



REPUBLIC OF KENYA



**Eedi Motor Services Limited v Devani & 3 others; Koroma & another (Interested Parties)  
(Environment & Land Case E015 of 2021) [2022] KEELC 2818 (KLR) (24 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 2818 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT & LAND CASE E015 OF 2021**

**CG MBOGO, J**

**MAY 24, 2022**

**BETWEEN**

**EEDI MOTOR SERVICES LIMITED ..... PLAINTIFF**

**AND**

**KAPLESH VASUDEV DEVANI ..... 1<sup>ST</sup> DEFENDANT**

**UNION INTERNATIONAL LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**CHIEF LAND REGISTRAR NAROK ..... 3<sup>RD</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**AND**

**CATHERINE NASHIPAE KOROMA ..... INTERESTED PARTY**

**DIAMOND TRUST BANK KENYA LIMITED ..... INTERESTED PARTY**

**RULING**

1. What is before this court for determination is a Chamber Summons Application dated January 26, 2022, filed by the 2<sup>nd</sup> interested party/applicant and brought pursuant to Order 1 Rules 10 (2), 14 and 25 of the [Civil Procedure Rules](#) and Sections 1A and 1B of the [Civil Procedure Act](#) seeking the following orders: -
  1. That this honourable court be pleased to strike out the name of the 2<sup>nd</sup> interested party from the suit herein.
  2. That the costs of this application as well as those of the suit against the 2<sup>nd</sup> interested party be borne by the plaintiff.



2. The application is premised on the grounds on the face of it and more particularly as set out in the supporting affidavit of Francis Kariuki sworn on January 26, 2022. The 2<sup>nd</sup> interested party/ applicant deposed that he is the Legal Officer of the 2<sup>nd</sup> interested party/ applicant and that sometime in the year 2015, the plaintiff/respondent approached the bank with a proposal seeking a loan facility of Kshs. 9,000,000/= and the bank secured the facility vide a charge dated March 12, 2015 over property known as Title No. Cis-Mara/Ilmashariani-Morijo/3834.
3. The 2<sup>nd</sup> interested party/ applicant further deposed that the plaintiff/respondent fully discharged its obligations and the 2<sup>nd</sup> interested party/ applicant has no interest in the suit property and therefore its presence in the suit is not necessary.
4. The plaintiff/respondent filed a replying affidavit in opposition to the application sworn on April 27, 2022 by Dipen Dodhia. The plaintiff/respondent deposed that the 2<sup>nd</sup> interested party/ applicant is an interested party and striking out its name from the proceedings will deny this court an opportunity to interrogate the issues in totality. Further, that the 2<sup>nd</sup> interested party/ applicant has not demonstrated the prejudice likely to be suffered if it remains a party to the suit. The plaintiff/respondent further deposed that at the time the 1<sup>st</sup> and 2<sup>nd</sup> defendants/respondents carried out the impugned transfer of the suit property, the property had been charged to the applicant vide a charge dated March 12, 2015 for a loan facility amounting to Kshs. 9,000,000/=.
5. The plaintiff/respondent deposed that fraudulent transactions took place thereafter when the original title was in the custody of the 2<sup>nd</sup> interested party/ applicant and for this reason, it is a necessary party to the suit herein.
6. The plaintiff/respondent filed a supplementary affidavit sworn on May 5, 2022 which he clarified the reference to the suit land as Cis-Mara/Ilmashariani-Morijo/3834 as opposed to Cis-Mara/Ilmashariani-Morijo/317.
7. The 2<sup>nd</sup> interested party/ applicant herein did not file written submissions. The plaintiff/respondent filed written submissions dated May 5, 2022 and raised one issue for determination which is whether the name of the 2<sup>nd</sup> interested party/ applicant ought to be struck out of the main suit. The plaintiff/respondent submitted that the joinder of the party is necessary for the fair, effectual and just determination of the dispute herein and that whereas the plaintiff/respondent repaid the loan facility, the same cannot be the basis for the applicant to be excused from the proceedings. In any case, the 2<sup>nd</sup> interested party/ applicant has only been joined as an interested party for purposes of assisting the court with the full determination of the dispute herein. To buttress this submissions, the plaintiff/respondent relied on the following authorities: -
  - a) *Trusted Society of Human Rights Alliance versus Mumo Matemu & 5 Others* [2014] eKLR
  - b) *Kenya Medical Laboratory Technicians and Technologists Board & 6 others versus Attorney General & 4 Others* [2017] eKLR.
  - c) *Laisa Mpoye & 2 others versus Kajiado Central Milk Project "The Board" & 5 others* [2012] eKLR.
8. I have analysed the Chamber Summons application, the replies and annexures thereof as well as the written submissions filed by the plaintiff/respondent and the issue for determination is whether the 2<sup>nd</sup> interested party/ applicant ought to be struck out from the suit herein.



