



**Njapit & 3 others v Mussa & 4 others (Environment & Land Case  
E006 of 2021) [2024] KEELC 6288 (KLR) (30 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6288 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT & LAND CASE E006 OF 2021  
CG MBOGO, J  
SEPTEMBER 30, 2024**

**BETWEEN**

**SALATON OLE NJAPIT ..... 1<sup>ST</sup> PLAINTIFF  
NAISWAKU ENE NJAPIT ..... 2<sup>ND</sup> PLAINTIFF  
NOONKIPA ENE NJAPIT ..... 3<sup>RD</sup> PLAINTIFF  
KARSIE ENE NJAPIT ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**ISSAK MUSSA ..... 1<sup>ST</sup> DEFENDANT  
KARIM BUX MUSSA ..... 2<sup>ND</sup> DEFENDANT  
NASIR ALI MUSSA ..... 3<sup>RD</sup> DEFENDANT  
BASHIR MUSSA ..... 4<sup>TH</sup> DEFENDANT  
HAMID MUSSA ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. Before this court for determination is the notice of motion dated 9<sup>th</sup> April, 2024 filed by the defendants/ applicants and it is expressed to be brought under Order 2 rule 15 (1)(a), (b), (c) and (d) of the [Civil Procedure Rules](#) and Section 7 of the [Limitations of Actions Act](#) seeking the following orders: -
  - i. That the plaint filed herein and dated 3<sup>rd</sup> February, 2021 be struck out.
  - ii. That costs of this application be borne by the defendants (sic).
2. The application is predicated on the grounds inter alia that the plaint does not disclose a reasonable cause of action. The application is further supported by the affidavit of Karim Bux Mussa, the 2<sup>nd</sup> defendant/ applicant sworn on even date. The 2<sup>nd</sup> defendant/ applicant deposed that on the face of the



pleadings, the claim is for recovery of land, and that the date of accrual of the cause of action herein was 13<sup>th</sup> February, 1980. He further deposed that the plaintiffs/ respondents have admitted to have filed a similar matter in 2008 being ELC 168 of 2008 which is pending determination.

3. The 2<sup>nd</sup> defendant/ applicant further deposed that the plaintiffs/ respondents are aware of the accrual of the cause of action as at 2008, and have overlaid the same on an existing suit which is a gross abuse of the court process. It was deposed that the plaintiffs/ respondents have not attached any evidence to show that they were co-owners of Cis-Mara/ Olchoro/ Oiruwa/ 17 and Cis-Mara/ Olchoro/ Oiruwa/ 19. Further, he deposed that at the time when the grant of letters of administration was issued, the parcels of land did not form part of the estate of Nelson Njapit. The 2<sup>nd</sup> defendant/ applicant went on to depose that the plaint is a gambling exercise as it is time barred, and it has been filed by people who have no demonstrable right over the parcels of land.
4. The plaintiffs/ respondents filed their grounds of opposition dated 22<sup>nd</sup> July, 2024 challenging the application on the following grounds: -
  1. The applicants are seeking to run away from explaining how they got registered over the property where they never executed a sale agreement or transfer documents in their favour while they were minors and the late Nelson Njapit (deceased) who had no capacity to transfer land to the applicants as he was not the registered owner.
  2. The applicants have not exhibited what they paid to the 1<sup>st</sup> respondent who was a co-registered owner of the suit parcel to acquire registration.
  3. The 1<sup>st</sup> respondent has never signed a transfer document or sale agreement in favour of the applicants.
  4. The application seeks a short cut and an attempt to disrupt the fair hearing of this suit and the application is an abuse of court process.
  5. The applicant has not disputed the facts of fraud which the applicants used to secure registration of the suit parcel and this can only be proved through trial.
  6. The respondent prays that the application be dismissed with costs.
5. The application was opposed by the replying affidavit of Karsis Ene Njapit, the 4<sup>th</sup> plaintiff/ respondent sworn on 12<sup>th</sup> September, 2024. The 4<sup>th</sup> plaintiff/ respondent deposed that the registration of the defendants/ applicants as the owners of the suit properties was fraudulently done, and that there is no evidence of payment of any purchase price. The 4<sup>th</sup> plaintiff/ respondent further deposed that cases of fraud and illegal transactions are not statutory governed, and it may be filed anytime.
6. The application was canvassed by way of written submissions. The defendants/ applicants filed their written submissions dated 30<sup>th</sup> July, 2024. The defendants/ applicants submitted that for the purposes of Order 2 Rule 15 of the *Civil Procedure Rules*, a matter is scandalous if it is offensive, improper and it denies a well-known fact. Further, they submitted that stale claims fit within the category of scandalous claims, and they relied on the case of *Madison Insurance Company Limited v Augustine Kamanda Gitau* [2020] eKLR.
7. The defendants/ applicants further submitted that this court has inherent powers to prevent its procedures and processes from abuse and for the instant pleadings, they do not merit the court's attention. They relied on the case of *Satya Bhama Gandhi v Director of Public Prosecutions & 3 Others* [2018] eKLR.



