



**Karimulink Aviation Limited v Kenya Civil Aviation Authority &
4 others (Judicial Review Miscellaneous Application E095 of 2023)
[2025] KEHC 297 (KLR) (Judicial Review) (23 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 297 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E095 OF 2023
JM CHIGITI, J
JANUARY 23, 2025**

BETWEEN

KARIMULINK AVIATION LIMITED APPLICANT

AND

KENYA CIVIL AVIATION AUTHORITY 1ST RESPONDENT

KENYA AIRPORTS AUTHORITY 2ND RESPONDENT

NATIONAL POLICE SERVICE 3RD RESPONDENT

MINISTRY OF DEFENCE (DOD) 4TH RESPONDENT

ATTORNEY GENERAL 5TH RESPONDENT

RULING

1. The application before this Court is the 4th Respondent’s Notice of Motion application dated 5th February, 2024 brought under Articles 50(1), and 159(2) of *the Constitution* of Kenya, 2010, Sections 1A, 1B, 3A, and 63(e) of the *Civil Procedure Act*, Cap 21, Laws of Kenya, Order 1, rule 10(2), Order 2, rule 15, Order 51, rules 1, and 4 of the Civil Procedure Rules, 2010. The application seeks the following orders;
 1. The 4th Respondent be and his hereby struck out from this suit.
 2. Costs of this application be to the 4th Respondent.
2. The 4th respondent’s case is that the instant suit is frivolous and vexatious and further that it does not disclose any reasonable cause of action against it.



3. According to the 4th Respondent there are no orders sought against it and no action is required from it, whether positive or negative, to actuate any orders that may be issued by this Honourable Court in the instant suit.
4. It is urged that the 4th Respondent is neither a proper nor necessary party in the instant suit and that the Honourable Court can comfortably adjudicate the suit without its presence.
5. The 4th Respondent also urges that the Applicant seeks orders against the 1st Respondent, its agents, or anyone under its instructions. It is the 4th Respondent's case that it is not an agent or under the 1st Respondent and its presence is only useful for extending the dispute's time.
6. In response the Applicant filed a Replying Affidavit sworn 28th June 2024 by Pkosing David Losiakou who introduces himself as the Director of the Applicant.
7. According to the Applicant on 25th August 2023 the Kenya Civil Aviation Authority suspended the privileges of Air Operator Certificate number 216 and operations specifications that had been issued by the authority on the 2nd December 2022 and the 10th March 2023 with respect to the operations of aircraft registration number 5Y-DPL belonging to the Applicant herein.
8. The events leading up to the suspension were that 1st Respondent had accused the Applicant of using their aircraft for banditry in the North Rift Region. In an effort to address the allegations the then Interior Cabinet Secretary Professor Kithure Kindiki deployed officers, emphasizing the National Police Service's role in protecting Kenyans in banditry-prone areas. Only youths familiar with the terrain and the routes were deployed in the above region to confirm whether the above allegations were founded.
9. Upon the above deployments the Interior Cabinet Secretary is said to have proceeded to confirm that the National Police Reservists provided the much needed support and were further able to neutralise the threat of banditry and livestock.
10. The Applicant urges that there still exists a dispute between it and the 4th Respondent herein by virtue of it being the only government body whose employees under the directive of the Interior Cabinet Secretary Professor Kindiki Kithure were deployed to the North Rift Region to confirm the allegations that the Applicant herein was aiding bandits in the North Rift region and therefore they are the only persons who can confirm whether the said allegations are true or false.
11. The application was canvassed by way of written submissions.
12. The 4th Respondent filed submissions dated 15th July 2024 and in the submissions the applicant submits that this court can at any stage of the proceedings order that a party has been improperly joined as was held by the court in the case of Joseph Njau Kingori v Robert Maina Chege & 3 others [2002] eKLR (Eldoret, HCCC No. 136 of 2000, [R N Nambuye, LJ on 27 March 2002) where the court relied on Order 1 rule 10(2) of the Civil Procedure Rules when addressing the issue of joinder of parties.
13. According to the 4th Respondent the guiding principles when an intending party is to be joined are that the intending party must be a necessary party, a proper party and in the case of a respondent there must be a relief flowing from that defendant to the plaintiff. The 4th respondent also submits that the principle to consider is that the ultimate order or decree cannot be enforced without the intending parties presence in the matter. It is also submitted that the intending parties presence is necessary to enable the Court to effectively and to completely adjudicate upon and settle all questions involved in the suit.



