



REPUBLIC OF KENYA



Farhana Properties Limited v Khatri & 3 others (Environment & Land Case E003 of 2024) [2025] KEELC 3873 (KLR) (15 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3873 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE E003 OF 2024**

**YM ANGIMA, J
MAY 15, 2025**

BETWEEN

FARHANA PROPERTIES LIMITED APPLICANT

AND

AHARUB EBRAHIM KHATRI 1ST RESPONDENT

**AISHA ABDALLAH T/A ANJARWALLA & KHANNA LLP
ADVOCATES 2ND RESPONDENT**

COUNTY REGISTRAR OF LANDS 3RD RESPONDENT

THE ATTORNEY GENERAL 4TH RESPONDENT

RULING

A. 2nd Respondent's application

1. By a chamber summons dated 30.07.2024 bought pursuant to Order 1 Rule 10 (2), Order 34 Rule (1-6) of the Civil Procedure Rules and Sections 1A, 1B, 3A, 63 and 89 of the Civil Procedure Act (Cap 21) the 2nd respondent sought the following orders;
 - a. The 2nd respondent be permitted to deposit the properties Title Numbers Mombasa/Block XXX/7, Mombasa/block XXX/8 & Mombasa Block XXX/9 in dispute into court or as the Court may direct.
 - b. The applicant and the 1st respondent be restrained from commencing or continuing with any proceedings against the 2nd respondent in respect of the properties in dispute.
 - c. Upon such determination, the 2nd respondent be discharged from all liability in relation to the properties in dispute.
 - d. The 2nd respondent be struck out as a party in this suit for being wrongly joined.



- e. The costs of this Application and the costs incurred by the 2nd respondent in relation to the properties be borne by the Applicant.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Aisha Abdallah on 30.07.2024. The 2nd respondent contended, inter alia, that they only held the title documents as a neutral stakeholder with no legal or beneficial interest in the properties. The 2nd respondent urged the court to find that the real dispute was between the applicant and the 1st respondent and that they were not necessary parties in the suit.

B. Applicant's response

3. The applicant filed a replying affidavit sworn by Harban Singh Birdi on 14.08.2024 and contended that the said title documents should be released into their custody as the rightful owners, following the rescission of the agreement for sale between themselves and the 1st respondent. The applicant argued that any attempt to deposit the title documents in court is a plot by the respondents to frustrate the applicant and deny them their properties.

C. Directions on submissions

4. When the application was listed for directions, it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that only the 2nd respondent filed submissions dated 25.04.2025.

D. Issues for determination

5. The court has perused the 2nd respondent's chamber summons, the applicant's replying affidavit in response thereto as well as the material on record. The court is of the opinion that the following are the main issues for determination herein;
 - a. Whether the 2nd respondent is entitled to the orders sought in the application.
 - b. Who shall bear the costs of the application.

E. Analysis and determination

Whether the 2nd respondent is entitled to the orders sought in the application

6. The court has considered the material and submissions on record on this issue. The principles to be considered striking out a party from a suit are set out in Order 1 Rule 10 (2) of the Rules 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.

7. The rationale behind allowing a party to move court to be struck from a suit is so that a party improperly joined in a suit does not endure the process of trial and incur expenses before it can vindicate itself. In this case, the 2nd respondent is in physical possession of the title documents to Mombasa/block XXX/7, Mombasa/block XXX/8 & Mombasa Block XXX/9 in their capacity as stakeholders and



claim no legal or beneficial interest in the said properties. They maintain that they are mere custodians of the title documents and are not actively involved in the dispute between the applicant and the 1st respondent.

8. This position has been confirmed by the applicant in their replying affidavit whereby it was deposed that the title documents came to be in the possession of the 2nd respondent by virtue of them acting in an agreement for sale between the applicant and 1st respondent. However, the applicant urged the court to direct the said documents to be released into their possession as the rightful owners.
9. The court has perused the originating summons dated 10.06.2024 and in particular, the agreement for sale dated 02.03.2012 between the applicant as the vendor and the 1st respondent as the purchaser. It is clear to the court that the 1st respondent was the advocate acting for the applicant hence their possession of the title documents. Now that the dispute is between the applicant and the 1st respondent insofar as the agreement for sale is concerned, it is only prudent for the court to allow the 2nd respondent to hand over the title documents to the court for safekeeping until that dispute is heard and determined.

Who shall bear the costs of the application

10. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons –vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court finds no good reason to depart from the general rule. As a result, the 2nd respondent shall be awarded costs of the application.

F. Conclusion and disposal order

11. The upshot of the foregoing is that the court finds merit in the 2nd respondent's application. As a consequence, the court makes the following orders for disposal of the motion dated 30.07.2024:
 - a. The 2nd respondent, Ms. Anjarwalla & Khan LLP Advocates, are hereby struck out of the proceedings.
 - b. The 2nd respondent shall deposit the titles and other completion documents in their possession with respect to Title Nos. Mombasa Block XXX/7, Mombasa Block XXX/8 and Mombasa Block XXX/9 in court and the Deputy Registrar of the Court shall keep them under lock and key.
 - c. The applicant shall pay the 2nd respondent the costs of the application.

Orders accordingly.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT

TEAMS ON THIS 15TH DAY OF MAY 2025.

.....
Y. M. ANGIMA

JUDGE

In the presence of:

N/A for the applicant



Ms. Winnie Julu for the 1st respondent

Mr. McCourt for the 2nd respondent

N/A for the AG for the 3rd and 4th respondents

Gillian - Court assistant

