



**Ethics and Anti-Corruption Commission v Karamoh Impex & Transport Limited & 5 others; National Land Commission & 2 others (Interested Parties) (Civil Suit E003 of 2021) [2025] KEELC 3287 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 3287 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO  
CIVIL SUIT E003 OF 2021  
JO MBOYA, J  
MARCH 20, 2025**

**BETWEEN**

**ETHICS AND ANTI-CORRUPTION COMMISSION ..... PLAINTIFF**

**AND**

**KARAMOH IMPEX & TRANSPORT LIMITED ..... 1<sup>ST</sup> DEFENDANT  
JOTHAM KILIMO ..... 2<sup>ND</sup> DEFENDANT  
STEPHEN AMBANI ..... 3<sup>RD</sup> DEFENDANT  
PATRICK ACHOKI ..... 4<sup>TH</sup> DEFENDANT  
FEDSON NYAGAKA ORARE ..... 5<sup>TH</sup> DEFENDANT  
PETER NG'ANG'A MBURU ..... 6<sup>TH</sup> DEFENDANT**

**AND**

**THE NATIONAL LAND COMMISSION ..... INTERESTED PARTY  
ISIOLO JUAKALI ASSOCIATION ..... INTERESTED PARTY  
COUNTY GOVERNMENT OF ISIOLO ..... INTERESTED PARTY**

**RULING**

1. The 6<sup>th</sup> Defendant/Applicant [hereinafter referred to as the Applicant] has moved the court vide application dated 9<sup>th</sup> September 2024; and wherein the Applicant essentially seeks to have his name struck off the suit beforehand. Furthermore, the Applicant also seek[s] to have the suit as against him dismissed for [sic] non-disclosure of a reasonable cause of action.



2. The instant application is premised on various grounds which have been highlighted in the body thereof. In addition, the application is supported by the affidavit of the 6<sup>th</sup> Defendant/Applicant sworn on even date and wherein the Applicant has reiterated the grounds contained in the body of the application.
3. Upon being served with the application under reference, the Plaintiff/Respondent, namely; the Ethic & Anti-Corruption Commission [EACC] filed grounds of opposition and wherein same have essentially contended that the application beforehand is intended to invite the court to undertake a mini-trial in respect of disputed issues of fact and law albeit without a plenary hearing.
4. Additionally, it has been contended that the jurisdiction of the court to strike out the name of a party and/or better still, to strike out a suit ought to be exercised sparingly and with necessary caution. Moreover, it has been posited that a court of law ought not to strike out a suit or the name of a party, unless it is shown that the suit is hopelessly and irredeemably bad in law.
5. The application under reference came up for directions on the 4<sup>th</sup> March 2025 whereupon the advocates for the respective parties covenanted to canvass and dispose of the application by way of written submissions. In this regard, the 6<sup>th</sup> Defendant/Applicant and the Plaintiff/Respondent have both filed written submissions. The submissions under reference form part of the record of the court.
6. Having reviewed the application dated the 9<sup>th</sup> September 2024; and the response thereto and upon consideration of the written submissions, I come to the conclusion that the determination of the application beforehand turns on only two [2] key issue, namely; whether the Plaintiff's suit discloses a reasonable cause of action as against the 6<sup>th</sup> Defendant/Applicant or otherwise; whether the 6<sup>th</sup> Defendant/Applicant is a necessary party to the instant proceedings or otherwise.
7. Before venturing to address the two [2] key issue[s] that have been highlighted in the preceding paragraph, it is important to underscore that the suit herein has been filed by the Plaintiff/Respondent with a view to recovering the suit property which has been contended to have been part of public land reserved for Isiolo GK Prison, before same [suit property] was [sic] illegally hived of and registered in the name of the 1<sup>st</sup> Defendant.
8. Moreover, it has been contended that, the impugned process, namely; the illegal hiving of a portion of the land which was reserved for Isiolo GK Prison was facilitated by the department of physical planning and the land registrar, respectively. To this end, the 4<sup>th</sup> Defendant who was the Physical Planner and the 6<sup>th</sup> Defendant who was a Land Registrar have been duly impleaded.
9. According to the Plaintiff/Respondent, the 6<sup>th</sup> Defendant/Applicant [land registrar] acted beyond his statutory powers in facilitating the registration of the lease instrument and the ultimate issuance of the certificate of title in favour of the 1<sup>st</sup> Defendant. To this end, the Plaintiff has contended that the impugned actions by the 6<sup>th</sup> Defendant/Applicant are ultra vires.
10. Furthermore, the Plaintiff/Respondent has accused the 6<sup>th</sup> Defendant/Applicant of malfeasance. In this regard, the 6<sup>th</sup> Defendant/Applicant has been joined in respect of the instant matter as part of the chain leading to [sic] the issuance of the certificate of title which is the subject of the instant proceedings.
11. Based on the foregoing background, it is now apposite to return to the application and to discern whether the Plaintiff has disclosed a reasonable cause of action as against the 6<sup>th</sup> Defendant/Applicant, which is capable of being investigated by the court during a plenary hearing or otherwise.



