



**Mohamed & 54 others v County Government of Mandera (Environment & Land Case E008 of 2024) [2025] KEELC 2975 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 2975 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT GARISSA  
ENVIRONMENT & LAND CASE E008 OF 2024**

**JM MUTUNGI, J  
MARCH 27, 2025**

**BETWEEN**

**ADAN MOHAMED & 54 OTHERS & 54 OTHERS & 54 OTHERS .... PLAINTIFF**

**AND**

**COUNTY GOVERNMENT OF MANDERA ..... RESPONDENT**

**RULING**

1. The Defendant/Applicant herein filed a Notice of Motion application dated 24<sup>th</sup> May 2024 expressed to brought under Order 2 Rule 15 and Order 1 Rule 8 and Section 3 and 3A and sought the following orders;
  1. That the Plaintiffs' pleadings do not disclose a reasonable cause of action, therefore an abuse of the Court process, and neither do they meet the threshold of a representative suit set under Order 1 Rule 8 of the Civil Procedure Rules, 2010.
  2. That this Honourable Court be pleased to strike out the Plaintiff's pleadings ab initio on the grounds set out under Order 2 Rule 15 of the Civil Procedure Rules, 2010.
  3. That the costs of this application be borne by the Plaintiff.
2. The application was founded on the grounds outlined on the body of the application and the Affidavit sworn by Mohammed Nur Abdi, Counsel for the Defendant. He deposed that the pleadings filed by the Plaintiff are scandalous, vexatious, and frivolous due to a lack of clarity regarding whose interests among the Arda Adeo Farmers Association, Hegan Development Group, or Garbaqoley Farmers the Plaintiffs represent. Counsel averred that the Plaintiff annexed a power to plead supported by only three individuals instead of the fifty-four (54) individuals who are Plaintiffs in this suit. He argued that the authority to file the suit was issued by three officials representing the Garbaqoley Farmers, who numbered over 450. Yet, the suit was initiated in the names of 55 Plaintiffs instead of the full count of 450. He further averred that the Plaintiffs had not provided any documentation proving that the



Garbaqoley Farmers had been registered as an association on whose behalf the three Officials claim to act. Counsel further averred there was no evidence showing that the 450 farmers had any vested interest in this matter. Counsel argued that the Plaintiffs included farmers from three different associations, creating uncertainty regarding whose interests are being represented. He further pointed out that the 1<sup>st</sup> Plaintiff is a member of all three associations, indicating a conflict of interest. In Counsel's view, the pleadings did not reveal a reasonable cause of action and failed to meet the criteria for a representative suit under Order 1 Rule 8 of the Civil Procedure Rules. He urged that the suit be struck out under Order 2 Rule 8 of the Civil Procedure Rules.

3. In response, the Respondents filed grounds of opposition, stating that the Applicants' application was legally flawed, defective, misconceived, and an abuse of the Court's process. They argued that the issues raised in the application could only be addressed in a full trial where evidence is presented to resolve factual matters. The Respondents asserted that the authority attached to the Plaintiff is competent and valid, as the Plaintiffs are properly identified. They contended that whether the Plaintiffs possess formal documents proving the registration of the Welfare groups would be determined during the trial with evidence from both parties. They further argued that the Plaintiffs, as members of the Garbaqoley Farmers Group, an umbrella organization reliant on agricultural activities, are entitled to public participation as guaranteed by the *Constitution*. They claimed that this right had been denied them by the Applicants. The Respondents maintained that issues related to land should be fully heard and adjudicated rather than being dismissed based on what they described as flimsy, frivolous, and vexatious grounds outlined in the application by the Defendant. They expressed concern that the County Government had transformed some farmlands into unlawful dumpsites, attracting scavengers, dogs, and hyenas, thereby posing a health hazard to the Community. In conclusion, the Plaintiff argued that the greater interest of justice would be served by hearing both parties rather than granting the orders sought in the application.

### **Analysis and Determination**

4. I have reviewed the application, the Respondent's grounds of opposition, and the parties' submissions. The issues that arise for determination are:
  1. Whether the Plaintiffs have complied with the requirements of a representative suit under Order 1 Rule 8 of the Civil Procedure Rules.
  2. Whether the Plaintiffs' pleadings disclose a reasonable cause of action as required under Order 2 Rule 15 of the Civil Procedure Rules.
  3. Whether the suit ought to be struck out or allowed to proceed to full trial.

### **Compliance with Order 1 Rule 8 of the Civil Procedure Rules.**

5. Order 1 Rule 8 of the Civil Procedure Rules provides as follows: -
  1. Where numerous persons have the same interest in any proceedings, the proceedings may be commenced, and unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.
  2. The parties shall, in such case, give notice of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.
  3. Any person on whose behalf or for whose benefit a suit is instituted or defended under sub rule (1) may apply to the Court to be made a party to such suit.



