



REPUBLIC OF KENYA



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**Mwaura v Nairobi City County Government & 2 others (Environment & Land
Case 71 of 2020) [2023] KEELC 15790 (KLR) (23 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 15790 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 71 OF 2020
JO MBOYA, J
FEBRUARY 23, 2023**

BETWEEN

NAHASHON MWANGI MWAURA PLAINTIFF

AND

NAIROBI CITY COUNTY GOVERNMENT 1ST DEFENDANT

NAIROBI CITY COUNTY INSPECTORATE SERVICE 2ND DEFENDANT

MUKAB HOMES LIMITED 3RD DEFENDANT

RULING

Introduction and Background

1. *Vide* Notice of Motion Application dated the 3rd February 2023, the 3rd Defendant/Applicant has approached the Honourable court seeking for the following reliefs;
 - i. That this Application be and is hereby certified urgent and service of this Application be dispensed with in the first instance.
 - ii. That this Application be heard before the hearing of the main suit set for 8TH February 2023;
 - iii. That this Honourable Court be pleased to strike out the pleadings filed by the Plaintiff instituting this suit as the same is an abuse of the process of court;
 - iv. That the Plaintiff's suit be dismissed with costs as Plaintiff lacks the *Locus Standi* to initiate suit;
 - v. That the Costs of this Application be provided for;
2. The instant application is premised and anchored on various, albeit numerous grounds, totaling to 17 in number, which are enumerated in the body of the application. Besides, the application is supported by the affidavit of one Abdikadir Hassan Adan, sworn on even date.



3. Upon being served with the instant application, the Plaintiff/Respondent responded thereto *vide* a Replying Affidavit sworn on the 20th February 2022 and in respect of which, the Plaintiff/Respondent has contended, *inter-alia* that same was lawfully and duly issued with a Letter of allotment pertaining to and concerning Plot number 1962, East Legh Section VII, Timboroa Street, with the street of Nairobi.
4. Subsequently, the instant application came up for hearing on the 21st February 2023, whereupon the advocates for the respective Parties agreed to canvass and dispose of the current application by way of oral submissions. In this regard, the Application was duly canvassed and thereafter reserved for ruling.
5. Other than the foregoing, it is appropriate to state and underscore that the 1st and 2nd Defendants/ Respondents neither filed any responses to the said application nor attended court during the scheduled hearing.
6. In the premises, the only Parties who ventilated their submissions to and in respect of the instant application are the 3rd Defendant/Applicant and the Plaintiff/Respondent, only.

Submissions by the Parties

a. Applicant's Submissions

7. Learned counsel for the Applicant herein raised, highlighted and amplified four salient issues for consideration and determination by the Honourable court.
8. Firstly, learned submitted that the Plaintiff/Respondent herein has not placed before the court any credible and believable evidence, pertaining to and concerning ownership of the suit property. In this regard, counsel added that what has been placed before the court is a mere Letter of allotment, which does not confer any legal rights and/or interests over the suit property.
9. Furthermore, learned counsel contended that to the contrary the 3rd Defendant/Applicant has placed before the Honourable court credible evidence to show that same is the lawful and legitimate proprietor over and in respect of the suit property.
10. In the premises, counsel has therefore contended that the Plaintiff/Respondent herein has no legal rights and/or interests to and in respect of the suit property, capable of being vindicated and protected by the Honourable court.
11. In this regard, learned counsel has invited the court to take cognizance of the holding in the case of *Wreck Motors Ltd v Commissioner of Lands* (1997)eKLR, where the Court of Appeal stated that a certificate of title supersedes a letter of allotment.
12. Secondly, learned counsel for the Applicant has further submitted that to the extent that the Plaintiff/ Respondent does not have any lawful and legitimate rights to the suit property, same therefore is devoid and divested of the requisite *locus standi* to commence, originate and maintain the subject suit.
13. Additionally, learned counsel has further contended that *locus standi* represents the sufficiency of interests that a Party has over and in respect of the named dispute and hence same confers upon the claimant the capacity to approach and appear before the Honourable court on the named matter.
14. Be that as it may, counsel has contended that in the absence of the requisite *locus standi*, the Plaintiff/ Respondent herein has no lawful basis to approach the court or better still, to maintain the subject suit.



