



REPUBLIC OF KENYA



**KENYA LAW**  
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**Waweru v Kibathi & 2 others (Environment & Land Case  
E148 of 2024) [2025] KEELC 3631 (KLR) (6 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3631 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE E148 OF 2024**

**JM ONYANGO, J**

**MAY 6, 2025**

**BETWEEN**

**JENNIFER NGENDO WAWERU ..... PLAINTIFF**

**AND**

**SCOLASTICA WAMBUI KIBATHI ..... 1<sup>ST</sup> DEFENDANT**

**NATIONAL BANK OF KENYA LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**FAMILY BANK LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. Through a chamber summons application dated 3rd February 2025, the 2nd Defendant/Applicant seeks the following orders:
  - a. That the honourable court be pleased to strike out the 2nd Defendant, National Bank of Kenya Limited, out of these proceedings.
  - b. That the costs of this application be provided for.
2. The application is premised on the grounds set out on the face of the chamber summons and the supporting affidavit of Chrispus N. Maithya (an employee of the Applicant heading the Commercial Transactions and Litigation Department) sworn on 3rd February 2025.
3. I shall give a brief background of the case in order to put the application into perspective. The Plaintiff/Respondent initiated this suit through a plaint dated 1st September 2024. Her claim is that she is the registered owner of land parcel number Ruiru/Township/383 (the suit property), which the 1st Defendant/Respondent has trespassed onto and erected a building comprising of rental properties. The Plaintiff/Respondent filed an application dated 1st September 2024 together with the plaint, seeking inter alia injunctive reliefs. Subsequently, the 3rd Defendant also filed a chamber summons application dated 24th October 2024 seeking an order to strike their name from the suit on the



grounds that they have no interest in the suit property. The 3rd Defendant explained that they had earlier charged the suit property upon advancing a financial facility to the 1st Defendant/Respondent. However, they executed a discharge dated 26/9/2024 when the 1st Defendant/Respondent repaid the loan. The two applications were heard simultaneously, and a ruling was delivered by this court [Eboso JJ] on 30th January 2025 to the following effect:

- i. The 3rd Defendant, M/s Family Bank Limited, are removed from this suit with no order as to costs.
  - ii. Pending the hearing and disposal of this suit, no dealings shall be registered in any land register relating to the two parallel titles held in the names of Jennifer Ngendo Waweru [the plaintiff] and Scholastica Wambui Kibathu [the 1st defendant], respectively, in relation to land parcel number Ruiru Township/383.
  - iii. The obtaining status quo relating to rental income from the apartments erected on the said land shall be maintained, meaning that the plaintiff's interlocutory plea on rental income is declined.
  - iv. The Land Registrar - Ruiru and the Hon Attorney General are hereby joined as the 4th and 5th defendants in this suit. The plaint shall be amended appropriately.
  - v. Costs of the two applications shall be in the cause.
4. The 2nd Defendant/Applicant has now filed this application for consideration. In his supporting affidavit, Chrispus N. Maithya alleges that sometime in 2011 the 2nd Defendant/Respondent advanced a credit facility of Kshs 9,600,000 to the 1st Defendant/Respondent, which was secured by a legal charge registered in respect of the suit property. He states that the original title to the suit property, together with a duly executed discharge of charge, was released to the 1st Defendant/Respondent upon full payment of the credit facility. He adds that consequently, the 2nd Defendant/Applicant's interest in the suit property terminated once the said discharge was registered.
  5. He maintains that the 2nd Defendant/Applicant does not pose any danger or harm to the Plaintiff/Respondent's proprietary interest, given that it cannot resort to exercising a power of sale over the suit property to the Applicant's detriment, hence is not a necessary party to the suit. He deposes that no cause of action has been disclosed against the 2nd Defendant/Applicant. In conclusion, he avers that it is in the interest of justice that this application be allowed as prayed.
  6. In opposing the application, the Plaintiff/Respondent filed a replying affidavit sworn on 3rd February 2025. She deposes that the 1st Defendant/Applicant fraudulently misrepresented herself as the lawful owner of the suit property by presenting to the 2nd Defendant/Applicant an identity card different from the one recorded in the lease. She further deposes that the 2nd Defendant/Applicant's failure to properly verify the identity of the 1st Defendant/Respondent and the validity of her title further emphasizes their negligence and complicity in the fraudulent transaction. She maintains that the 2nd Defendant/Applicant, being a financial institution, owed a duty of care to the public, including her, to conduct due diligence before accepting the title deed to the suit property as collateral for loans.
  7. She faulted the 2nd Defendant/Respondent for failing to scrutinise and validate the 1st Defendant/Respondent's identity against the information in the lease, before advancing the loan. She deposes that the 1st Defendant/Respondent has been able to remain in unlawful possession of the suit property as a result of the 2nd Defendant/Respondent's negligence, and as a result, she has suffered financial loss. She maintains that the 2nd Defendant/Applicant's role in facilitating the fraudulent transaction must be investigated and determined by this court and that their removal from these proceedings would deny her an opportunity to seek redress for the harm caused by their actions.



