



Sakwa & 3 others v County Government of Vihiga & 3 others (Environment and Land Appeal E006 of 2023) [2025] KEELC 4560 (KLR) (12 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4560 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIRONMENT AND LAND APPEAL E006 OF 2023**

**E ASATI, J
JUNE 12, 2025**

BETWEEN

**CHARLES TEMBA HOSEA SAKWA 1ST APPELLANT
FRANCIS AMULIOTO SAKWA 2ND APPELLANT
RUTH AMIMO MUHAKA 3RD APPELLANT
ANNE KABEKA SAKWA 4TH APPELLANT**

AND

**COUNTY GOVERNMENT OF VIHIGA 1ST RESPONDENT
KENYA ROADS BOARD 2ND RESPONDENT
DIRECTOR TRANSPORT & INFRASTRUCTURE COUNTY GOVERNMENT
OF VIHIGA 3RD RESPONDENT
GENERAL ENTERPRISES LIMITED 4TH RESPONDENT**

JUDGMENT

Introduction

1. The Appellants herein are the plaintiffs in Vihiga CM ELC Case No. 57 of 2020 (the suit) wherein they had sued the Respondents claiming that in the course of construction of a road known as Musiakhupa - Mulusiola – Wanyumbile Road, the Respondents unlawfully encroached on the Plaintiffs' land parcel known as East Bunyore/ Ebusiratsi/1223 and East Bunyore/Ebusiratsi/1484 (the suit lands herein).
2. The appellants claimed for an order of permanent injunction, a declaration, an order to restore the land, general damages and costs. The record shows that in response to the appellants' claim the 2nd Respondent filed an application vide Notice of Motion dated 3rd August 2022 seeking for the following orders:-



- a. That the plaint dated 12/8/2020 be struck out and the suit against the 2nd Defendant dismissed with costs.
 - b. That the 2nd defendant is an unnecessary party to the suit.
 - c. That the plaintiffs’ suit does not disclose any cause of action against the 2nd defendant.
 - d. Costs be in the cause.
3. The application was brought under the provisions of Order 2 Rule 15 Civil procedure Rules 2010 and sections 1A, 1B and 3A of the Civil Procedure Act.
 4. The application was supported by the contents of the Supporting Affidavit sworn by Catherine Kassim the Legal Officer of the 2nd Respondent on 3rd August 2022.
 5. The Plaintiffs’/Appellants’ replied to the application vide the Replying Affidavit sworn by the 1st Appellant on 14th September 2022. The record shows further that the application was disposed of by way of written submissions and that vide its ruling dated 27/7/2023 the court found that the plaintiffs (appellants herein) had failed to convince the court that the 2nd Defendant was a necessary party in the suit. The court allowed the application and made the following orders;-
 - “(a) The 2nd defendant, KENYA ROADS BOARD was not a necessary party to the proceedings and its absence or presence will not add value to these proceedings.
 - (b) I proceed to strike out the name of the 2nd defendant from the suit herein.
 - (c) The costs of the 2nd defendant shall be borne by the plaintiffs.”

The Appeal

6. Aggrieved by the Ruling dated 27/7/2023, the plaintiffs filed the present appeal vide the Memorandum of Appeal dated 24th August 2023 on the grounds that: -
 - i. The Learned trial Magistrate erred in law and in fact in finding that the 2nd defendant, Kenya Roads Board, was not a necessary party to the lower court proceedings.
 - ii. The Learned trial Magistrate erred in law and in fact in striking out the name of the 2nd Defendant Kenya Roads Board, from the suit.
 - iii. The Learned trial Magistrate erred in law and in fact in failing to exhaustively and/or cumulatively evaluate the evidence on record and thus arriving at an erroneous conclusion.
7. The appellants in this appeal seek for orders that: the lower court ruling be set aside and/or quashed and that costs of the appeal and those incurred in the subordinate court be borne by the Respondent. The Appeal was canvassed by way of written submissions.

Analysis and determination

8. This being a first appeal, this court reminds itself of the duty to re-examine and re-analyze the evidence placed before the trial court with a view to arrive at independent conclusion and thus determine whether the findings of the trial court are consistent with the evidence and the applicable law. In *Gitobu Imanyara & 2 Others vs Attorney General* [2016]eKLR the court held that:

“ this being a first appeal, it is trite law that this court is not bound necessarily to accept the findings of fact by the court below and that an appeal to this court from a trial by the High



Court is by way of a retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.”

