



**Kung'u & another (As Administrators of the Estate of Cosmas Kungu Muhinja - Deceased)
v Kibagare Slums Association (Sued Through Abdi Godana Dida & David M. Nyaga,
its Officials and Trustees); National Land Commission (Interested Party) (Environment
& Land Case 64 of 2020) [2024] KEELC 13359 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13359 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 64 OF 2020
LN MBUGUA, J
NOVEMBER 14, 2024**

BETWEEN

**JAMES NG'ANG'A KUNG'U 1ST PLAINTIFF
MYRA WANJIRU KUNG'U SADIQ ALIAS MONICA WANJIRU
KUNG'U 2ND PLAINTIFF
AS ADMINISTRATORS OF THE ESTATE OF COSMAS KUNGU MUHINJA -
DECEASED**

AND

**KIBAGARE SLUMS ASSOCIATION (SUED THROUGH ABDI GODANA DIDA
& DAVID M. NYAGA, ITS OFFICIALS AND TRUSTEES) DEFENDANT**

AND

NATIONAL LAND COMMISSION INTERESTED PARTY

RULING

1. Before me is the defendant's Notice of Motion application dated 29.4.2024 seeking orders to strike out the suit. The application is premised on the grounds on the face of the application and the supporting affidavit of John Mwangi, the chairman of the defendant. They contend that the plaintiffs are not the owners of the suit land which still belongs to the Kenya railways.
2. The plaintiffs oppose the application vide their replying affidavit dated 1.7.2024 sworn by James Nganga Kungu one of the administrators of the estate of Cosmas Kungu. He contends that the application is premature and a waste of court's precious time as the survey report by National Land Commission did not in any way confer proprietary rights and or possession of the suit property upon



the defendants. Adding that the suit is partly heard where PW1 has given his testimony and is yet to be stood down.

3. I have considered all the arguments proffered herein. In *John Nabashon Mwangi v Kenya Finance Bank Limited (in Liquidation)* [2015] eKLR Justice Gikonyo held that;

“The fundamental principles of justice are enshrined in the entire Constitution and specifically in Article 159 of the *Constitution*. Article 50 coupled with article 159 of the *Constitution* on right to be heard and the constitutional desire to serve substantive justice to all the parties, respectively, constitutes the defined principles which should guide the court in making a decision on such matter of reinstatement of a suit which has been dismissed by the court.....”

4. It is the finding of this court that the same principles would apply in a question of whether a suit should be sustained or struck out. The trial herein is mid stream, where the re-examination of PW1 is underway. Any issues relating to the merits or demerits of the case ought to be ventilated in the main hearing and not in interlocutory applications.
5. In the end, I find that the application dated 29.4.2024 is not merited, the same is hereby dismissed with costs to the plaintiffs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14th DAY OF NOVEMBER 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Kimiti for Plaintiff

Waigwa for Defendant

Njuguna for Interested Party

Court Assistant: Vena

