

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC LC NO. E183 OF 2024

SIKO WOCHÉ IMALA

PLAINTIFF

VERSUS

IMPACT INVESTMENTS LIMITED 1ST

DEFENDANT

**JOSEPH NJENGA WANDUI &
DAVID OMONDI BUOP T/A PETRO GAP 2ND**

DEFENDANT

**ABDULWAHID MAALIM
T/A SCREEN REPUBLIC GAMING 3RD**

DEFENDANT

HENRY OCHIEL T/A FAVOURANTS CEREALS..4TH

DEFENDANT

PEGASUS KENYA LIMITED PROPOSED 5TH

DEFENDANT

RULING

ELC LC NO. E183 OF 2024

Ruling

1. What is before the Court for determination is the proposed 5th Defendant's Notice of Motion application dated the 20th March 2025 where it seeks the following Orders:

a) Spent.

b) That the Honourable Court allow the proposed 5th Defendant/ Respondent to be enjoined as a Defendant/ Respondent in the current proceedings pending hearing and determination of this application and suit.

c) That the Honourable Court grant leave to the proposed 5th Defendant/Respondent to file a response to the Application/suit herein pending hearing and determination of this application and suit.

d) That costs of this application be provided for.

2. The application is premised on grounds on its face and on the supporting affidavit of Idan Haji Isaak, the proposed 5th Defendant's director. He avers that the proposed 5th Defendant purchased the suit property for value from the 1st Defendant, of which it paid a consideration of Kshs. 23

million. He claims subsequently, the Respondents conspired and tried to sell the same property illegally, necessitating him to file **HCCCOM E195 of 2021** where the Court issued injunction orders which he annexed.

3. He points out that the 1st Defendant has also filed **HCCCOM E658 OF 2024**. He avers that the proposed 5th Defendant ought to be joined to these proceedings so as to respond to the issues raised herein, as the sale of the subject property to the Plaintiff was fraudulent and being that he is in occupation.
4. The application is opposed by the Plaintiff who filed a replying affidavit. He avers that he seeks an eviction order against the 1st Defendant, having purchased the suit property in a public auction conducted on behalf of African Banking Corporation Ltd, after which the subject land was transferred and registered to him. He contends that the public auction having been completed, the 1st Defendant and the proposed 5th Defendant can only seek damages against the Chargee

Bank. Further, that the proposed 5th Defendant has not demonstrated any cause of action against him.

5. He insists that he is not privy to the transaction between 1st Defendant and proposed 5th Defendant thus any claim by the proposed 5th Defendant can only be filed against the 1st Defendant/the Bank, which the proposed 5th Defendant alleges to have paid. He avers that there is no evidence that the proposed 5th Defendant paid the alleged Kshs.23 million. He accuses the proposed 5th Defendant for non-disclosure and points out that it did not disclose that it rescinded the agreement between the 1st Defendant and itself.
6. The 1st, 2nd to 4th Defendants did not oppose the instant application which was canvassed by way of written submissions.

Submissions

7. The proposed 5th Defendant submits that it has a direct and identifiable equitable interest in the subject property, having paid a total sum of Ksh. 23 million, to the 1st Defendant. He

argues that any decision made in its absence would risk being unenforceable, unjust, and susceptible to future litigation thus all issues surrounding the suit property ought to be resolved in the same suit to prevent contradictory judgments and ensure finality.

8. It further submits that the principle of proprietary estoppel applies thus having committed significant funds, it should not suffer injustice from a subsequent and competing transaction. It insists that its presence will allow the Court to effectually and completely adjudicate the matter and ensure that all conflicting claims are addressed in a single forum.
9. To support its arguments, it relied on the following decisions:
Departed Asians Property Custodian Board v Jaffer Brothers Ltd [1999] 1 EA 55, Francis Kariuki Muruatetu & another v Republic & 5 others [2016] eKLR, Mwangi & Another v Mwangi & 5 Others [1986] KLR 328, Macharia Mwangi Maina & 87 Others v

Davidson Mwangi Kagiri [2014] eKLR and Wanjiru Kamau v Tabitha Muthoni [2012] eKLR.

