



**Shah & another (Suing as representatives of the Estate of Janendra Raichand Shah) v Awako Developers Ltd & 4 others (Environment and Land Case E022 of 2023) [2025] KEELC 6902 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6902 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE E022 OF 2023  
YM ANGIMA, J  
OCTOBER 9, 2025**

**BETWEEN**

**KAMAL JANENDRA RAICHAND SHAH ..... 1<sup>ST</sup> PLAINTIFF  
VIKESH JANENDRA SHAH ..... 2<sup>ND</sup> PLAINTIFF  
SUING AS REPRESENTATIVES OF THE ESTATE OF JANENDRA RAICHAND  
SHAH**

**AND**

**AWAKO DEVELOPERS LTD ..... 1<sup>ST</sup> DEFENDANT  
SHELKA INVESTMENTS LTD ..... 2<sup>ND</sup> DEFENDANT  
LAND REGISTRAR MOMBASA ..... 3<sup>RD</sup> DEFENDANT  
HEERAL VISHAL SONI ..... 4<sup>TH</sup> DEFENDANT  
WINNIE KERUBO OGORO ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

**A. 4<sup>th</sup> and 5<sup>th</sup> Defendants' application**

1. By a notice of motion filed pursuant to Order 1 Rule 10(2), Order 51 Rules 3 & 5 of the Civil Procedure Rules, Sections 1A and 3A of the *Civil Procedure Act* (Cap 21), Section 134 (1) of the *Evidence Act*, and all other enabling provisions of the law, the 4<sup>th</sup> and 5<sup>th</sup> defendants (the defendants) sought an order striking out their names from the suit.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavits by Heeral Vishal Soni and Winnie Kerubo Ogoro sworn on even date. The defendants pleaded that they were not necessary parties to the suit since they were merely instructed



in their capacity as advocates in a conveyancing transaction hence they were not liable for any disputes which may arise under the said transaction. They also pleaded that they were protected against civil suits under the doctrine of advocates privilege.

### **B. Plaintiffs' response**

3. The plaintiffs filed a replying affidavit sworn by Vikesh Janendra Shah on 05.06.2025 in opposition to the application. It was pleaded that at the material time the defendants were advocates in the firm of Muthee Kihiko Soni & Associates when they handled the transcription giving rise to the instant suit. He pleaded that completion documents were entrusted to the 4<sup>th</sup> defendant who acted fraudulently and in breach of his fiduciary duty by causing the transfer of the suit property to a third party before completion. The 5<sup>th</sup> defendant was alleged to have witnessed the alleged fraudulent transfer of the suit property to the 2<sup>nd</sup> defendant who was not the purchaser in the conveyancing transaction.
4. The plaintiffs also pleaded that the defendants had committed forgery to facilitate the alleged fraudulent transfer. It was thus the plaintiffs' contention that the defendants were properly sued as necessary parties so that they may answer to the alleged fraud and breach of fiduciary duty. As a consequence, the court was urged to dismiss the application and retain the 4<sup>th</sup> and 5<sup>th</sup> defendants in the proceedings.

### **C. Directions on submissions**

5. 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 submissions. The record shows that the defendants submissions were filed on 10.06.2025 whereas the plaintiffs' submissions were filed on 01.10.2025.

### **D. Issues for determination**

6. The court has perused the notice of motion dated 25.04.2025, the plaintiffs' replying affidavit in opposition thereto and the material on record. The court is of the view that the main issue for determination is whether the 4<sup>th</sup> and 5<sup>th</sup> defendants are necessary parties to the suit. The ancillary issue is who shall bear costs of the application.

### **E. Analysis and determination**

7. There is no dispute that the 4<sup>th</sup> and 5<sup>th</sup> defendants acted for both parties in the sale transaction between the plaintiffs' late father and Awako Developers Ltd. The completion documents were allegedly handed over to the 4<sup>th</sup> defendant pending completion whereas the 5<sup>th</sup> defendant is said to have witnessed and stamped some conveyancing documents. The plaintiffs' allegation as per the amended plaint was that the defendants acted fraudulently and in breach of their fiduciary duty by causing the suit property to be transferred to a party who was not the purchaser and even before full payment of the purchase price. The plaintiffs pleaded several particulars of alleged fraud, breach of contract and breach of trust against the defendants in paragraph 17 of the amended plaint.
8. The 4<sup>th</sup> and 5<sup>th</sup> defendants did not concede the alleged fraud and breach of trust. They took the position that they were not parties to the sale transaction since they merely acted in their professional capacity as advocates hence they ought not to be sued in any dispute arising out of the said transaction. They contended that they were protected in law against civil suits for simply having done their professional work.



9. In the case *Pizza Harvest Ltd vs Felix Midigo* [2013]eKLR, it was held, inter alia, that;

“What makes a person a necessary party? It is not of course, merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance and is afraid that the existing parties may not advance them adequately ...the Court might often think it convenient or desirable that some of such persons should be heard so that the court could be sure that it had found the complete answer, but no one would suggest that it would be necessary to hear them for that purpose. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action, and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party.”

10. The court is of the view that given the nature of the suit and the allegations of fraud and breach of trust pleaded against the 4<sup>th</sup> and 5<sup>th</sup> defendants the issues in dispute cannot be effectually and completely resolved in their absence. The court is thus of the view that they are indeed necessary parties to the proceedings for the purpose of resolving all the issues in controversy.

11. Although the defendants contended in their application that there was no cause of action against them in view of the advocates’ privilege the court is of the view that the such privilege cannot validly apply to bar a claim based upon alleged fraud, forgery or breach of trust by an advocate. The court does not also agree with the defendants’ contention that there are no reliefs sought against them in the amended plaint. A perusal of the amended plaint reveals that among the reliefs sought against them is general damages for fraudulent transfer and breach of trust as well as costs of the suit.

#### **F. Conclusion and disposal orders**

12. The upshot of the foregoing is that the court finds and holds that the 4<sup>th</sup> and 5<sup>th</sup> defendants are necessary parties to the suit. As a result, the notice of motion 25.04.2025 is hereby disallowed. Costs of the application shall be in cause.

**RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 9<sup>TH</sup> DAY OF OCTOBER 2025.**

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**Y. M. ANGIMA**

**JUDGE**

In the presence

Court assistant Gillian

Mr. Kyallo for the plaintiff

Mr. Kiprono for the 3<sup>rd</sup> defendant

Mr. Lutukai for the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants

