



REPUBLIC OF KENYA



KENYA LAW
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**Matoya & another v Attorney General & 4 others (Environment & Land
Case 24 of 2020) [2024] KEELC 5488 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5488 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 24 OF 2020**

M SILA, J

JULY 25, 2024

BETWEEN

BEATRICE MATOYA 1ST PLAINTIFF

TABITHA BONARERI MATOYA 2ND PLAINTIFF

AND

HON. ATTORNEY GENERAL 1ST DEFENDANT

COMMISSIONER OF LANDS 2ND DEFENDANT

LAND REGISTRAR, KISII 3RD DEFENDANT

HENRY MANYANGE MATOYA 4TH DEFENDANT

JAMES MANYANGE OBIRI 5TH DEFENDANT

RULING

1. The application before me is that dated 3 April 2023 but filed on 4 July 2023 by the 4th defendant. It asks this court to be pleased to review its ruling delivered on 1 March 2023. The application is based on the ground that in my said ruling, I did not address myself as to whether the 5th defendant had capacity to be sued. The application is opposed by the plaintiff.
2. My ruling of 1 March 2023 was in respect of two preliminary objections, one of which was raised by the 4th defendant. In his preliminary objection, the applicant raised three issues being (i) that this suit is time barred pursuant to Section 7 of the *Limitation of Actions Act*, (ii) that the suit is res judicata, and (iii) that the 5th defendant lacks capacity to be sued. The other preliminary objection was more or less to the same effect as it asked that the suit be struck out for being time barred and res judicata. I heard the objections but I was not convinced. On the issue of res judicata, various cases were cited but my assessment was that they do not make this suit res judicata as they were either dealing with different subject matter or were withdrawn and not heard on merits. On whether the suit is time barred,



I directed that that is a matter that could only adequately be canvassed during the hearing of the suit. In this application the 4th defendant urges that in my ruling of 1 March 2023, I did not address myself on the issue whether the 5th defendant has capacity to be sued.

3. I have gone through that ruling and I agree that I may not have addressed myself on the 3rd limb of the preliminary objection, that is whether the 5th defendant has capacity to be sued.
4. I now address myself on that issue and I will be brief. I hold as follows :
5. It is for the 5th defendant to raise complaint on why he has been sued. If he feels that he has been wrongly sued, he is at liberty to file an application to be struck out of this suit. That, in my humble view, is a matter that can only be canvassed through the taking of evidence in an affidavit, where the 5th defendant can contend that he is wrongly sued, and the plaintiff respond, and say why they feel that the 5th defendant has been properly sued. I cannot address myself on that issue as a preliminary objection. I will thus proceed to dismiss the third limb of the preliminary objection but without prejudice to the right of the 5th defendant to apply to be struck out as I have elaborated above.
6. There will be no orders as to costs.
7. It is so ordered.

DATED AND DELIVERED THIS 25 DAY OF JULY 2024

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