12. What constitutes a cause of action has been considered and elaborated upon in various decision[s]. In the case of Kigwor Company Limited v Samedy Trading Company Limited [2021] KECA 810 (KLR), the Court of Appeal discussed the meaning, import and tenor of a cause of action.

13. For coherence, the court stated as hereunder;

36. In the Court of Appeal case of Attorney General & another v Andrew Maina Githinji & 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 vs. Britain Medical Association (1970) 2 WLR 688 at pg 616. In an earlier case, Read vs. 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 vs. 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 ...”

14. With the foregoing definition in mind, it is now appropriate to ascertain whether the Plaintiff’s suit as against the 6<sup>th</sup> Defendant/Applicant raises a reasonable cause of action or otherwise. Pertinently, the Plaintiff has contended at the foot of paragraph 7 of the amended Plaintiff that the 6<sup>th</sup> Defendant herein breached and/or violated his statutory powers and duties in the process pertaining to the issuance of the impugned certificate of lease.

15. For ease of appreciation, it is expedient to reproduce paragraph 7 of the amended Plaintiff.

16. Same are reproduced as hereunder;

7. The 6<sup>th</sup> Defendant a male adult of sound mind and was at all material times to this suit a Lands Registration Officer appointed under the Land Registration Act no. 3 of 2012. However, the actions complained of against him were ultra vires his powers and duties as a Lands Registrar and as such he is sued in his personal capacity (Summons to enter Appearance shall be served upon the Defendant through the Plaintiff’s advocate’s office).

17. My understanding of paragraph 7 of the amended Plaintiff drives me to the conclusion that the Plaintiff is contending that the 6<sup>th</sup> Defendant was party and privy to the illegality leading to the issuance of the certificate of lease in favour of the 1<sup>st</sup> Defendant. Moreover, the Plaintiff/Respondent posits that the 6<sup>th</sup> Defendant/Applicant acted ultra vires and thus same is personally liable for acting outside the statutory mandate.

18. To my mind, the averments by and on behalf of the Plaintiff bring to the fore various perspectives and nuances, which require due interrogation by the court. Suffice it to state that it would require production of evidence by the Plaintiff to demonstrate what was done or not done by the 6<sup>th</sup> Defendant/Applicant that culminated into [sic] the impugned certificate of title.



19. Instructively, the Plaintiff shall bear the burden of placing the evidence before the court. However, on a prima facie basis, the contention by the Plaintiff/Respondent demonstrate[s] a cause of action of the tort of malfeasance, [which if proven] is actionable in the eyes of the law.
20. On the other hand, the 6<sup>th</sup> Defendant/Applicant shall subject to discharge of evidential burden of proof by the Plaintiff/Respondent be called upon to demonstrate that same acted in accordance with the law whilst discharging his statutory mandate.
21. Either way, the issues that have been espoused vide the amended Plaint cannot be subjected to a mini-trial on the basis of affidavit, either in the manner contemplated by the Applicant herein. To do so, shall be tantamount to denying and depriving the Plaintiff of the right to fair hearing which is underpinned by the provisions of Article 50[1] of *the Constitution*.
22. In any event, it is trite and established that before a court can deploy the summary approach and/or procedure, including striking out the name of a party or better still striking out a suit, the court must act with due caution and circumspection. Furthermore, the jurisdiction to strike out a suit must be undertaken sparingly and hesitantly.
23. The Court of Appeal in the case of D.T. Dobie & Company (Kenya) Limited v Joseph Mbaria Muchina & another [1980] eKLR, considered the scope of the jurisdiction pertaining to summary procedure and/or striking out of pleadings.
24. For coherence, the court stated as hereunder;

Per Lord Justice Swinfen Eady in Moore v. Lawson and Another (supra) at p. 419.

"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.

25. Furthermore, the court stated as hereunder;

"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 amendments, 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".

26. Further, in the case of Industrial and Commercial Development Corporation v Daber Enterprises Limited [2000] KECA 413 (KLR), the Court of Appeal stated 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 - see the cases of Home and Overseas Insurance Co. Ltd. v. Mentor Insurance Co. (U.K.) Ltd. (In Liquidation) , [1990] 1 W.L.R. 153, 158 and Balli Trading v. Afalona Shipping, The Coral, [1993] 1 Lloyd's Rep. 1, C.A. A defendant who can show by affidavit that there is a bona fide triable issue is to be allowed to defend that issue without condition - see the case of Jacobs v. Booth's Distillery Co., (1901) L.T. 262 H.L.

