



**Kihara & another v Sharifow (Environment & Land Case  
E029 of 2023) [2025] KEELC 4904 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4904 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E029 OF 2023  
CA OCHIENG, J  
JUNE 30, 2025**

**BETWEEN**

**BENSON NGURA KIHARA ..... 1<sup>ST</sup> PLAINTIFF**

**FREDRICK KAMIRI KARUMBA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**ABDIRASHID ABDUL SHARIFOW ..... DEFENDANT**

**RULING**

1. What is before Court for determination is the Plaintiffs' Notice of Motion application dated the 25<sup>th</sup> November, 2023 where he seeks the following Orders:
  1. Spent
  2. Spent
  3. Spent
  4. Spent
  5. Spent
  6. Spent
  7. That the name of Abdirashid Abdul Sharifow be struck out from this suit.
  8. That costs of and/incidental to this application be costs in the cause.
2. The application is premised on the grounds on the face of it and the supporting affidavit of Abdirashid Abdul Sharifow where he denies being the owner of the property plot No. 285 (LR No. 36/VII/285).



3. The Plaintiff opposed the instant application by filing a replying affidavit sworn by Benson Ngura Kihara. He deposes that the Defendant is the owner of Plot No. 285 (LR No. 36/VII/285) and attached a copy of an Agreement dated the 6<sup>th</sup> September, 2024 to that effect. He insists that the issue of whether the Defendant has been properly sued or not can only be canvassed during the main hearing of this suit and not at an interlocutory stage.
4. The application was canvassed by way of written submissions.

### **Analysis and Determination**

5. Upon consideration of the instant Notice of Motion including the respective affidavits and rivalling submissions, the only issue for determination is whether the Defendant should be struck off this suit.
6. The Defendant contends that he is not the owner of Plot No. 285 (LR No. 36/VII/285) in which the Plaintiffs have a dispute with, hence he should be struck off this suit. The Plaintiffs opposed the striking out of the Defendant from this suit and insists he is the owner of the said land.
7. On striking out of a party to a suit, Order 1, Rule 10 (1) and (2) of the Civil Procedure Rules stipulates that:
  - “(1) Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit.
  - (2) 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.”
8. In this instance, I note even though the Defendant denied ownership of the aforementioned parcel of land, I note in the Agreement for Removal of Temporary Structures, made between Fredrick Kamiri Karumba and himself, dated the 6<sup>th</sup> September, 2024, he indeed admitted that he is the owner of plot LR. 36/ VII/ 285 which neighbours Plot 36/VII/503 Jam Street.
9. Based on the legal provisions I have cited above and applying it to the circumstances at hand, I find that since the Defendant had signed the Agreement for removal of structures dated 6<sup>th</sup> September, 2024, which was produced by the Plaintiffs as annexure ‘BN1’, confirming that the said parcel of land belongs to him, he is hence properly joined in this suit. I opine that his presence before the court may be necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. It is my considered view that seeking an order to be struck off this suit, actually amounts to an abuse of the process of court.
10. In the circumstance, I find the instant Notice of Motion application unmerited and will proceed to dismiss it.
11. Costs will be in the cause.



**DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30<sup>TH</sup> DAY OF JUNE 2025**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

Ms Kingori holding brief for Muturi for Plaintiff

Adano for Defendant

Court Assistant: Joan

