

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KAJIADO
ELCEPCC E004 OF 2025

ZEN NOMINEES LIMITEDPLAINTIFF

VERSUS

RAFIKI MICROFINANCE LIMITED1ST DEFENDANT

JOSEPH MUNGAI GIKONYO T/A

GARAM INVESTMENT AUCTIONEERS.....2ND DEFENDANT

WILLIAM KAGWI KIMIRI.....3RD DEFENDANT

BRAMWELL MWITI GATOBU.....4TH DEFENDANT

JOHN GATOBU KIRIMANIA5TH DEFENDANT

MERU JORDAN HOSPITAL6TH DEFENDANT

THE LAND REGISTRAR, KAJIADO REGISTRY.....7TH DEFENDANT

THE HON. ATTORNEY GENERAL.....8TH DEFENDANT

RULING

(In respect of the 6th Defendant's Chamber Summons application dated 19th May, 2025 seeking its removal or striking out from the proceedings)

1. The 6th Defendant seeks the following prayers vide its Chamber Summons Application dated 19th May, 2025 brought pursuant to Order 2 Rules 15 of the Civil Procedure Rules and Sections 1A,1B and 3A of the Civil Procedure Act:

(a) That the Honourable court be pleased to order the removal of the 6th Defendant from this suit and or strike out the suit as against the 6th Defendant.

(b) That the Plaintiff herein does pay the costs of this Application and of this suit to the 6th Defendant.

(c) That this honourable court be pleased to grant such equitable orders in favour of the 6th Defendant.

2. The Motion which is premised on the grounds set out on its face is supported by the Affidavit of the 6th Defendant's Director, one Martin Murithi Riungu, sworn on 19th May, 2025. It is contended that the Plaintiff's cause of action accusing the 6th Defendant of illegal involvement and fraudulent transfer and dealings of **KAJIADO/KIPETO/362** subdivided into three portions amongst them **KAJIADO/KIPETO/22223**, the suit property herein, only arose on 10th September, 2024 after it supposedly bought the suit property by way of an auction. The deponent proclaims that as at the time the 6th Defendant hospital business was sold to Artemis Health Care Solutions Limited through an Agreement dated 1st August, 2023, no known encumbrances were registered against the Company nor was any debenture disclosed to the purchaser.

3. It is contended that based on Clause 4 and 12 of the Agreement, the purchaser was not taking over any liabilities nor would such liabilities be visited upon the new business owners. The Agreement further stipulated that liabilities existing prior to the date of the Agreement, which is the date of business transfer, were to be borne personally by outgoing

Directors of the 6th Defendant's whom the Plaintiff has sued as the 4th and the 5th Defendants respectively.

4. The 6th Defendant avers that based on the Plaintiff's pleadings, the loan obligations resulting from the sale of the suit property occurred prior to the sale of the 1st Defendant's business. Therefore, any liability or obligation arising after 1st August, 2023 lies squarely on the 4th and 5th Defendants' shoulders. Hence, it is only fair that the 6th Defendant be immediately excluded and removed from these proceedings since there is no cause of action against it or its new owners.
5. The Plaintiff through the Supporting Affidavit of its Director Manoj Keshaval Shah sworn on 9th June, 2025, opposes the Application by the 6th Defendant and prays for its dismissal asserting that it is intended to defeat justice. It is said that the 6th Defendant is not deserving of the orders sought because it is mentioned as a borrower and beneficiary of the loan facility whose title was used as security and later sold to the Plaintiff through a public auction. It is averred that given that the sale of the 6th Defendant company was not public; the Plaintiff would not have known that it was correspondingly sold to different persons.
6. The Plaintiff opines that the subject of this suit must be canvassed at full trial as the 6th Defendant cannot refute or confirm the sale at this interlocutory stage. This is because it is aware that its participation in this

suit shall assist this court in rendering a just decision, establish key players in the fraud chain and ensure that the Plaintiff is refunded its monies as an innocent purchaser for value.

