



Seii & 10 others v Nairobi County Govt & 8 others (Environment and Planning Petition E019 of 2024) [2025] KEELC 6329 (KLR) (25 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6329 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND PLANNING PETITION E019 OF 2024**

**AA OMOLLO, J
SEPTEMBER 25, 2025**

BETWEEN

- JEROTICH SEII 1ST PETITIONER**
- NJOMO KAMAU 2ND PETITIONER**
- MAUREEN MUGURE 3RD PETITIONER**
- FLORENCE ILOVI 4TH PETITIONER**
- MARGARET KAMAU 5TH PETITIONER**
- CHARLES KIGOTHO 6TH PETITIONER**
- ATIENO OCHOLLA 7TH PETITIONER**
- EUNICE NYAWIRA 8TH PETITIONER**
- MARGARET ORAIRO 9TH PETITIONER**
- JANET MAWIYOO 10TH PETITIONER**
- BROWNHILL MANAGEMENT LIMITED 11TH PETITIONER**

AND

- NAIROBI COUNTY GOVT 1ST RESPONDENT**
- PATRICK ANALO AKIVAGA 2ND RESPONDENT**
- STEPHEN GATHUITA MWANGI 3RD RESPONDENT**
- TOM ACHAR 4TH RESPONDENT**
- GEOFFREY MUTURI MURUMIA 5TH RESPONDENT**
- NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY 6TH RESPONDENT**



MAMO B. MAMO	7 TH RESPONDENT
CATHERINE THAITHI	8 TH RESPONDENT
BLISSFUL INVESTMENTS LTD	9 TH RESPONDENT

RULING

1. The 1st, 2nd, 3rd, 4th and 5th Respondents/Applicants filed a notice of motion dated 10th June 2025 seeking that the names of the 2nd, 3rd and 4th respondents be struck off from the suit by dint of section 89 of PLUPA and costs of the application be provided for.
2. The motion was supported by two affidavits, both sworn by Mr. Wilfred Masinde, Ag. Deputy Director of Planning, Compliance and Enforcement of the 1st Respondent, on 10th June and 10th July 2025, respectively. He stated that the 1st respondent, as a devolved government under *the Constitution* of Kenya, 2010, has the mandate for land use planning, development control, and granting approvals within Nairobi, while the 2nd, 3rd, and 4th respondents are its employees.
3. Mr Masinde cited Section 89 of the *Physical and Land Use Planning Act*, which provides immunity to public officers for actions done in good faith and without negligence under the Act forming the basis for the names to be struck out. The deponent avers that the petitioners have not demonstrated any negligence, bad faith, or unlawful conduct by the 2nd- 4th Respondents in the course of their official duties.
4. He asserts that their inclusion in the suit is unjustified and their names should be struck out as all the allegations in the petition concern actions taken by them in official capacities and not in personal capacities. That also the 1st Respondent, is already a party to the case hence retaining the 2nd-4th Respondents as parties serves no legal or procedural purpose, encumbers their ability to perform official duties, and results in unnecessary duplication.
5. He deposed that unless bad faith or ultra vires conduct is proven, public officers should not be personally targeted for actions performed within the scope of their employment.
6. The Petitioners vehemently opposed the motion through a replying affidavit of Jerotich Seii sworn on 1st July 2025. She contends that the application is frivolous, vexatious, and an abuse of the court process, arguing that Wilfred Masinde, who swore the supporting affidavit, holds a position not recognised in law and has not demonstrated the authority or basis for his involvement.
7. The deponent of the replying affidavit emphasised that the 2nd, 3rd, and 4th respondents being holders of legally established public offices ought to respond directly to the allegations instead of delegating to a person deemed to lack credibility, knowledge, or relevance to the petition. Further, she asserts that the said Respondents have been properly sued in both their official and individual capacities due to their actions and omissions which, according to the petitioners, resulted in breaches of fundamental rights, including the right to a clean and healthy environment.
8. That specific grievances are laid out in Parts C and D of the petition and the Respondents violated the laid-out laws including the *Physical and Land Use Planning Act* from which they now seek protection. That the attempt by the 2nd -4th Respondents to hide behind Section 89 of the Act is dismissed as a disingenuous effort to avoid accountability for negligence and misconduct in the discharge of public duties.



9. The Petitioners state that public officers are not immune from personal liability where there is negligent or bad faith conduct. That they are accused of failing to act diligently and in good faith concerning activities on Nairobi Block 171/392, leading to environmental harm and infringement of rights, thus are necessary parties for a fair determination of the petition.