8. The defendants/ applicants further submitted that based on the time when the cause of action arose, the plaintiffs/ respondents ought to have presented the case within 12 years which was in the year 1992. For this reason, the defendants/applicants submitted that the case is barred by the Limitations of Actions Act, and that it is frivolous and scandalous. Reliance was placed in the case of *Sobanlaldurgadass Rajput & Another v Divisional Integrated Development Programmes Co. Limited* [2021] eKLR.
9. In conclusion, the defendants/ applicants submitted that the instant suit is an abuse of the court process for the reason that the plaintiffs/ respondents having pleaded that they had filed Nakuru ELC 168 of 2008, which is still pending, went ahead and filed the instant suit. It was their submission that no party should be permitted to stultify the court process and that this court should stop abuse of its process by striking out this suit.
10. The plaintiffs/ respondents filed their written submissions dated 19<sup>th</sup> September, 2024 where they raised two issues for determination as listed below: -
  1. Whether the entire suit is time barred under the limitations of Actions Act.
  2. Whether the suit is bad in law incurably defective, frivolous and vexatious and an abuse of the court process.
11. On the first issue, the plaintiffs/ respondents submitted that Section 7 of the Limitations of Actions Act is not applicable in the instant case, as there is no extension as provided for under Section 26 of the Limitations of Actions Act on the grounds that the right of action was concealed by the defendants/ applicants. To buttress on this submission, the plaintiffs/ respondents relied on the case of *Dickson Ngige Ngugi v Consolidated Bank Ltd (Formerly Jimba Credit Corporation Limited) & Another* [2020] eKLR. They further submitted that their claim is based on fraud committed by the defendants/ applicants, and that the suit properties were fraudulently transferred between the defendants/applicants. The plaintiffs/ respondents further relied on the cases of *Tureti Obara v Peter Koipetai Nengisoi* [2014] eKLR and *Philip Kimutai Langat v John Kibet Maina*, Kericho High court Civil Case 100 of 2010.
12. On the second issue, the plaintiffs/ respondents while relying on the case of *Mehuba Gelan Kelil & 2 Others v Abdulkadir Shariif Abdirhim & 4 Others* [2015] eKLR, submitted that a suit which is bad in law, misconceived, and discloses no reasonable cause of action cannot be entertained through a preliminary objection.
13. I have considered the application, the replies thereof and the written submissions filed by both parties. In my view, the issue for determination is whether the plaint dated 3<sup>rd</sup> February, 2021 ought to be struck out.
14. Order 2 Rule 15 (1) of the *Civil Procedure Rules*, states that –

“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.”
15. The decision to strike out pleadings is discretionary, and the courts are urged to exercise such discretion with utmost caution, and only in the clearest of cases, since striking out of pleadings is considered to be draconian, and drastic. In determining whether the instant plaint ought to be struck out, the defendants/ applicants argued that the claim for recovery of land is statute barred since the cause of action arose in the year 1980, secondly, that the plaintiffs/ respondents filed this suit whereas a similar matter being Nakuru ELC No. 168 of 2008 is pending, which is an abuse of the court process. The defendants/ applicants further contended that the plaintiffs/ respondents have not proved co-ownership of the suit properties, therefore there is no reasonable cause of action against them.
16. In *Yaya Towers Limited v Trade Bank Limited (In Liquidation)* (Civil Appeal No. 35 of 2000), it was held that:
- “A plaintiff (defendant) is entitled to pursue a claim in our courts however implausible and however improbable his chances of success. Unless the defendant (plaintiff) can demonstrate shortly and conclusively that the plaintiff’s claim is bound to fail or is otherwise objectionable as an abuse of the process of the court, it must be allowed to proceed to trial...It cannot be doubted that the court has inherent jurisdiction to dismiss that, which is an abuse of the process of the court. It is a jurisdiction, which ought to be sparingly exercised and only in exceptional cases, and its exercise would not be justified merely because the story told in the pleadings was highly improbable, and one, which was difficult to believe, could be proved.”
17. Also, in *D.T. Dobie & Company Kenya Limited v Joseph Mbaria Muchina & Another* [1980] eKLR, Madan, JA (as he then was) stated:
- “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.”
18. I have perused the plaint dated 3<sup>rd</sup> February, 2021 and I note that the plaintiffs/ respondents in paragraph 12 pleaded acts and particulars of fraud which took place on or about 13<sup>th</sup> February, 1980. In paragraph 11 of the plaint, the plaintiffs pleaded that the defendants/ applicants fraudulently obtained the registration of the suit properties in their names. From the witness statement by the 1<sup>st</sup> plaintiff/ respondent dated 3<sup>rd</sup> February, 2020 (sic), reference has been made to a visit by the defendants/ applicants which took place in early December, 2020. From my analysis, and whereas there is a claim of fraud as pleaded by the plaintiffs/ respondents, I find it necessary that a full trial will paint a clear glimpse of the circumstances leading to the filing of this case. It is my view that the plaint raises issues that ought to be tried, and the case heard on its merits. Also, a plain reading of the instant plaint cannot be termed as one which is frivolous, scandalous, and one which does not have a reasonable cause of action.
19. Arising from the above, the notice of motion dated 9<sup>th</sup> April, 2024 is thus dismissed. Costs in the cause. Further mention on 9<sup>th</sup> October, 2024 for further directions. Orders accordingly.

**DATED, SIGNED & DELIVERED VIA EMAIL this 30<sup>TH</sup> day of SEPTEMBER, 2024.**



**HON. MBOGO C.G.**

**JUDGE**

**30/09/2024.**

In the presence of: -

Mr. Meyoki – C.A