6. Order 1 Rule 8 of the Civil Procedure Rules allows one or more individuals to sue on behalf of a larger group if they share a common interest. The requirements under this Rule are that; Proper notice must be given to all interested parties; and that the individuals represented must share the same interest in the proceedings.
7. The Plaintiffs in the present suit filed an authority to file suit, which was signed by Adan Mohamed, Ismail Ali, and Farah Mohamed. These individuals identified themselves as representatives of over 450 farmers from Garbaqoley.
8. As has been observed above, the requirements under Order 1 Rule 8 Civil Procedure Rules are that proper notice must be given to all interested parties and the individuals represented must share the same interest in the proceedings. Plaintiffs in their documents included a document titled “Request for a Court Order,” which was signed by all 55 individuals listed as Plaintiffs, which perhaps was intended to signify their commonality of interest though the Court notes three of the would have been Plaintiffs have filed a notice withdrawing from the case as Plaintiffs stating their names had been included without their consent.
9. In the case of Jonathan Njagi & 15 Others v County Government of Kirinyaga & Another [2019] eKLR, the Court held that a representative suit must be properly authorized and supported by express consent from the individuals represented. Where authorization is disputed, the burden is on the initiating party to demonstrate compliance with Order 1 Rule 8 of the Civil Procedure Rules. Further, in the case of Moses Wachira v Niels Bruel & 2 Others [2015] eKLR, the court reiterated that failure to follow procedural requirements for representative suits, including proper notification and consent, is fatal to such a suit.
10. Applying these principles, the Plaintiffs when called upon to show compliance with this rule, did not produce a certificate of registration of the group they purported to represent, consent from the over 450 members of Garbaqoley Farmers, who they intend to represent, or any notification of the intention to sue. The absence of documented authority from all the Plaintiffs and the withdrawal of three Plaintiffs who claim they were not consulted raises a procedural defect.
11. The above notwithstanding, Order 1 Rule 9 of the Civil Procedure Rules provides that a suit shall not be defeated by reason of misjoinder or non-joinder of parties.
12. In the case of Jack Mukhongo Munialo -Vs- Nzoia Sugar Company Ltd & another (2017) eKLR the Court stated as follows:-
 

“...the above in my view is not a reason to strike out the entire suit taking into account that it is not fatal at this stage since the suit is still in its infancy stage and giving due regard to Article 159 of the *Constitution*. The Plaintiff still has an opportunity to comply...”
13. The Court may instead of applying a guillotine to strike out the suit order amendments or allow time to the Plaintiffs to rectify procedural defects/or flaws in their pleadings particularly where as in the present matter the case is at its infancy stage and the pleadings are yet to close.
14. Order 2 Rule 15 of the Civil Procedure Rules allows the court to strike out pleadings that:
  1. Do not disclose a reasonable cause of action.
  2. Are scandalous, frivolous, or vexatious
  3. May prejudice, embarrass, or delay the fair trial of the action.



- 4.. Amount to an abuse of the Court process.
15. The Applicant seeks to have the Pleadings struck out for failure to disclose any reasonable cause of action.
16. In the case of D.T Dobie & Company (Kenya) Limited –vs- Joseph Mbaria Muchina & Another (1980)eKLR the court stated thus:

“The Court ought to act very cautiously and carefully and consider all facts of the case without embarking upon a trial thereof before dismissing a case for not disclosing a reasonable cause of action or being otherwise an abuse of the process of the Court. At this stage the Court ought not to deal with any merits of the case, for that 'is a function solely reserved for the Judge at the trial as the Court itself is not usually fully informed so as to deal with the merits "without discovery, without oral evidence tested by cross-examination in an ordinary way". (Sellers, L.J. (supra)). As far as possible, indeed not at all, there should be no opinions expressed upon the application which may prejudice the fair trial of the action or make it uncomfortable or restrict the freedom of the trial judge in disposing of the case in the way he thinks it right.

If an action is explainable as a likely happening which is not plainly and obviously impossible the Court ought not to overact by considering itself in a bind summarily to dismiss the action. A Court of justice should aim at sustaining a suit rather than terminating it by summary dismissal. Normally a law suit is for pursuing it.

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.

On the other hand, if there is a point of law which merits a serious discussion the Court should be asked to proceed under order XIV" Rule 2.”

17. The Plaintiffs in the present suit allege that the Defendant has unlawfully transformed their farmland into dumpsites, which poses health and environmental hazards. They also aver they are occupying community land, which the Defendant under the law is holding in trust for the Community and that they as the Community are entitled to the use of the land. The Plaintiffs aver that the Defendant has engaged in the conversion of the Community Land to public land without following due process.
18. Under Article 63(3) of the *Constitution* the County Government holds any unregistered land on behalf of the Communities for which it is held. Article 63(3) provides as follows:-
- 63(3) Any unregistered Community land shall be held in trust by County Governments on behalf of the Communities for which it is held.
19. Sections 21 and 22 of the *Community Land Act*, Cap 287 Laws of Kenya outlines the procedure to be undertaken in converting Community Land to public land. The Plaintiffs suit raises issues concerning the process that the Defendant has adopted to convert what is otherwise Community land to public land. In the premises it cannot be said the suit does not raise triable issues. They are there.

The Court notes, the Plaintiffs may have had procedural lapses but considering the suit is at its infancy, these can be rectified. As observed by Madan JA in the DT Dobie –vs- Joseph Muchina case (supra) referred to above, Courts should always aim at sustaining suits rather than terminating them



prematurely. I will in the interest of Justice grant the Plaintiffs leave of 30 days of this Ruling, to amend their Plaint to align the same with the provisions of Order 1 Rule 8 of the Civil Procedure Rules. In the event of being served with any amended pleadings, the Defendant shall have corresponding leave of 21 days to amend their pleadings.

20. The costs of the application shall be in the cause.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT GARISSA THIS 27<sup>TH</sup> DAY OF MARCH 2025.**

**J. M. MUTUNGI**

**ELC - JUDGE**

