



REPUBLIC OF KENYA



KENYA LAW
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**Kipkoech v Fina Bank Ltd & 2 others (Civil Case 161 of 2011)
[2025] KEHC 13853 (KLR) (6 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13853 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL CASE 161 OF 2011
RN NYAKUNDI, J
OCTOBER 6, 2025**

BETWEEN

EMMY JEPKEMOI KIPKOECH PLAINTIFF

AND

FINA BANK LTD 1ST DEFENDANT

GUARANTY TRUST BANK (K) LTD 2ND DEFENDANT

ROSE JEPCHIRCHIR BUNEI 3RD DEFENDANT

RULING

1. Before this Court is a Notice of Motion under Certificate of Urgency dated 30th September 2025 seeking the following orders:
 - a. That the 3rd Defendant be granted leave to issue a Third Party Notice against one Sylus Kipro Limo.
 - b. That the said Third Party Notice be deemed as duly filed and served upon payment of requisite court fees.
 - c. That costs of this application be in the cause.
2. Which application is based on the following grounds:
 - a. The 3rd Defendant entered into a sale agreement for her hotel business with one Sylus Kipro Limo to settle the subject loan.
 - b. The Plaintiff was the undisclosed principal and actual beneficiary at that agreement.
 - c. The 3rd Defendant now seeks indemnity or contribution from Mr. Sylus Kipro Limo in the event of any liability imposed upon her by this court.



- d. It is just and necessary that Mr. Limo be joined to these proceedings for the complete and final adjudication of all issues herein.
3. This application is further supported by the affidavit sworn by Rose Jepchirichi Bunei who deponed as follows:
- a. That she is the defendant herein having been sued by the Plaintiff.
 - b. That she took the loan using the Plaintiff's title with her full consent thereof.
 - c. That upon taking the loan purchase by the Plaintiff herein she repaid the same for 1 year in vain.
 - d. That upon her realization that the business was not turning around she notified the Plaintiff of her intent to sale.
 - e. That Sylus appeared from nowhere and offered to buy her business as a going concern.
 - f. That the terms of the agreement were quite clear that the memorandum of understanding was tailored to pay the loan.
 - g. That she was willing to concede any amount so long as the loan was paid for in full.
 - h. That she sold the business at Kshs 2,660,000 as full and final settlement – See RJB 1.
 - i. That she notified the Plaintiff who gave her the go ahead but avoided signing the memorandum of understanding.
 - j. That she was paid the balance of was to be due and owing Kshs 200,000 and Sylus agreed to repay the loan with me balance of Kshs 2,420,000/=.
 - k. That her being locked up was trickered by her received Kshs 200,000 she has never known how.
 - l. That upon release from Prison the Plaintiff was running her former hotel business.
 - m. That she was not alive to the arrangement between Sylus and the Plaintiff.
 - n. That service to note that the 3rd defendant Sylus failed to pay and or neglected to pay the said loan.
 - o. That it was the duty of Sylus to pay as agreed failure to which is her application before Court for full indemnity against any liability that may accrue.
 - p. That it is her pray that the 3rd defendant be brought on board.

Decision

4. It is from the above affidavit learned Counsel Mr. Chemwok moved the Court for leave for the Third Party to join the proceedings and subsequent to that serve the necessary Notice and pleadings that touch on the ongoing proceedings.
5. The applicable law is found under the provisions of Order 1 Rule 15 of the Civil Procedure Rules 2010 which provides as follows:

“Order 1 Rule 15 Notice to third and subsequent parties-

Where a Defendant claims as against any other person not already a party to the suit (hereinafter called the third party)—