Submissions

10. The 1st -4th Respondents/Applicants filed submissions dated 23rd July 2025 in support of their application while the Petitioners/Respondents filed theirs dated 1st September 2024. The Applicants submitted that Section 89 of the *Physical and Land Use Planning Act* (PLUPA) provides statutory immunity to public officers for acts or omissions done in good faith and without negligence while exercising functions under the Act.
11. They argue that in this case, the 2nd to 4th respondents have been sued for actions undertaken in their official capacities while performing statutory duties. The Applicants contend that the petition does not substantiate claims of personal wrongdoing, bad faith, or actions outside the scope of their authority and mere allegations of negligence are insufficient to lift the statutory protection without specific evidence demonstrating malice, ill motive, or ultra vires conduct.
12. In support, the Applicants cited the case of Ethics and Anti-Corruption Commission & 5 others v Henry Morara Ongwenyi & 3 others [2019] eKLR, where the Court of Appeal held that, in the absence of bad faith, joinder of officers acting within their legal mandate was improper and Peter Solomon Gichira v Attorney General & Another (2020) eKLR, where the High Court held that officers are immune from personal liability unless bad faith is shown, further interpreting "good faith" as acting with honesty, integrity, and within one's duty.
13. The Applicants stated that Order 1 Rule 10(2) of the Civil Procedure Rules empowers the court to strike out parties improperly joined or unnecessary for the just resolution of the matter. That the presence of the 2nd to 4th respondents has not been shown to be necessary for effective adjudication, especially where the 1st respondent, their employer, is already a party to the proceedings.
14. They contend that their continued participation risks duplicating the defense and unduly encumbering them from discharging their public duties and in support they cited the case of Haraf Traders Ltd v Narok County Government and Republic v Rosemary Wairimu Munene, Ex parte Ihururu Dairy Farmers Co-operative Society Ltd.
15. The Petitioners/Respondents cited the case of County Council of Nandi v Ezekiel Kibet Rutto & 6 Others [2013] KEHC 5136 (KLR), emphasizing that scandalous pleadings attempt to put the other party in bad light without legal relevance, frivolous pleadings lack legal foundation, vexatious pleadings are meant to harass or irritate, and abuse of process involves misuse of the court process.
16. They assert that the application does not meet the threshold for striking out as it is based on contested facts that require full hearing citing the case of Trust Bank Ltd v H.S. Amin & Co. Ltd & Another [2000] eKLR, where the court held that pleadings lacking substance and brought in bad faith cause unnecessary anxiety, delay, and prejudice to fair trial.
17. The petitioners maintain that the 2nd to 4th respondents have been sued both in their official and individual capacities due to their failure to discharge statutory duties under PLUPA, including preparing County development plans and the improper issuance of illegal development permissions.
18. The Petitioners stated that they rely on Articles 10, 73, and 232 of *the Constitution*, which outline public officers' obligations of integrity, accountability, and service.



19. That the Petitioners/Respondents' reliance on Section 89 of PLUPA for indemnity is misplaced because immunity only applies where officers act in good faith and without negligence, conditions that were not met.
20. In support, the Petitioners/Respondents cited the case of Bellevue Development Co. Ltd v Francis Gikonyo & 3 Others (2020) eKLR and Harlow v Fitzgerald 457 US 800 (1982), where the courts clarified that immunity must be supported by both good faith and objective reasonableness, and that the line between immunity and impunity is crossed when public officers abandon their constitutional duties.
21. The petitioners further submitted that the affidavits in support of the application were sworn by Wilfred Masinde, a person not party to the petition thus unauthorized to speak on behalf of the 2nd to 4th respondents.
22. That the respondents themselves have not directly denied the allegations nor sought to clarify their roles, and have instead inappropriately delegated the responsibility to a third party. Citing the case of Civicon Ltd v Kivuwatt Ltd & 2 others [2015] eKLR, the petitioners stress that the court has a duty to ensure all necessary parties are before it to resolve the matter effectively and justly thus the 2nd to 4th respondents are essential parties given their statutory roles and the specific allegations raised in the petition.
23. The Petitioners emphasize that striking out the 2nd-4th respondents at this preliminary stage, before a full hearing would deny the court the opportunity to assess the alleged violations of constitutional rights and duties under the law. In support, the Petitioners cited the case of Alumark Investments Ltd v Tom Otieno Anyango & 4 Others [2018] KEELC 4536 (KLR), where the court held that officials sued in their representative capacities are proper parties to the suit.

Analysis and Determination:

24. I have read and considered the grounds relied upon in the application together with the affidavits sworn in support thereof; the replying affidavit filed in opposition and the submissions rendered by the respective parties. The main question that falls for determination is whether or not the 2nd-4th Respondents are necessary parties to this suit.
25. It is trite that the power to strike out a party from a suit should be approached with caution as the power to strike out a party from a suit is obviously the same as the power to strike out a suit in so far as that party is concerned. Madan. J.A in the case of DT Dobie and Company (K) Ltd v Joseph Mbaria Muchina & Another (1982) KLR 1 referring to the power to strike out a suit 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.”
26. In this case, the Applicants contend that the 2nd-4th Respondents were only acting in their professional duties in good faith thus should not be enjoined in the suit especially that the 1st Defendant, their employer, is in the suit. The rely on section 89 of PLUPA which provides thus;

“A public officer acting under the Act shall not be liable in an action or a



proceeding for or in respect of an act done or omitted to be done without negligence and in good faith in the exercise of any of the functions conferred by or under this Act.”

27. The Petitioners argued that they have set out the particulars of negligence and or bad faith of the 2nd -4th Respondents under parts C and D of the Petition. For instance at paragraph 84 of the Petition, it is pleaded that 2nd to 5th, 7th and 8th Respondents refused and or failed their constitutional and or statutory duties and continues to abet the illegal acts of the 9th Respondent.
28. Thus, the Petitioners are impleading the Applicants both for acts of omission and commission committed by them under the law and in their individual capacity. The allegations may ultimately be unfounded, but the court cannot, through an interlocutory application, determine whether all actions alleged were carried out in the exercise of official duties or otherwise by the Applicants.
29. Secondly, for the application to succeed, the Applicants needed to demonstrate that indeed all the alleged breaches complained were done in their official capacities. Instead, they rely only on two grounds, that they are employees of the 1st Respondent and second that the Petitioner has not shown that they acted negligently. The burden was on them, which burden they have not discharged, and they cannot blame the Petitioners, who already set out the grounds/triable issues why they are sued, but have yet to be allowed to present their case.
30. Consequently, it is my opinion and I so hold that it would be premature to conclude that the 2nd -4th Respondents are not necessary to this suit when triable issues as to whether they acted in good faith in their professional capacity and whether they are liable at an individual level have been raised against them by the Petitioners.
31. In the end, the 2nd - 4th Respondents’ application dated 10th June 2025 is without merit and it is dismissed with costs in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF SEPTEMBER, 2025

A. OMOLLO

JUDGE