- 10.** The Plaintiff submits that the proposed 5th Defendant has not put forth any justifiable reason to be joined in these proceedings. Further, that by allowing it to be joined as a Defendant, the Court will have to answer the question on whether the said party paid monies to the 1st Defendant and the recourse for the same, deviating from the Plaintiff's suit which is on eviction of the 1st Defendant from the subject property.
- 11.** He submits that joinder would introduce extraneous commercial disputes and unduly delay his rights to enforcement of his proprietary rights. Further, that the proposed 5th Defendant's claim can only be maintained as against the Chargee bank in commercial courts.
- 12.** To buttress his averments, the Plaintiff relied on the following decisions: **Hi Jung Oh Childrens' Home v Life**

Reformation Centre & 4 others
[2024] KEELC 4298 (KLR), Nova Holdings Limited v
Waithera & 5 others (Environment & Land Case 83 of
2022) [2023] KEELC 22571 (KLR) (11 October 2023)
(Ruling) and Joseph Njau Kingori v Robert Maina Chege
& 3 others [2002] KEHC 1192 (KLR).

Analysis and Determination

- 13.** Upon consideration of the instant Notice of Motion application including the respective affidavits and rivalling submissions, the only issue for determination is whether the proposed 5th Defendant should be joined in these proceedings as the 5th Defendant and granted leave to file a reply to the suit.
- 14.** The proposed 5th Defendant has sought joinder to this suit and contends that it has a stake in the matter, having paid Ksh. 23 million towards purchase of the suit property, to the 1st Defendant. It argues that since the central issue in this suit is the rightful ownership and title to the subject

property, it ought to be joined and allowed to file a reply so that all the issues in the suit can be determined. In opposition, the Plaintiff contends that it was not privy to any transaction between the proposed 5th Defendant and the 1st Defendant, thus the proposed 5th Defendant has no stake in this matter.

15. On joinder, Order 1 Rule 10 (2) of the Civil Procedure Rules, states as follows:

“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 to effectually and completely to adjudicate upon or settle all questions involved in the suit, be added.”

16. In **Meme v. Republic [2004] KLR**, the Court highlighted parameters for joinder of parties and stated thus:

“(i)Where the presence of the party will result in the complete settlement of all the questions involved in the proceedings; (ii) Where the joinder will provide protection for the rights of a party who would otherwise be adversely affected in law: and (iii) Where the joinder will prevent a likely course of proliferated litigation.”

17. In the Ugandan case of **“Deported Asians Custodian Board v - Jaffer Brothers Ltd [1999] 1 E.A. 55 (SCU)”**, the Court stated as follows:

“...For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders which the plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such person

joined so that he is bound by the decision of the court in that suit. Alternatively, a person qualifies (on an application of a defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.”

- 18.** On perusal of the pleadings herein including documents filed, I note the proposed 5th Defendant entered into a Sale Agreement dated the 29th June, 2017 for the purchase of the suit property. In the said Sale Agreement, it indicates that the sale is with the consent of the Chargee African Banking Corporation Limited. The Plaintiff has vehemently opposed the joinder of the proposed 5th Defendant insisting that it will delay this matter where he seeks eviction orders. However, I opine that since the proposed 5th Defendant also commenced the purchase of the suit property prior to the auction and claims proprietary interest over the said property, its involvement in these proceedings is necessary to enable the

Court effectually and completely adjudicate upon as well as settle all questions involved in the suit. Further, this will also avoid a multiplicity of suits.

19. Based on the facts as presented and relying on the legal provisions I have quoted while associating myself with the cited decisions, it is my considered view that the proposed 5th Defendant will also be affected by any decision emanating from this suit. To my mind, I find that the Plaintiff has not demonstrated what prejudice he stands to suffer if the proposed 5th Defendant was joined in these proceedings as the 5th Defendant.

20. It is against the foregoing that I find the Notice of Motion application dated the 20th March 2025 merited and will allow it, in the following terms:

- a.** The Plaintiff to file and serve an amended Plaint in fourteen (14) days.

b. Upon service, 5th Defendant do file and serve its Defence within twenty (21) days.

c. Costs in the cause.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS
13TH DAY OF NOVEMBER, 2025**

**CHRISTINE OCHIENG
JUDGE**

In the presence of:

Kaveke for 1st Defendant

Mugisha for Plaintiff

Ms Nyariki for Ogechi for Proposed Defendant

Court Assistant: Joan