15. Arising from the foregoing, learned counsel for the Applicant has therefore submitted that the Honourable court ought to strike out the Plaintiff/Respondent's suit on the basis of lack of *Locus standi*.
16. To underscore the submissions pertaining to and concerning the question of *locus standi*, learned counsel for the Applicant has invited the Honourable court to take cognizance of the case of [Laws Society v The Commissioner of Lands](#) (2001)eKLR.
17. Thirdly, learned counsel for the Applicant has similarly submitted that the instant suit constitutes and amounts to an abuse of the due process of the court. In this regard, it has submitted that insofar as the plaintiff/Respondent does not have any Certificate of title to and in respect of the suit property, same cannot legally lay a claim thereto and by extension, file the instant suit.
18. Furthermore, learned counsel has also submitted that the Applicant herein has a certificate of title to the suit property and hence her rights to and in respect of the suit property are legally sanctioned and protected *vide* the provisions of Section 24 and 25 of the [Land Registration Act](#), 2012.
19. In view of the foregoing, learned counsel has therefore submitted that the filing of the instant suit by the Plaintiff/Respondent, even though same has no lawful title thereto, renders the suit an abuse of the due process of the court.
20. In respect of the submissions that the instant suit constitutes and amounts to an abuse of the due process of the court, learned counsel has cited and quoted the decision in the case of [Dr. Joseph N. K Arap Ngok v Justice Ole Kiewua](#) (1997)eKLR and [Muchanga Investments Ltd v Safaris Unlimited \(Africa\) Ltd](#) (2009)eKLR.
21. In a nutshell, counsel for the Applicant has therefore contended that the suit by and on behalf of the Plaintiff/Respondent does not raise or disclose any reasonable cause of action and hence same ought to be struck out in limine.

Plaintiff's/Respondent's Submissions

22. Learned counsel for the Plaintiff/Respondent adopted and relied on the Replying affidavit sworn on the 20th February 2023, together with annexures thereto and thereafter highlighted four salient issues for consideration by the court.
23. First and foremost, learned counsel for the Plaintiff/Respondent has submitted that the Plaintiff was lawfully and duly allocated the suit property in the year 1997. Besides, it has been submitted that other than the allocation of the suit property, the Plaintiff has also been in possession and occupation of the suit property up to and including when the 3rd Defendant/Applicant encroached onto and interfered with the Plaintiff's occupation thereof.
24. Owing to the foregoing, it has been contended that the question and/or issue pending before the Honourable court relates to ownership of the suit property, which is contended to be a question of fact and thus same can only be addressed and dealt with in the conventional manner.
25. Furthermore, learned counsel has added that the issue as to whether or not a Letter of allotment can confer and vests ownership rights is a question that can only be addressed and ventilated during a plenary hearing. In this regard, it has therefore been submitted that the contention that the Plaintiff/Respondent does not have lawful and legitimate rights over the suit property is prematurely raised by the Applicant.