9. The first ground of appeal is that the court erred in finding that the 2nd defendant was not a necessary party in the suit.
10. The grounds upon which the 2nd Respondent’s application had been brought before the trial court were that the plaint as filed did not disclose any reasonable cause of action against the 2nd Defendant (2nd Respondent herein) as the plaint did not set out what actions of the 2nd Respondent occasioned the plaintiffs loss or damage and that the 2nd Defendant (Respondent) had not interfered with the Plaintiffs’ quiet and peaceful enjoyment of the suit land, that the 2nd Defendant was improperly enjoined in the suit and that it was not a necessary party to the suit.
11. The Appellants’ response as contained in the Replying affidavit was that going by the issues raised in the suit it would be prudent to have the 2nd Defendant participate in the suit so as to bring out all the issues in controversy.
12. In this appeal it has been submitted on behalf of the Appellants that the relevant test for determining whether or not to join a party in proceedings were restated in the case of Kingori –vs Chege & 3 others (2002) eKLR 243 that the person must be a necessary and proper party. That in case of a defendant there must be a relief flowing from that defendant to the plaintiff, that the ultimate order cannot be enforced without his presence in the matter, that his presence is necessary to enable the court effectively and completely adjudicate upon and settle all questions involved in the case.
13. Counsel submitted that the 2nd Respondent’s presence in the suit is necessary as the same will enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit. That the order for compensation sought in the suit will directly affect the 2nd Respondent. That under Order 1 Rule 3 of the Civil Procedure Rules 2010 a person may be joined in a suit as a Defendant against whom any right to relief arising out of an act or transaction is alleged to exist.
14. Counsel relied on the cases of Youth Limited -vs – Kiluko & Another Kenya Railway Corporation (Intended defendant) Civil Suit 160 of 2019 (2024) eKLR, and Givicom Limited -vs- Karuwatt Limited & 2 others (2015) eKLR among other authorities to support his submissions.
15. Written submissions dated 24th March 2025 were filed on behalf of the 2nd Respondent by Gilbert C. Tarus Principal State Counsel for Attorney General. Counsel submitted that the suit did not disclose any reasonable cause of action against the 2nd Respondent, the Kenya Roads Board, that there was no connection between the allegations in the plaint and the final orders being sought as against the 2nd Respondent.
16. That the 2nd Respondent was not involved in the implementation of the projects and hence could not have interfered with the Plaintiffs’ land parcels, the suit lands. That under Order 2 Rule 15 of the Civil Procedure Rules the court had power to strike out pleadings which do not disclose reasonable cause of action or defence in law. That therefore the appeal lacks merit.
17. I have considered the submissions. The 2nd Defendant was described in paragraph 2 of the plaint as “a road board established in accordance with Kenya Roads Board Amendment Bill 2019, empowered to borrow and set aside funds for repayment of loans and other facilities taken for purposes of road maintenance, development and rehabilitation”.



18. The claim in the plaint is based on trespass allegedly committed by the 4th Defendant by re-routing the road from its original course and instead constructing it through the suit lands which belong to the Plaintiffs' father.
19. A reading of the plaint reveals no complaint or nexus between the 2nd Respondent and the complaint in the plaint. In essence, no cause of action was revealed against the 2nd Respondent. And this was the finding of the trial court.
20. The 2nd ground of appeal faults the trial court for striking out the name of the 2nd Respondent from the proceedings.
21. A reading of the Ruling appealed against reveals that the trial court after having found that 2nd Respondent herein was not a necessary party in the suit proceeded to strike out its name from the suit.
22. The Civil Procedure Rules allows the court to strike out the name of party wrongly joined in a suit.
23. The trial court relied on and was guided by the authority in Amon vs Raphael Tuck & Sons 1956 in ER 273 where it was held that the only reason which makes it necessary to make a person a party to an action is so that he would 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 effectively and completely settled unless he is a party. This was not demonstrated in respect of the 2nd Respondent.
24. For the foregoing reasons the court finds no merit in the appeal. The appeal is dismissed. Each party to bear own costs of the appeal as the suit is yet to be determined.

Orders accordingly.

JUDGEMENT DATED AND SIGNED AT VIHIGA AND DELIVERED THIS 12TH DAY OF JUNE 2025 VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Ajevi- Court Assistant.

Mbaka for the Appellant.

No appearance for the Respondent.