- a. that he is entitled to contribution or indemnity; or
 - b. that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff; or
 - c. that any question or issue relating to or connected with the said subject matter is substantially the same question or issue arising between the Plaintiff and the Defendant and should properly be determined not only as between the Plaintiff and the Defendant but as between the Plaintiff and Defendant and the third party or between any or either of them, he shall apply to the Court within fourteen days after the close of pleadings for leave of the Court to issue a notice (hereinafter called a third party notice) to that effect, and such leave shall be applied for by summons in chambers ex parte supported by affidavit.
- (2) A copy of such notice shall be filed and shall be served on the third party according to the rules relating to the service of a summons.
 - (3) The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the court, be filed within fourteen days of service, and shall be in or to the effect of Form No. 1 of Appendix A with such variations as circumstances require and a copy of the plaint shall be served therewith.
 - (4) Where a third party makes as against any person not already a party to the action such a claim as is mentioned in sub rule(1), the provisions of this Order regulating the rights and procedure as between the defendant and the third party shall apply mutatis mutandis as between the third party and such person, and the court may give leave to such third party to issue a third party notice, and the preceding rules of this Order shall apply mutatis mutandis, and the expressions “third party notice” and “third party” shall respectively apply to and include every notice so issued and every person served with such notice.
 - (5) Where a person served with a notice by a third party under sub rule (4) makes such a claim as is mentioned in sub rule (1) against another person not already a party to the action, such other person and any subsequent person made a party to the action shall comply mutatis mutandis with the provisions of this rule.

6. The Court in interpreting this rule held as follows in the Case of Oceanfreight (EA) Limited –Versus-Technomatic Limited & Another (2010) eKLR held that:

“It is, in my opinion professionally expedient that the Defendant should seek to enjoin the Applicant herein, as a third party. This is because of the perceived connection between the Applicant’s role in the said contract and the cause of action.” Court further stated “from the several authorities canvassed by counsel on both sides, it emerges, contrary to the Applicant’s contentions, that joinder of third parties as may be prayed by Defendants, is not conceptually linked to contract as such; such joinder may be sought in connection with different causes of action was that, provided only that there exists a basis of liability of the third party to the defendant; and such a basis of liability can arise by operation of the law, in the light of the applicable facts and circumstances.”



7. Similarly in the case of Kenya Commercial Bank – Versus - Suntra Investment Bank Limited (2015) eKLR the Court held that:

“In law, a third party is enjoined in a suit at the instance of the Defendant and through the set procedure under Order 1 rule 15 – 22 of the Civil Procedure Rules. And, liability between the Defendant and the third party is determined between the Defendant and the third party, but of course, after the court is satisfied that there is a proper question to be tried as to liability of the third party and the Defendant, and has given directions under Order 1 Rule 22 of the Civil Procedure Rules.”

8. This application finds its answer in the statement by Professor Genn HG in his book Judging Civil Justice (2010) in which he made the following observations:

... the machinery of civil justice sustains social stability and economic growth by providing public processes for peacefully resolving civil disputes, for enforcing legal rights and for protecting private and personal rights. The civil justice system provides the legal architecture for the economy to operate effectively, for agreements to be honoured and for the power of government to be scrutinised and limited. The civil law maps out the boundaries of social and economic behaviour, while the civil courts resolve disputes when they arise. In this way, the civil courts publicly reaffirm norms and behavioural standards for private citizens, businesses and public bodies. Bargains between strangers are possible because rights and responsibilities are determined by a settled legal framework and are enforceable by the courts if promises are not kept. Under the rule of law, government is accountable for its actions and will be checked if it exceeds its powers. The courts are not the only vehicle for sending these messages, but they contribute quietly and significantly to social and economic wellbeing. They play a part in the sense that we live in an orderly society where there are rights and protections, and that these rights and protections can be made good. If the law is the skeleton that supports liberal democracies, then the machinery of civil justice is some of the muscle and ligaments that make the skeleton work.

9. With this background in mind the Chamber Summons dated 30th September 2025 be and is hereby allowed by this Court granting leave to the 3rd defendant to issue a Third Party Notice against one Sylus Kiprop Limo and further this order the Third Party Notice be deemed as duly filed and served within the provisions of the Civil Procedure Rules. This paves way for any rejoinder to be filed against the Third Party notice.

10. As a consequence, hearing to proceed in earnest on 27th October 2025 at 11.00 A.M. It is so ordered.

DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 6TH DAY OF OCTOBER 2025.

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R. NYAKUNDI
JUDGE