26. Secondly, learned counsel for the Plaintiff/Respondent has submitted that the 3rd Defendant/Applicant herein has no nexus or affinity to the suit property, whatsoever and howsoever.
27. In any event, learned counsel for the Plaintiff/Respondent has submitted that the 3rd Defendant's/Applicant's Certificate of title relates to a separate and distinct ground as shown in the Registry Map which has been exhibited and attached to the Replying affidavit.
28. In addition, learned counsel for the Plaintiff/Respondent has contended that even though the 3rd Defendant's/Applicant's Title relates to a separate and distinct ground, the Applicant is using the impugned certificate of title to grab the Plaintiff's/Respondent's plot in question.
29. Furthermore, learned counsel has also added that the scheme by the 3rd Defendant/Applicant to defraud the Plaintiff/Respondent of the suit property is being aided by the National Police Service, who have continually been used to harass and intimidate the Plaintiff/Respondent.
30. Thirdly, learned counsel for the Plaintiff/Respondent has submitted that the Plaintiff/Respondent has lawful and legitimate rights to and in respect of the suit property and in this regard, the Plaintiff/Respondent therefore has the requisite *locus standi* to approach the Honourable court and in particular, to mount the instant suit.
31. Fourthly, learned counsel for the Plaintiff/Respondent has submitted that the issues which has been raised and ventilated by the Applicant herein are issues of facts, which can only be addressed during a plenary hearing, when the Parties will be at liberty to tender evidence and be subjected to cross examination, albeit in the conventional manner.
32. In the premises, counsel has therefore contended that this Honourable court is ill equipped to interrogate and address the issues of facts, which have been raised and canvassed at the foot of the current application.
33. Arising from the foregoing, learned counsel for the Plaintiff/Respondent has therefore submitted that it is the current application which constitutes and amounts to an abuse of the due process of the court.
34. Consequently and in the premises, counsel has therefore invited the Honourable court to find and hold that the impugned Application is devoid of merits and thereafter, to dismiss the application with costs.

Issues for Determination

35. Having reviewed and evaluated the application herein, together with the supporting affidavit thereto and having taken into account the contents of the Replying affidavit by the Plaintiff/Respondent; and having considered the oral submissions tendered on behalf of respective Parties, the following issues do arise and are worthy of determination;
 - i. Whether the Plaintiff/Respondent is seized of the requisite *Locus standi* to commence, mount and maintain the instant suit.
 - ii. Whether the instant suit discloses a reasonable cause of action, worthy of being ventilated vide a Plenary hearing.
 - iii. Whether the instant suit constitutes or amounts to an abuse of the Due process of the Honourable court.



Analysis and Determination

Issue Number 1. Whether the Plaintiff/Respondent is Seized of the Requisite Locus Standi to Commence, Mount and Maintain the Instant Suit.

36. The Plaintiff/Respondent herein filed and mounted the instant suit *vide* Plaint dated the 12th May 2020 and in respect of which the plaintiff/Respondent has contended that same was duly and lawfully allocated Plot number 1962- East Legh Section 7, Timboroa Road, within the City of Nairobi.
37. On the other hand, the Plaintiff/Respondent further contended that despite having been duly allocated the suit plot, the Defendant herein has illegally and unlawfully trespassed onto the suit plot and thereby infringed upon and violated the Plaintiff's/Respondent's rights/interests over the suit property.
38. Furthermore, the Plaintiff/Respondent has also contended that as a result of the impugned actions by and on behalf of the 3rd Defendant/Applicant, same (Plaintiff/Respondent) has therefore been deprived and dispossessed of the suit property, albeit without lawful and reasonable cause.
39. Premised on the foregoing, the Plaintiff/Respondent has therefore approached the Honourable court, seeking albeit numerous reliefs, *inter-alia* declaration that same is the lawful and legitimate allottee of the suit property.
40. From the totality of the averments contained in the body of the Plaint, and which have been duly verified, the Plaintiff/Respondent contends that same is the lawful and legitimate allottee over and in respect of the suit property.
41. To the contrary, the 3rd Defendant/Applicant has averred that the Plaintiff/Respondent does not have any lawful rights or interests over and in respect of the suit property. In this regard, the 3rd Defendant/Applicant has contended that the purported Letter of allotment can neither confer nor vest in the Plaintiff/Respondent any ownership rights to the suit property.
42. Arising from the foregoing, the 3rd Defendant/Applicant has therefore contended that without any lawful and legitimate rights over and in respect of the suit property, the Plaintiff/Respondent does not have the requisite *locus standi* to mount and maintain the current suit.
43. In the premises, it has therefore been submitted that the Plaintiff herein is devoid and divested of the requisite *locus standi* to appear and/or approach the Honourable court, in matters pertaining to the suit property.
44. Before resolving the issues as to whether or not the Plaintiff/Respondent has the requisite *locus standi*, to approach and appear before the court in respect of the suit property, it is appropriate to ascertain and authenticate what *locus standi* connotes and by extension, its importance in litigation.
45. In this regard, it is imperative to refer to and take cognizance of the holding in the case of *Kbelef Khalifa El-Busaidy v Commissioner of Lands & 2 others* [2002] eKLR while canvassing the issue of *Locus Standi* stated thus:
- “...For an individual to have a *locus standi*, he must have an interest either vested or contingent in the subject matter before the court, which interest must be a legal one. Such interest must be above that of other members of the public in general.”
46. Additionally, the meaning, tenor and import of *locus standi* was recently revisited in the case of *Michael Osundwa Sakwa v Chief Justice and President of the Supreme Court of Kenya & another* [2016]