14. The 4th Respondent's submission is that it is neither a proper nor necessary party to this suit. Further that the suit does not disclose any reasonable cause of action against it, nor are there any orders sought against the 4th Respondent. The 4th Respondent urges that no action, whether positive or negative, is required from it to actuate any orders that may be issued by this Honourable Court in the instant suit.
15. The 4th Respondent also submits that it is not subject to the Cabinet Secretary for Interior and National Administration and further, that personnel under the 4th Respondent can only be deployed by the Defence Council pursuant to Article 240(7) of *the Constitution* of Kenya, 2010 and the *Kenya Defence Forces Act* (Cap 199).
16. The 4th respondent also relies on the case of *Boniface Omondi v Mathare Youth Sports Association & another [2021] eKLR (Nairobi, ELRCC No. 1049 of 2018* [N Makau, J] on 29 September 2021) on the joinder and misjoinder of parties.
17. It is the 4th Respondent's submission that the removal of the 4th Respondent will not in any way prejudice the Applicant or hinder this Honourable Court from adjudicating the issues in this suit but will allow the court to focus the scarce judicial time on the proper parties to the suit without the unnecessary compounding of issues through the involvement of many unnecessary parties.
18. In response the Applicant filed written submissions dated 28th June 2024.
19. The Applicant submits that under Order 2 Rule 15 of the Civil Procedure Rules, the court has power to strike out pleadings on several grounds which includes striking out where the pleading in question does not disclose a reasonable cause of action or defence in law.
20. It is also the Applicant's submission that Order 2 Rule 15 (2) further makes it clear that applications seeking to strike out pleadings for not disclosing a reasonable cause of action or defence should not be supported by any evidence. Further that all an applicant needs to do is to state concisely the grounds on which the application is premised.
21. The Applicant relies on the case of *DT Dobie & Co (K) Ltd vs. Muchina*, [1982] KLR, where the Court is said to have defined the term reasonable cause of action and also defined what constitutes a cause of action.
22. The Applicant also submits that in the case of *Crescent Construction Co Ltd V Delphis Bank Limited*, [2007] eKLR the Court of Appeal emphasized the need for a court to exercise its discretion with utmost care when faced with an application such as the present one as striking out pleadings is a draconian action which may have the consequences of slamming the door of justice on the face of one party without according it an opportunity to be heard.
23. It is the Applicant's submission that its aircraft operations were suspended due to allegations of banditry in the North Rift Region and that Interior Cabinet Secretary Professor Kithure Kindiki deployed officers and emphasized the National Police Service's role in safeguarding Kenyans' lives and property in banditry-prone areas.
24. The Interior Cabinet Secretary, Professor Kithure Kindiki, it is submitted directed the recruitment of National Police Reservists to the North Rift Region, focusing on youths familiar with the terrain and routes. Further that the 4th Respondent, being the only party deployed in these areas, can confirm or deny the allegations' foundation.
25. The Applicant urges that the 4th Respondent's absence from the proceedings would be detrimental as they are the only party in the suit who can confirm the allegations leading to the suspension of its license. The 4th Respondent it is submitted is also the only party who dispatched officers to the North



Rift Region, where the Exparte Applicant was accused of aiding and perpetrating banditry, making it liable to answer key questions.

26. According to the Applicant, its application for judicial review orders could be rendered otiose and academic, if the 4th Respondent's Applicant is allowed also causing irreparable damages. It is the Applicant's submission that, there is a reasonable cause of action against all the Respondents, including the 4th respondent, and no prejudice will be suffered if the case proceeds on merit.
27. On costs the Applicant submits that costs should follow the event in that the successful party be awarded his costs as is provided under Section 27 of the [Civil Procedure Act](#).

Analysis and Determination

28. Upon perusing the application, the response by the Exparte Applicant to the application, the written submissions filed by the Applicant and the 4th Respondent the issue that arises for determination whether the 4th Respondent is a necessary party to this suit and if so, whether any cause of action is disclosed against it.
29. This court's power to strike out a party from any proceedings is found under Order 1 Rule 10 (2) of the Civil Procedure Rules which states thus;

“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.”
30. The power to strike out a party from a suit should be approached with caution. The court has to assess whether or not there is a prima facie case against the 4th Respondent while being careful not to go into the merits of the case at this stage.
31. Madan JA in the case of DT Dobie and Company (K) Ltd vs Joseph Mbaria Muchina & Another (1982) KLR 1 stated as follows:

“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.”
32. Order 1 rule 9 of the Civil Procedure Rules states that no suit shall be defeated for misjoinder or non-joinder of parties. That provision of the law requires that the court deals with the matter in controversy in so far as the rights and interests of the parties actually before it is concerned.
33. In this case, there is a prima facie case pointing at the existence of banditry in the North Rift Region and that Interior Cabinet Secretary Professor Kithure Kindiki deployed officers and emphasized the National Police Service's role in safeguarding Kenyans' lives and property in banditry-prone areas.
34. There is an issue that can only be determined at the inter partes hearing stage around the question whether or not The Interior Cabinet Secretary, directed the recruitment of National Police Reservists to the North Rift Region, focusing on youths familiar with the terrain and routes.



35. It is this court's finding that the 4th Respondent has the ability to address matters of national security, as well as offer legal advice to the cabinet on issues regarding the need to recruit National Police Reservists upon considering the magnitude and impact of the banditry activities in the affected areas of Kenya. The 4th Respondent is a necessary party to the suit.

36. In any case, an award of costs would serve as a panacea if the court ultimately rules in its favour.

Order:

The application dated 5th February 2024 is hereby dismissed. The costs of the application shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF JANUARY 2025.

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J. M. CHIGITI (SC)

JUDGE