9. The Black's Law Dictionary, 9th Edition defines an interested party as;  
"A party who has a recognizable stake (and therefore standing) in the matter"
10. The 'Mutunga Rules', the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, Legal Notice No. 117 of 2013, defines an interested party as;  
"A person or an entity that has an identifiable stake or legal interest or duty in the proceedings and may not be directly involved in the litigation"
11. The Black's Law Dictionary, 9th Edition defines a "Necessary Party" as being  
"A party who being closely connected to a lawsuit should be included in the case if feasible but whose absence will not require dismissal of proceedings"
12. Order 1 Rule 10 (2) of the Civil Procedure Rules provides that: -  
"The court may at any stage of the proceedings, either upon or without the application of either part, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendants, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added."
13. At the centre of this application is a charge dated 12<sup>th</sup> March, 2015. The dispute seem to arise at the circumstances that took place thereafter. In my view, being an interested party is more important to the court than summoning a party to attend and testify as a witness. The interested party will participate in the proceedings and assist the court with crucial information that may help the court in determining the dispute at hand. A witness may decide not to attend and if he attends, he/she may decide to give evidence depending on his/her personal opinion on the matter. I see no harm in having the 2<sup>nd</sup> interested party/ applicant participate in the proceedings and neither is their presence meaningless. Should the 2<sup>nd</sup> interested party's/ applicant participation be seen to be an impediment to the hearing and determination of the case, the court has powers under Order I Rule 10(2) of the Civil Procedure Rules to strike out the name of the 2<sup>nd</sup> interested party/ applicant and stop it from participating in the case.
14. In the exercise of that discretion, the court must as a matter of cause, act according to reason and fairness and not according to its whims and caprice.
15. The question that falls for determination therefore is whether the 2<sup>nd</sup> interested party/ applicant is a necessary party to this suit.
16. The power to strike out a party from a suit should be approached with caution. I am of the considered view that whether or not the 2<sup>nd</sup> interested party/ applicant had a role to play, is a question that cannot be determined at this juncture. I think that to ascertain this at this stage, the court would be required to go into the rigorous exercise of trying to determine whether the plaintiff has a proper case against the defendants by assessing the evidence in place. This in my view is premature as evidence can only be tendered at the trial.



17. I am guided by the wise words of Madan. J.A in the case of DT *Dobie and Company (K) Ltd vs Joseph Mbaria Muchina & another* (1982) KLR 1 wherein he stated that;

“The power to strike out should be exercised only after the court has considered all the facts, but it must not embark on the merits of the case itself as this is solely reserved for the trial judge. On an application to strike out pleadings, no opinion should be expressed as this would prejudice fair trial and would restrict the freedom of the trial judge in disposing the case.”

18. Arising from the above, I find no merit in the Chamber Summons dated January 26, 2022 and the same is hereby dismissed. Costs to be in the cause. It is so ordered.

**DATED, SIGNED and DELIVERED VIA EMAIL ON 24<sup>TH</sup> MAY, 2022.**

**MBOGO C.G**

**JUDGE**

**24/5/2022**

In the presence of: -

CA: Timothy Chuma