eKLR while referring to the matter of *Ms. Priscilla Nyokabi Kanyua v Attorney General & Interim Independent Electoral Commission* Nairobi HCCP No. 1 of 2010.

47. For coherence, the Honourable court stated and observed as hereunder;

“...In Kenya the Court has emphatically stated that what gives *locus standi* is a minimal personal interest and such interest gives a person standing even though it is quite clear that he would not be more affected than any other member of the population.”

48. From the foregoing decisions, what becomes evident and apparent is that *locus standi* connotes the interest(s) that the named claimant has over and in respect of the subject before the Honourable court. In this regard, there is no gainsaying that even if the rights and interests over and in respect of the dispute, is nominal or otherwise minimal, such a claimant would be deemed to have the requisite *locus standi* in the impugned dispute.

49. As pertains to the subject matter, the Plaintiff/Respondent has contended that same was lawfully and duly allocated the suit property. Furthermore, the Plaintiff/Respondent has also added that upon the allocation of the suit property, same entered upon and took possession thereof.

50. In addition, the Plaintiff/Respondent has also contended that same remained in occupation and possession of the suit property up to and including when the Defendant/Applicant trespassed onto the suit property and caused extensive damage thereto.

51. The foregoing averments, may or may not be true, but it is not lost on this court that the determination of whether or not the impugned averments are true, or otherwise, can only be gone into during the plenary trial/hearing.

52. For now, all that the court is called upon is to determine whether the Plaintiff/Respondent has exhibited some scintilla of rights and interests over the suit property and by extension, the subject matter before the court.

53. Taking into account, the erudite and elaborate definitions supplied *vide* the case law, which I have cited herein before, I have no difficulty in stating and holding that the Plaintiff/Respondent indeed has the requisite *locus standi* to approach and appear before this Honourable court.

54. For clarity, the *locus standi* herein is predicated on the claim of having been duly allocated the suit property and coupled with having been in occupation and possession thereof.

Issue Number 2. Whether the Instant Suit Discloses a Reasonable Cause of Action, Worthy of Being Ventilated Vide a Plenary Hearing.

55. Other than the contention that the Plaintiff/Respondent herein was devoid and divested of the requisite *locus standi*, to mount and maintain the instant suit, the Applicant herein has also contended that the Plaintiff's suit does not disclose any reasonable cause of action.

56. Whilst arguing this limb of the application, learned counsel for the Applicant contended that a Letter of allotment, like the one exhibited by the Plaintiff herein, does not confer any ownership rights to and in respect of land.

57. In this regard, learned counsel for the Applicant invited the court to take cognizance of and to apply the holding of the Court of Appeal in the case of *Wreck Motors Ltd v The Commissioner of Land* (1997)eKLR, where it was held that a certificate of title supersedes a Letter of allotment.