8. The application was canvassed through written submissions. The 2nd Defendant/Applicant filed written submissions dated 27th February 2025, while the Plaintiff/Respondent filed written submissions dated 17th February 2025.

### **Analysis and Determination**

9. I have considered the application, the replying affidavit and the submissions filed by the parties. The issue for determination is whether the 2nd Defendant/Applicant is a necessary party for determination of the key issues in this suit.
10. Order 1 rule 10 of the *Civil Procedure Rules* provides as follows:

“The court may at any stage of the proceedings, either upon or without the application of either party, 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 defendant, 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.”
11. The Plaintiff/Respondent’s claim in the suit is about the question of ownership of the suit property and the question relating to the authenticity of the parallel titles that the Plaintiff/Respondent and the 1st Defendant/Respondent are holding.
12. The 2nd Defendant/Applicant contends that their relationship with the 1st Defendant/Respondent was that of borrower and lender. They have demonstrated that they advanced a loan facility to the 1st Defendant/Respondent, and a charge was registered against the title to the suit property. The 1st Defendant/Respondent subsequently serviced the loan in full, and the 2nd Defendant/Applicant executed a discharge of charge discharging the title. It is the case of the 2nd Defendant/Applicant that they do not have any interest in the suit land or in the title which the 1st Defendant/Respondent holds.
13. The 2nd Defendant/Applicant contends that the plaint does not disclose a reasonable cause of action against it. In response, the Plaintiff/Respondent faults the 2nd Defendant/Applicant for being negligent and complicit in the fraudulent transaction perpetrated by the 1st Defendant/Respondent. She maintains that the 2nd Defendant/Applicant, being a financial institution, owed a duty of care to the public, including her, to conduct due diligence before accepting the title deed to the suit property as collateral for loans.
14. A perusal of the plaint dated 7th September 2024 does not reveal a reasonable cause of action or a cause of action at all against the 2nd Defendant/Applicant. Neither fraud nor negligence has been pleaded and particularized against the 2nd Defendant/Applicant.
15. I agree with [Eboso J] that in their lending business, financial institutions accept land titles as security and given that the Plaintiff/Respondent seeks to invalidate the title held by the 1st Defendant/Respondent, then the 2nd Defendant/Applicant would be a necessary party if they still held the 1st Defendant/Respondent’s title as security. However, the 2nd Defendant/Applicant indicated that when the secured loan was repaid in full, they released the original title and executed a discharge of charge discharging the title.
16. This court finds that the Plaintiff/Respondent can still ventilate the issues for determination in the suit even without the 2nd Defendant/Applicant being a party to the suit. The Plaintiff/Respondent is at liberty to call an officer of the 2nd Defendant/Applicant to attend court as a witness and produce to produce any evidence she wishes to rely on.



17. For the above reasons, I find merit in the application dated 3rd February 2025. Accordingly, the application is allowed as prayed.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 6<sup>TH</sup> DAY OF MAY 2025.**

**J. M ONYANGO**

**JUDGE**

In the presence of:-

1. Mr. Yala for the Defendant/ Applicant

2. Mr. Muhira for the Plaintiff

3. Mr Ngeru for the 1st Defendant

Court Assistant: Hinga