7. The 1st and 2nd Defendants responded to the Application through the Replying Affidavit of the 1st Defendant's acting Manager in charge of Debt Recovery Unit, John Langat, sworn on 27th October, 2025. The deponent asserts that it is the 3rd, 4th, 5th and 6th Defendants who are best suited to demonstrate to this court the issues raised by the Plaintiff with respect to the source of its suit property title.
8. The Deponent explains that the 1st Defendant advanced a loan facility of Kshs. 6,375,000/= to the 6th Defendant at an interest rate of 23% per annum on a reducing balance. The loan was secured with a charge over **KAJIADO/KIPETO/22223** registered in the name of William Kagwi Kimiri, the 3rd Defendant herein and the personal guarantee (chargor). When the 6th Defendant defaulted in repaying the loan, two statutory notices were served upon it by the 1st Defendant showing that the outstanding loan arrears were Kshs.4,864,103/= and Kshs.5,315,808/= as at 30/6/2023 and 28/11/2023 in that order.
9. It is affirmed that when the 3rd, 4th, 5th and 6th Defendants failed to remedy the default despite issuance of the requisite notices by the 1st Defendant, the 1st Defendant exercised its statutory power of sale and

sold the property through a public auction to the Plaintiff on 10/9/2024. According to the 1st and 2nd Defendants, the transfer and sale of the 6th Defendant's business on 1/8/2023 was done in bad faith since it had been served with the first statutory notice on 30/6/2023 alongside the 3rd, 4th and 5th Defendants. Further its intention of selling the business without informing the 1st Defendant notwithstanding its obligation, contravened Clause 9.15 of the terms of the charge dated 18/3/2021.

10. The Deponent further states that an official search conducted by the 1st Defendant before and after advancing the loan to the 6th Defendant, the charge of the suit property and before its sale through public auction, showed that William Kagwi Kimiri was its registered owner. It also revealed that the property was encumbered by the 1st Defendant.

11. The 1st and 2nd Defendants maintain that proof of how ownership and possession of the suit property passed, was charged and later sold through public auction as well as claim of ownership by parties will only be adduced satisfactorily and properly at the full trial. Therefore, the 6th Defendant's presence in this suit is absolutely necessary for it was properly enjoined to aid the court in the effectual and complete adjudication and settlement of all questions in this suit. Unlike the Plaintiff, and the 1st and 2nd Defendants who shall immensely be prejudiced by its absence, it is

avowed that the 6th Defendant's presence in this suit will not result in irreparable loss, damage or prejudice.

12. Consequently, the 1st and 2nd Defendants implore the court to dismiss and strike out the Application by the 6th Defendant with costs since it is an abuse of court process, lacking in merits, bad in law and against the overriding objective as expressed in Sections 1A and 1B of the Civil Procedure Act.

13. The 6th Defendant responded to the Plaintiff's and 1st and 2nd Defendants' assertions through the supplementary affidavit of its Director Martin Muriithi Riungu sworn in 7th November, 2025. The deponent terms the responses as misconceived, inaccurate, misleading, speculative and unsupported by material evidence or documentations. The court is implored to disregard the Plaintiff's allegations because they violate the rules of fair procedure by introduction of new matters and allegations which ought to be pleaded in the main suit. The Plaintiff is further accused of failure to wholly substantiate and bring forth evidence concerning its allegations of fraud.

14. The Deponent claims that the allegations against the 6th Defendant are unfounded, false and ill-advised because it never borrowed monies from 1st Defendant nor executed any loan agreement. Equally, neither the 6th Defendant nor its agents guaranteed a charge to the 1st Defendant over its

property. It restated that as at the time the 6th Defendant's business was sold to Artemis Health Care Solutions Limited, no encumbrances or debentures were registered against it.

15. The Deponent asserts that he has never owned the suit property nor did he participate in any alleged negotiations, execution and enforcement of transactions entered into by the Plaintiff and the 1st, 2nd and 3rd Defendants. The deponent expresses his willingness to cooperate with this court. Consequently, the deponent maintains that the 6th Defendant's Application is merited as it was unjustifiably and incorrectly joined into these proceedings yet it has no interest in the suit property.

16. The 7th and 8th Defendants associated themselves with the position adopted by the 1st and 2nd Defendants.

Court's directions

17. The court's directions were that the Application be canvassed by way of written submissions. This directive was complied with by counsel for the Plaintiffs and 1st, 2nd and 6th Defendants. The court has considered the submissions in the writing of this ruling.

Issues for determination

18. After careful analysis of the 6th Defendant's Application, the Affidavits in response thereto and the submissions by learned counsel for the parties,

the singular issue for determination is whether the 6th Defendant has made out a case to warrant its striking out from these proceedings.