58. Furthermore, learned counsel has also submitted that the 3rd Defendant/Applicant holds a legitimate certificate of title over and in respect of the suit property and hence her rights to and in respect of the suit property are protected *vide* the provisions of Sections 24 and 25 of the [Land Registration Act, 2012](#).
59. Based on the foregoing, the Applicant has thus submitted that in the absence of legitimate claim to the suit property, the Plaintiff's/Respondent's suit therefore does not disclose any reasonable cause of action.
60. Contrarily, the Plaintiff/Respondent contends that same was duly and lawfully allocated the suit property. In addition, the Plaintiff/Respondent avers that same has been in occupation and possession of the suit property.
61. Other than the foregoing, the Plaintiff/Respondent has also averred that the 3rd Defendant/Applicant does not have a certificate of title over the suit property. In any event, it has also been averred that the 3rd Defendant/Applicant is using a certificate of title relating to a separate and distinct parcel of land, to grab the suit property, which is separate and distinct from what is claimed by the Applicant.
62. Besides, it is also contended that the Applicant herein with the connivance and collusion of the National Police Service has been harassing and intimidating the Plaintiff/Respondent, with the sole purposes of defrauding the Plaintiff/Respondent of the suit property.
63. I must point out that the allegations and counter-allegations, which have been raised by the adverse Parties herein, are issues that cannot be summarily addressed, determined and disposed of.
64. Conversely, the various factual controversies, whose details have even been more amplified in the application beforehand, can only be resolved during the hearing of the subject matter, when Parties will be called upon to tender evidence and be cross examined.
65. Be that as it may, what this court must determined at this juncture is whether the factual averments contained and enumerated in the body of the plaint, disclose or exhibit a reasonable cause of action.
66. To this end, the starting point is to determine and ascertain, what then does a cause of action connote. In this regard, the holding of the Court of Appeal in the case of [Kigwor Company Limited v Samedy Trading Company Limited](#) [2021] eKLR, where the court stated as hereunder;
36. In the Court of Appeal case of [Attorney General & another v Andrew Maina Gitinji & another](#) [2016] eKLR Justice Waki held that:-

“ A cause of action is an act on the part of the defendant, which gives the plaintiff his cause of complaint.”

That definition was given by Pearson J. in the case of *Drummond Jackson v Britain Medical Association* (1970) 2 WLR 688 at pg 616. In an earlier case, *Read v Brown* (1889), 22 QBD 128, Lord Esher, M.R. had defined it as:-

“ Every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court.”

Lord Diplock, for his part in *Letang v Cooper* [1964] 2 All ER 929 at 934 rendered the following definition:-

“ A cause of action is simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person.”



When did the cause of action in this case arise? Put another way, when did the respondents become entitled to complain or obtain a remedy ...”

67. Does the factual controversies and or averments contained at the foot of the Plaintiff herein, raise and disclose a cause of action, which can be ventilated before a court of law?
68. In my humble view, the Plaintiff/Respondent has averred to being the lawful allottee of the suit property and thus being entitled to occupy, possess and use the suit property.
69. However, despite the contention that same is the lawful allottee of the suit property, the Plaintiff/Respondent has averred that the 3rd Defendant/Applicant has indeed and without any color of right or otherwise, interfered with his rights and interests thereto.
70. Guided by what constitutes a cause of action, as explained in the decision cited in the preceding paragraphs, it is my finding and holding that indeed the Plaintiff's suit raises and discloses a reasonable cause of action.
71. Furthermore, where a Party seeks to strike out a pleading on the basis of non-disclosure of a reasonable cause of action, it behooves the Applicant to demonstrate that the offensive pleadings do not exhibit even a semblance of a cause of action.
72. In any event, where the offensive pleadings demonstrates or exhibits some semblance of a cause of action, it behooves the court to facilitate the hearing and determination of such a matter in the conventional way.
73. In this regard, striking out of a pleading can and must only be resorted to in the clearest of cases and when it is evident that the impugned pleadings are hopelessly and irredeemably bad, and hence beyond redemption vide amendments.
74. Without belaboring the point, it is imperative to recall, restate and reiterate the words of wisdom that were pronounced vide the case of *DT Dobbie & Company (K) Ltd v Joseph Mbaria Muchina & another* (1982)eKLR, where the Judge stated and held as hereunder;

