



**Orion East Africa Ltd v Attorney General State Law Office & 8 others (Commercial Petition E024 of 2024) [2025] KEHC 13965 (KLR) (Commercial and Tax) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13965 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX**

**COMMERCIAL PETITION E024 OF 2024**

**BK NJOROGE, J**

**OCTOBER 2, 2025**

**BETWEEN**

**ORION EAST AFRICA LTD ..... PETITIONER**

**AND**

**ATTORNEY GENERAL STATE LAW OFFICE ..... 1<sup>ST</sup> RESPONDENT**

**PRINCIPAL SECRETARY NATIONAL TREASURY (NT) .... 2<sup>ND</sup> RESPONDENT**

**PRINCIPAL SECRETARY MINISTRY OF AGRICULTURE & LIVESTOCK  
DEVELOPMENT (MA & LD) ..... 3<sup>RD</sup> RESPONDENT**

**PRINCIPAL SECRETARY MINISTRY OF PUBLIC HEALTH &  
SANITATION ..... 4<sup>TH</sup> RESPONDENT**

**DIRECTOR GENERAL AGRICULTURE & FOOD AUTHORITY  
(AFA) ..... 5<sup>TH</sup> RESPONDENT**

**MANAGING DIRECTOR PBK-PYRETHRUM REGULATORY  
AUTHORITY ..... 6<sup>TH</sup> RESPONDENT**

**MANAGING DIRECTOR EXPORT PROCESSING ZONES AUTHORITY .... 7<sup>TH</sup>  
RESPONDENT**

**DIRECTOR GENERAL KENYA REVENUE AUTHORITY (KRA) .... 8<sup>TH</sup>  
RESPONDENT**

**KENTEGRA BIOTECHNOLOGY HOLDINGS LLC ..... 9<sup>TH</sup> RESPONDENT**



## RULING

1. This is a Ruling in respect of the application by way of a Notice dated 14.2.2025. It is filed by the 9<sup>th</sup> Respondent. It is supported by the affidavit of Mucheru Njoroge John sworn on even date.
  1. It seeks the following orders:
    1. That this Honourable Court be please to strike out the name of the 9<sup>th</sup> Respondent from the proceedings before this Honourable Court.
    2. That the costs of this application and the suit against the 9<sup>th</sup> Respondent be borne by the (sic) on full indemnity basis.

### Background Facts

2. The Petitioner herein has filed the Judicial Review proceedings seeking to recover costs of Kshs. 4,094,709/=. These are costs said to have been awarded to the Petitioner in Judicial Review 370 of 2010. A perusal of the annexures to the application reveal that the correct details of that case is Judicial Review 375 of 2010 Republic vs Pest Control Board and Pyrethrum Board of Kenya Ex-Parte Orion East Africa Limited.
3. The 9<sup>th</sup> Respondent submits that it was not neither a party to the Judicial Review proceedings nor a Judgement Debtor in the subsequent decree.
4. The Petitioner is acting in person through one Peter Maina Ruo. Mr. Maina Ruo appeared in Court virtually on 8<sup>th</sup> July, 2025 and indicated to the Court that he opposes the application. The Court has seen the bulky Response and Written Submissions filed by the Petitioner. The other Respondents are not affected by the orders sought in the application.

### Issue for Determination

5. Having perused the application and the bundle filed in response as well as the submissions, the Court frames a single issue for determination.
  - a. Whether the Court should exercise its discretion in striking out the 9<sup>th</sup> Respondent from these proceedings.

### Analysis

6. The Applicant cites Order 1 Rules 10 and 14 of the *Civil Procedure Rules* as the power to strike out the 9<sup>th</sup> Respondent from these proceedings. Order 1 Rule 10 states as follows;
  10. Substitution and addition of parties [Order 1, rule 10.]
    - (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, be added.
- (3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent in writing thereto.
- (4) Where a defendant is added or substituted, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendants.

7. Order 1 Rule 14 of the *Civil Procedure Rules* states as follows;

14. Practice [Order 1, rule 14.]

Any application to add or strike out or substitute a plaintiff or defendant may be made to the court at any time before trial by chamber summons or at the trial of the suit in a summary manner.

8. The Court hears the Applicant to submit that it has been wrongly and erroneously added to these pleadings by the Petitioner. That there is no basis in it being a party herein.

9. The Court also hears the Applicant to submit that no reasonable cause of action arises against it. That no reliefs are either sought or can lie against it in these proceedings. This calls into play the provisions of Order 2 Rule 15 of the *Civil Procedure Rules* which states as follows;

15. Striking out pleadings [Order 2, rule 15.]

- (1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—
  - (a) it discloses no reasonable cause of action or defence in law; or
  - (b) it is scandalous, frivolous or vexatious; or
  - (c) it may prejudice, embarrass or delay the fair trial of the action; or
  - (d) it is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.
- (2) No evidence shall be admissible on an application under subrule (1)(a) but the application shall state concisely the grounds on which it is made.
- (3) So far as applicable this r. shall apply to an originating summons and a petition.

10. It is not lost to this Court that striking out of parties from proceedings is a draconian remedy. It has the effect of bringing to an end the intended action against such a party. Yet the Petitioner from the drafting to the filing of the Petition herein intended to have the 9<sup>th</sup> Respondent as a party to the proceedings. As to whether the action against the 9<sup>th</sup> Petitioner will ultimately succeed will depend on the nature of evidence presented before this Court at the hearing.



11. This Court will therefore have to balance the interests of the Petitioner to proceed as against the 9<sup>th</sup> Respondent versus the right of the 9<sup>th</sup> Respondent to extricate itself from this case at this interlocutory stage. The Court has to exercise such powers sparingly, leaning towards hearing cases on merits. It also calls into play the exercise of exercise of discretion.
11. The Court is alive to the fact that the Petitioner has several other matters before this Court. He has been pushing to be heard on merits. The Court would rather hear the dispute fully and reach a determination rather than deal with the Petition through piece-meal applications.
12. In the circumstances, the Court is reluctant to strike out the name of the 9<sup>th</sup> Respondent from the proceedings at this stage.
13. As to costs, there shall be no orders as to costs.

#### **Determination**

14. The 9<sup>th</sup> Respondent's application by way of a Notice of Motion dated 14<sup>th</sup> February 2025 is dismissed for lack of merits.
15. There shall be order as to costs.
16. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS 02<sup>ND</sup> DAY OF OCTOBER, 2025.**

**NJOROGE BENJAMIN K.**

**JUDGE**

In the presence of;

Mr. Maina Ruo acting in person for Petitioner/Applicant.

Miss Athman holding brief for Mr. Munyu for the 9<sup>th</sup> Respondent

Mr. Bett for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents.

Mr. Peter Wabwire - Court Assistant.

