



REPUBLIC OF KENYA



**Muthusi v Olive Limited & another (Environment & Land Case  
E092 of 2022) [2024] KEELC 13250 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13250 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE E092 OF 2022  
LC KOMINGOI, J  
NOVEMBER 14, 2024**

**BETWEEN**

**MARGARET NDUKU MUTHUSI ..... PLAINTIFF**

**AND**

**OLIVE LIMITED ..... 1<sup>ST</sup> DEFENDANT**

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

**RULING**

1. This is the Notice of Motion dated May 29, 2023 brought under;  
  
(Section 1A, 1B and 3A of the *Civil Procedure Act*; Order 1 Rule 10 (2); Order 2, Rule 15; Order 51 Rule 1 of the *Civil Procedure Rules*, 2010 and all other enabling provisions of the law).
2. It seeks orders;
  - 1) The name of the 1<sup>st</sup> Defendant be struck out from the suit on the ground that it is improperly enjoined as a party in this suit.
  - 2) The suit against the 1<sup>st</sup> Defendant be struck out as it does not contain a sufficient cause of action against it.
  - 3) Costs of this application be provided for.
3. The grounds are on the face of the Notice of Motion and are set out in paragraphs a – h.
4. The Application is supported by the affidavit of Peter Gitau Kariuki, a Director of the 1<sup>st</sup> Defendant sworn on the May 29, 2023.



5. The Application is opposed. There is a Replying Affidavit sworn by Margaret Nduku Muthusi, the Plaintiff/Respondent sworn on the June 5, 2023.
6. The 2<sup>nd</sup> Defendant intimated to the court that he did not wish to participate in the Notice of Motion.
7. On the October 17, 2023, the court with the consent of parties directed that the Notice of Motion be canvassed by way of written submissions.
8. The 1<sup>st</sup> Defendant/Applicant's submissions are dated March 4, 2024. They raise one issue for determination; whether the Plaintiff's Application meets the threshold set for striking out a party from the pleadings. Reliance placed on Order 1 rule 10 (2) of the Civil Procedure Rules and the case of Opele Vs. Biometric Technology & 3 Others KEELRC 3718 (KLR).
9. It is further submitted that the Plaintiff/Respondent has failed to prove that the 1<sup>st</sup> Defendant/Applicant has interfered with her peaceful possession of the property or threatened to interfere with proprietary rights of the suit parcels.
10. It is also submitted that the attached photographs depicting a project by the 1<sup>st</sup> Defendant/Applicant named "Naserian Ridge Phase 3," are for the 1<sup>st</sup> Defendant's parcel of land Kajiado/Ntashart/1237, which it purchased from George Ngure Kariuki.
11. It is also submitted that the question of whether the parties joined in a suit are proper, is one that goes to the root of the case. He has put forward the cases of Apex International Limited & Another Vs. Kenya Anti-Corruption Commission (2012) eKLR. Amon Vs. Raphael Tuck & Sons Ltd (1956) 1 AII ER 273.
12. It is also submitted that the court may exercise its discretion and order the striking out of the 1<sup>st</sup> Defendant/Applicant from the pleadings as there is no reasonable cause of action raised against it and has been improperly joined in the suit.  
He prays that the Application be allowed.
13. The Plaintiff/Respondent submissions are dated September 4, 2024. It is submitted that the 1<sup>st</sup> Defendant/Applicant has advertised the Plaintiffs parcel of land naming the project as "Naserian Ridge Phase 3."
14. Counsel further submitted that the 1<sup>st</sup> Defendant/Applicant has not attached any sale agreement to show that it purchased its parcel of land from George Ngure Kariuki. That this application is an attempt by the 1<sup>st</sup> Defendant/Applicant to hoodwink the court and divert the attention of this court from the real issues arising herein.
15. It is further submitted that the Plaintiff's claim against the 1<sup>st</sup> Defendant raises crucial issues including whether the 1<sup>st</sup> Defendant had an interest in taking over the Plaintiff's land.  
She prays that the Notice of Motion be dismissed with costs to the Plaintiff/Respondent.
16. I have considered the Notice of Motion, the affidavit in support, the response thereto, the rival submissions and the authorities cited. The issue for determination is whether the Application is merited.
17. In paragraph 7 of the plaint, the plaintiff states;  
"On October 31, 2022, the 1<sup>st</sup> Defendant and its servants trespassed and started clearing the bushes on the land in readiness of illegal subdivision of the property belonging to the plaintiff so that they can sell the plots to unsuspecting members of the public."



18. The Plaintiff has also annexed photographs to the Supplementary Affidavit sworn on November 2, 2022 which shows a Bill board written “Naserian Ridge Phase 3” as advertised by Olive. These averments have not been controverted by the 1<sup>st</sup> Defendant/Applicant.
19. It is clear that the Plaintiff has a claim against the 1<sup>st</sup> Defendant/Applicant which he cannot be wished away. The court will have to determine whether the Plaintiff has a case against the 1<sup>st</sup> Defendant after analysing the evidence tendered.
20. In conclusion I find no merit in this application and the same is dismissed. The costs will abide the outcome of the main suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 14<sup>TH</sup> DAY OF NOVEMBER 2024**

**L.KOMINGOI**

**JUDGE**

In the presence of:

Mr. S.M. Thuku for the Plaintiff.

M/s Njoki Macharia for the 1<sup>st</sup> Defendant.

Ms. Kirina for the 2<sup>nd</sup> Defendant.

Mutisya – Court Assistant.