Determination

19. The 6th Defendant seeks to be struck off from these proceedings on the premise that the Plaintiff's cause of action, which arose on 10th September 2024, occurred after it had sold its business to Artemis Health Care Solutions Limited on 1st August 2023. It maintains that, under the sale agreement, Artemis Health Care Solutions Limited did not assume any liabilities of the business and that any pre-existing liabilities would be borne by the Directors personally. On this basis, the 6th Defendant contends that liability for the impugned transaction should lie with the 4th and 5th Defendants, who were directors at the material time.
20. The Plaintiff opposes the Application and asserts that the 6th Defendant is a necessary party in these proceedings, having been the principal beneficiary of the loan facility secured by the suit property which the Plaintiff ultimately purchased at a public auction. The Plaintiff argues that the participation of the 6th Defendant is indispensable if the Court is to unravel the alleged fraud chain and render a just and complete determination.

21. The governing legal framework is set out in **Order 1 Rule 10(2)** of the Civil Procedure Rules which empowers the Court, at any stage of the proceedings, to strike out an improperly joined party or to add a party whose presence is necessary. This proviso which I hereby reproduce verbatim provides 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 effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

22. The jurisprudential test for determining who is a necessary party was extensively discussed in *Pizza Harvest Limited v Felix Midigo [2013] eKLR*, where the Court, while adopting the exposition of Devlin J. in *Amon v Raphael Tuck & Sons Ltd (1956) 1 All ER 273* stated as follows:

“..... 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.”

23. The 1st and 2nd Defendants have submitted that the 3rd, 4th, 5th and 6th Defendants are the parties best suited to explain the origin and status of the title to the suit property. The loan in issue was advanced by the 1st Defendant to the 6th Defendant, and was secured and guaranteed by the 3rd Defendant, who provided the title of the suit property as the security. Despite receipt of statutory notices dated 30th June 2023 and 28th November 2023, no remedial action was taken by the 6th Defendant or its guarantors, prompting the 1st Defendant to exercise its statutory

power of sale through the auction of 10th September 2024, at which the Plaintiff emerged the successful bidder and eventually the purchaser.

24. Further, the 1st Defendant alleges that the sale of the 6th Defendant's business was undertaken in bad faith, contravened the provisions of the charge instrument, and was concealed from the chargee notwithstanding that the 6th Defendant had already been served with a statutory notice. These are matters that go to the root of the transactions that culminated in the sale by auction.
25. The pleadings confirm that the 3rd Defendant is the registered proprietor of **KAJIADO/KIPETO/22223**, the subdivision of **KAJIADO/KIPETO/362** charged to the 1st Defendant. The Plaintiff's suit is premised on its purchase of this property for Kshs. 30,050,000/= at the auction, and its allegation that the Land Control Board declined to grant a consent for the transfer due to suspected fraud, thus prompting it to seek a refund from the 1st Defendant. The Plaintiff asserts that the title was not free from encumbrances or irregularity, a matter intricately tied to the conduct of the 6th Defendant in procuring and defaulting upon the loan facility, and in disposing of its business while the property remained charged as security.
26. The questions before the Court i.e. whether the loan was properly secured, whether the charge was lawfully enforced, whether fraud

occurred, and whether any party was unjustly enriched, cannot be effectively and completely determined in the absence of the 6th Defendant. The 6th Defendant's role is not that of a mere witness; it is a primary actor in the chain of transactions whose outcome will be bound by this Court's findings. Its presence is therefore necessary to ensure that the ultimate decision binds all responsible parties and does not give rise to subsequent satellite litigation.

27. In the circumstances, the 6th Defendant cannot legitimately contend that it was improperly enjoined. To the contrary, its participation is central to resolving the questions raised in the suit and to ensuring that any declaration of rights, liabilities or remedies binds all necessary parties. For these reasons, I find that the 6th Defendant is a necessary party to the proceedings.
28. Accordingly, the Application dated 19th May 2025 is hereby dismissed with costs to the Plaintiff for want of merit.

It is so ordered.

Dated Signed and Delivered at Kajiado Virtually this 11th Day of December 2025.

M.D. MWANGI
JUDGE

In the virtual presence of:

Ms. Oware for the Plaintiff

Ms. Njuguna for the 1st and 2nd Defendant

Ms. Ithondeka for the Interested Party

Ms. Tuwei h/b for Mr. Kirimi for the 6th Defendant/Applicant

Ms. Esami for the 5th Defendant

Ms. Kavuli for the 7th and 8th Defendants

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

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