“It cannot be doubted that the court has an inherent jurisdiction to dismiss an action which is an abuse of the process of the court. It is a jurisdiction which ought to be very sparingly exercised. and only unexceptional cases. I do not think its exercise would be justified merely because the story told in the pleadings was highly improbable, and one which it was difficult to believe could be proved”. per Lord Herschell in *Lawrence v Lord Norreys*, 15. A.C. 210 at p. 219.
75. Furthermore, it is not lost on the court that the summary procedure, including striking out of offensive pleadings, ought not to be resorted to in situations where the court may be called upon to carry out and or conduct a mini-trial, in a bid to determine the merits or otherwise of the various documents placed before the court.
76. For coherence, the interrogation and investigations of the merits or otherwise of any documents and evidence that may have been placed before the court must be left for the trial court. In this regard, any invitation by either party, to the court to usurp the powers of the trial court, albeit at the interlocutory stage, must frowned upon and eschewed.



77. In this regard, it is important to take cognizance of the warning and caution that was alluded to and underscored by the Court of Appeal in the case of *Industrial and Commercial Development Corporation v Daber Enterprises Limited* [2000] eKLR, where the court observed as hereunder;

Unless the matter is plain and obvious, a party to a civil litigation is not to be deprived of his right to have his case tried by a proper trial where, if necessary, there has been discovery and oral evidence subject to cross examination - see the case of *Wenlock v Moloney and Others*, [1965] 1 W.L.R. 1238. The purpose of the proceedings in an application for summary judgment is to enable a plaintiff to obtain a quick judgment where there is plainly no defence to the claim. And where the defendant's only suggested defence is a point of law and the court can see at once that the point is misconceived or, if arguable, can be shown shortly to be plainly unsustainable, the plaintiff will be entitled to judgment.

The summary nature of the proceedings should not, however, be allowed to become a means for obtaining, in effect, an immediate trial of the action, for it is only if an arguable question of law or construction is short and depends on few documents that the procedure is suitable.

78. Having reviewed the position explained herein before, I am afraid that the invitation to find and hold that the Plaintiff's suit does not disclose any reasonable cause of action, is neither tenable nor feasible, given the factual controversies that color the pleadings beforehand.

Issue Number 3. Whether the Instant suit constitutes or amounts to an abuse of the Due process of the honourable court.

79. The Applicant herein has also contended and invited the court to find and hold that the Plaintiff's/ Respondent's suit constitutes and amounts to an abuse of the process of the court".
80. Before venturing to consider whether or not the Plaintiff/Respondent's suit constitutes an abuse of the due process of the court, it is necessary to understand the meaning of the phrase "abuse of the due process of the court".
81. In the case of *Muchanga Investments Limited v Safaris Unlimited (Africa) Ltd & 2 others* Civil Appeal No. 25 of 2002 (2009) eKLR 229, had delineated the parameters of abuse of process thus:

"The term abuse of court process has the same meaning as abuse of judicial process. The employment of judicial process is regarded as an abuse when a party uses the judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice. It is a term generally applied to a proceeding, which is wanting in *bona fides* and is frivolous, vexatious or oppressive. The term abuse of process has an element of malice in it...The concept of abuse of judicial process is imprecise, it implies circumstances and situations of infinite variety and conditions. It's one feature is the improper use of the judicial powers by a party in litigation to interfere with the administration of justice. Examples of the abuse of the judicial process are: -

- i. Instituting multiplicity of actions on the same subject matter against the same opponent on the same issues or a multiplicity of action on the same matter between the same parties even where there exists a right to begin the action.
- ii Instituting different actions between the same parties simultaneously in different courts even though on different grounds.