27. In my humble view, the contents of paragraph 7 of the amended Plaintiff which implead[s] the 6<sup>th</sup> Defendant/Applicant, discloses and captures a reasonable cause of action. As to whether the Plaintiff shall be able to prove the allegations pertaining to ultra vires and malfeasance, is another matter.
28. Nevertheless, proof of the allegation/averments must await the plenary hearing.
29. Next is the issue as to whether the 6<sup>th</sup> Defendant/Applicant is a necessary party. Suffice it to state that the Plaintiff contends that the 6<sup>th</sup> Defendant/Applicant acted illegally, unprocedural and thus ultra vires.
30. To my mind, the manner in which the 6<sup>th</sup> Defendant/Applicant acted will be part of evidence and/or accusation to be tendered. In the absence of the 6<sup>th</sup> Defendant/Applicant, there is a likelihood that adverse allegation[s] will be made against the 6<sup>th</sup> Defendant/Applicant and which allegations would not be responded to by the 6<sup>th</sup> Defendant/Applicant.
31. The presence of the 6<sup>th</sup> Defendant/Applicant is intended to enable same to respond to the allegations being canvassed. Simply put, the 6<sup>th</sup> Defendant/Applicant is being afforded the statutory and constitutional forum to defend himself.
32. Surely, it is unorthodox for the 6<sup>th</sup> Defendant/Applicant to be heard to seek to be struck of the suit and thus deprive same of the opportunity to be heard. To my mind, the 6<sup>th</sup> Defendant/Applicant unknowingly, or blindly; is seeking to have himself condemned without being heard.
33. Nevertheless, it is the duty of this court and every other court established under the law to ensure that the provisions of Article 10[1] and [2]; 19[2]; 21; 27[1][2] and 50[1] of *the Constitution* 2010 are adhered to and complied with.
34. The compliance with the said provisions of *the constitution* can only be achieved and realized by having the 6<sup>th</sup> Defendant/Applicant as a party in the suit so as to enable same to respond to the accusation of malfeasance and breach of statutory duty which takes the impugned actions outside the doctrine of vicarious liability. [See *Muwonge v Attorney General of Uganda* [1967] EA 17].
35. Finally, I hold the view that the 6<sup>th</sup> Defendant/Applicant is bound to be affected by and/or impacted upon by the proceedings herein as well as the orders, which may ultimately issue. To this end, the 6<sup>th</sup> Defendant/Applicant, is no doubt a necessary party. [See the provisions of Order 1 rule 10[2] of the Civil Procedure Rules 2010].
36. Additionally, it is also important to take cognizance of the decision in the case of *Meme v. Republic* [2004] KLR 637 where it was held that joinder of parties will be permissible:
  - i. Where the presence of the party will result in the complete settlement of all the questions involved in the proceedings;



- ii. Where the joinder will provide protection for the rights of a party who would otherwise be adversely affected in law: and
- iii. Where the joinder will prevent a likely course of proliferated litigation.”

The exercise of this discretion to add a party as a co-defendant is also in consonance with the provisions of Order 1 rule 3 of the Civil Procedure Rules which provides that:

“All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise.”

37. Without belabouring the point, I come to the conclusion that the joinder of the 6<sup>th</sup> Defendant/Applicant accords with the legal principal espoused by the provisions of Order 1 Rules 3 and 10[2] of the Civil Procedure Rules 2010. In addition, the joinder complained of also falls within the parameters enunciated in the case of *Meme v republic* [supra].

**Final Disposition:**

38. For the reasons which have been highlighted in the body of the ruling, it must have become crystal clear that the subject application beforehand is devoid and bereft of merits.
39. Consequently, and in the premises, the Application dated 9<sup>th</sup> September 2024; be and is hereby dismissed with costs to the Plaintiff/Respondent only.
40. It is so ordered.

**DATED, SIGNED AND DELIVERED ON THE 20TH DAY OF MARCH 2025**

**OGUTTU MBOYA,**

**JUDGE.**

In the presence of:

Mutuma/Benson – Court Assistant.

Mr. Munene for the Plaintiff/ Respondent.

Mr. AK Mwangi h/b for Mr Arthur Ingutya for the 1st Defendant/ Respondent.

Mr. Mosota for the 4th Defendant/ Respondent.

Mr. C.B Mwangela for the 3rd Interested Party.

