of its process or where it is found to be scandalous, frivolous or vexatious."

9. In a recent case Kamara v Galana Oil Kenya Ltd (Civil Appeal 333 of 2015) [2023] KEHC 21537 (KLR) (28 July 2023) (Judgment) it was held as follows:

16. Order 2 Rule 15 of the Civil Procedure Rules, has established clear principles which guide courts in the exercise of the power to strike out suits. It provides that:

"15.

- (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.”

17. The law in regard to striking out of suits is that striking out should be done as a last resort in the plainest of the case where the case is hopeless and is not sustainable.”
10. In the present suit, it is clear that the application for striking out has not been brought under Order 2 Rule 15, but in this court’s view, those same principles enunciated in the case law cited herein above apply nevertheless. This court shall therefore approach the issue of striking out the suit herein with an abundance of caution.
11. The 4<sup>th</sup> defendant’s first limb of the objection is that that the suit was instituted 39 years after the cause of action arose, contrary to Section 7 of the *Limitation of Actions Act*. The second limb of this objection to the suit is the allegation that the suit relating to the ownership of the suit property has been heard and fully determined by the Court of Appeal, whose orders have not been set aside.
12. On the last point however, this court is not of the view that the applicant has demonstrated that any previous litigation over the suit land has been concluded between the same parties herein or between persons claiming under them and in a competent court of law. What this court has seen are cases involving other people and not the litigants herein. On that basis I find that the doctrine of res judicata does not apply in this case.
13. Going back to the first limb of the objection on whether the claim is time barred, the court observes that this is a matter in which many events are said to have taken place culminating in an alleged decision by the National Land Commission made as recently as 2016 recommending that the titles issued to any party subsequent to those issued in the plaintiff’s names be revoked. It is undisputed that there are other court decisions of that that recently declared the June 1986 Kenya Gazette Notice No 2505 and the then Commissioner of Lands’ letter purporting to recall titles in the area the suit land is situate illegal and unconstitutional.
14. Article 50 of *the Constitution* of Kenya provides for the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before court or if appropriate another independent and impartial tribunal or body. Article 159 (2) (d) provides that justice shall be administered without undue regard to technicalities.
15. In this court’s view this is an issue that can not be summarily tried at an interlocutory stage without the peril of occasioning at least one of the opposing parties some harm. I hardly think that in the circumstances of the present case any determination of the suit on the basis of a technicality without hearing of the evidence would be fair to the parties.
16. It is the opinion of this court that given the labyrinthine issues involved in the matter, the determination of the issue of statutory time bar necessitates a hearing of the evidence of the parties. I therefore reject the preliminary objection that the plaintiff’s claim is time barred as it requires adduction of evidence and I order that the matter shall proceed to full hearing.
17. In the final analysis the application dated November 29, 2024 is dismissed for want of merits. the costs shall be in the cause.
18. The parties shall comply with the rules and they shall file their trial bundles, duly indexed and paginated, the plaintiff within 21 days of this order and the defendant within 21 days of the expiry of the period granted to the plaintiff. The suit shall be listed for a mention on April 7, 2025 for issuance of a hearing date.



**DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 25<sup>TH</sup>  
DAY OF FEBRUARY 2025.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI**