- iii. Where two similar processes are used in respect of the exercise of the same right for example, a cross appeal and a respondent's notice.
- iv. Where there is no iota of law supporting a Court process or where it is premised on frivolity or recklessness." (Underline, mine)

82. Recently, the doctrine of abuse of court process was also calibrated upon and extensively elaborated upon in the case of *Satya Bhama Gandhi v Director of Public Prosecutions & 3 others* [2018] eKLR, where the court stated and held as hereunder;

22. The concept of abuse of court/judicial process is imprecise. It involves circumstances and situation of infinite variety and conditions. It is recognized that the abuse of process may lie in either proper or improper use of the judicial process in litigation. However, the employment of judicial process is only regarded generally as an abuse when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponents.[12]

23. The situation that may give rise to an abuse of court process are indeed in exhaustive, it involves situations where the process of court has not been or resorted to fairly, properly, honestly to the detriment of the other party. However, abuse of court process in addition to the above arises in the following situations:-

- (a) Instituting a multiplicity of actions on the same subject matter, against the same opponent, on the same issues or multiplicity of actions on the same matter between the same parties even where there exists a right to begin the action.
- (b) Instituting different actions between the same parties simultaneously in different court even though on different grounds.
- (c) Where two similar processes are used in respect of the exercise of the same right for example a cross appeal and respondent notice.
- (d) Where an application for adjournment is sought by a party to an action to bring another application to court for leave to raise issue of fact already decided by court below.
- (e) Where there no iota of law supporting a court process or where it is premised on recklessness. The abuse in this instance lies in the inconvenience and inequalities involved in the aims and purposes of the action.[13]
- (f) Where a party has adopted the system of forum-shopping in the enforcement of a conceived right.
- (g) Where an appellant files an application at the trial court in respect of a matter which is already subject of an earlier application by the respondent at the Court of Appeal.
- (h) Where two actions are commenced, the second asking for a relief which may have been obtained in the first. An abuse may also involve some bias, malice or desire to misuse or pervert the course of justice or judicial process to the irritation or annoyance of an opponent.[14]

83. In view of the definition of what constitutes an abuse of the due process of the court, can the issues raised at the foot of the current suit be described as amounting to an abuse of the court process.



84. In my humble view, the Plaintiff/Respondent has approached the honourable court staking a claim to ownership over and in respect of the suit property, albeit on the basis of a Letter of allotment, which is said to have been issued by the 1st Defendant.
85. In any event, it is also worthy to note that the 1st Defendant who is said to have issued the Letter of allotment, has neither challenged nor impugned the validity thereof.
86. Nevertheless, as to whether the certificate of title possessed and in the custody of the 3rd Defendant/Applicant, relates to the suit property or otherwise, would also have to be interrogated during a plenary hearing.
87. However, on the basis of what has been placed before the Honourable court, it is difficult nay impossible, to agree with the Applicant's contention that the suit beforehand, constitutes an abuse of the due process of the court.
88. Suffice it to point out that it would be appropriate to sustain even a weak case for hearing and determination on merits, rather than drive away the Plaintiff/Respondent from the seat of justice, merely because his/her story does not sound probable.
89. For the avoidance of doubt, the improbability or otherwise of the story must no doubt, be tested during the trial, when the Parties, the Plaintiff, not excepted, would be subjected to cross-examination in the usual way.
90. In a nutshell, I am not convinced that the Plaintiff's/Respondent's suit, in terms of the Plaint dated the 12th May 2020, amounts to and constitutes an abuse of the due process of the court.

Final Disposition

91. Having calibrated upon the issues that were captured and reflected in the body of the Ruling herein, it must have become evident and apparent that the application by the 3rd Defendant/Applicant is not meritorious.
92. To the contrary, the impugned application, was thinly veiled invitation to this Honourable court, to undertake, conduct and carryout a mini-trial, pertaining to and concerning ownership of the suit property, albeit prematurely.
93. Be that as it may, the Application dated 3rd February 2023, is however premature, misconceived and bad in law. Consequently, the Application be and is here Dismissed with costs to the Plaintiff/Respondent herein only.
94. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF FEBRUARY 2023.

HON. JUSTICE OGUTTU MBOYA

JUDGE

In the Presence of;

Benson Court Assistant

Mr. Mohamed for the 3rd Defendant/Applicant

Mr. Karoki for the Plaintiff/Respondent

N/A for the 1st and 2nd Defendants/Responndents

