



**Mwangi & another v Kassamali & 2 others (Commercial Case E896 of 2021)
[2025] KEHC 18920 (KLR) (Commercial and Tax) (16 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18920 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E896 OF 2021
MN MWANGI, J
DECEMBER 16, 2025**

BETWEEN

**SAID ALI MWANGI 1ST PLAINTIFF
RODEX EAST AFRICA 2ND PLAINTIFF**

AND

**ZAMEER KASSAMALI 1ST DEFENDANT
MAHIR NAKURU AUTOMOTIVE LIMITED 2ND DEFENDANT
BANK OF BARODA 3RD DEFENDANT**

RULING

1. The 3rd defendant filed a Chamber Summons application dated 27th March 2025 pursuant to the provisions of Order 1 Rule 14 of the Civil Procedure Rules, 2010, Sections 1A, 1B & 3A of the *Civil Procedure Act* and all other enabling provisions of law seeking an order that it be struck out of this suit.
2. The application is premised on the grounds on the face of the Summons, and it is supported by an affidavit sworn on the same day by Mr. Justus Paul Muga, the 3rd defendant's Credit Manager. Mr. Muga averred that the 3rd defendant was improperly joined to this suit. He stated that in 2015, the 1st plaintiff and the 1st defendant opened a bank account with the 3rd defendant in the name of the 2nd plaintiff. That thereafter, the 1st plaintiff sought financing from the 3rd defendant, but the request was declined as the entity was newly established, and instead, the facility was granted to the 2nd defendant, an entity with an established trading history, and the loan was secured by duly charged properties.
3. Mr. Muga stated that the relationship between the 3rd defendant, the other defendants and the plaintiffs is purely contractual under the charge Agreement, and no breach of the banking contract has been alleged against it. He averred that despite this, the 1st and 2nd plaintiffs instituted this suit



in November 2022, seeking among other reliefs, the winding up of the 2nd plaintiff and joined the 3rd defendant. He asserted that the dispute herein as framed in the pleadings exclusively concerns the internal shareholding and operational disagreements of the 2nd plaintiff. He therefore argued that there is no legal claim or cause of action disclosed against the 3rd defendant and that its continued joinder has caused it undue financial and administrative burden. He asserted that the 3rd defendant's presence improperly broadens the perceived scope of the dispute.

4. In opposition to the application, the plaintiffs filed a replying affidavit sworn on 13th May 2025 by Mr. Said Ali Mwangi, the 1st plaintiff herein. Mr. Mwangi deposed that the 3rd defendant was properly joined to this suit on account of alleged misconduct by its Credit Officers, whom he reasonably suspects of colluding with the 1st defendant to misappropriate funds belonging to the 2nd plaintiff. He referred to a key prayer in the amended plaint seeking orders for the substitution of charged securities held by the 3rd defendant, asserting that such relief directly concerns the 3rd defendant and cannot be granted in its absence. He averred that the instant application is an attempt by the 3rd defendant to evade liability and undermine the judicial process, noting that the 1st and 2nd defendants' failure to oppose the application herein bolsters this concern.
5. Mr. Mwangi relied on his witness statement dated 26th January 2022, wherein he accuses the 3rd defendant of colluding with the 1st defendant by refusing to effect substitution of securities, failing to provide monthly bank statements, thereby facilitating the alleged embezzlement of company funds. He claimed that the 3rd defendant acted outside its statutory and fiduciary obligations, including coercing him into signing a cheque, altering the signing mandate of the 2nd plaintiff's account in favour of the 1st defendant and subjecting him to verbal abuse by a Credit Officer.
6. He stated that as a guarantor of the 2nd defendant's loan, he has exercised his right to withdraw his guarantee by offering substitute company properties, and seeks a Court order compelling the 3rd defendant to effect the substitution. He maintained that the 3rd defendant is a necessary party under the established legal tests, as he seeks substantive relief against it, and an effective decree on the substitution of securities cannot be issued in its absence.
7. The application herein was canvassed by way of written submissions. The Court record confirms that the 1st & 2nd defendants did not oppose the application herein, while Mr. Kiptoo, learned Counsel for the plaintiffs, indicated that the plaintiffs would rely solely on their replying affidavit in opposition to the application. The 3rd defendant filed written submissions on 30th April 2025 by the law firm of Sheth & Wathigo Advocates.
8. Mr. Kisila, learned Counsel for the 3rd defendant submitted that the 3rd defendant is not a necessary party to these proceedings and that its joinder is gratuitous, made in bad faith, and intended to cast it in negative light. He argued that the 3rd defendant's continued participation in this suit exposes it to unnecessary expense and burdensome litigation. Counsel relied on the provisions of Order 1 Rule 10(2) of the Civil Procedure Rules, 2010, and contended that only persons against whom a cause of action is disclosed or whose presence is essential for the effective and complete adjudication of the dispute ought to be joined. He cited the cases of Peter Njenga Kamau t/a Penar Interconsumer Products v Ecolab INC & another [2023] KEHC 18858 (KLR) and Amon v Raphael Tuck & Sons Ltd (1956) 1 AII ER 273, and submitted that a necessary party is one against whom a direct right to relief exists, or without whom an effective decree cannot be issued.
9. Mr. Kisila asserted that the pleadings filed herein disclose no wrongful conduct, breach, or relief sought against the 3rd defendant. He further asserted that its presence does not aid the Court in resolving the real dispute between the parties herein, which concerns shareholding and management of the 2nd



plaintiff between the 1st plaintiff and 1st defendant. He maintained that the 3rd defendant's involvement was limited to that of a financier advancing a loan to the 2nd defendant, secured through a charge. He cited the cases of *Juhudi Kilimo Company Limited v Amwayi & another* (Suing as the legal representatives of the Estate of Grace Khasandi) & another [2024] KEHC 5333 (KLR) and stated that a financier's role does not render it liable for disputes arising from the management or use of the loan. He submitted that the 3rd defendant has not breached the charge instrument and no substantive relief is sought against it.

Analysis And Determination.

10. I have considered the instant application, the grounds on the face of it, and the affidavit filed in support thereof, the replying affidavit by the plaintiff and the written submissions by Counsel for the 3rd defendant. The issue that arises for determination is whether the 3rd defendant should be struck out from this suit.
11. The 3rd defendant's case is that the pleadings disclose no cause of action against it. It asserted that its role in the transactions between the parties herein was purely that of a financier pursuant to a charge Agreement securing a loan advanced to the 2nd defendant. According to the 3rd defendant, no breach of the charge instrument has been alleged. It contended that the real dispute concerns the internal management and shareholding of the 2nd plaintiff, a matter wholly unrelated to its involvement. The 3rd defendant maintained that its continued joinder in this suit serves only to broaden the apparent scope of the dispute and subject it to unnecessary litigation, contrary to the principles of expeditious and cost-effective resolution of suits under Sections 1A and 1B of the *Civil Procedure Act*.
12. The plaintiffs, on the other hand, asserted that the 3rd defendant's joinder to this suit is not only proper but also necessary. They relied on allegations contained in their replying affidavit and in the amended plaint, particularly, the prayer seeking substitution of the charged securities held by the 3rd defendant. The plaintiffs alleged misconduct on the part of the 3rd defendant by its Credit Officers, including collusion with the 1st defendant, failure to provide bank statements, refusal to effect substitution of securities and altering account mandates in a manner that facilitated alleged misappropriation of funds belonging to the 2nd plaintiff. The plaintiffs contended that these matters give rise to a substantive relief sought directly against the 3rd defendant. They asserted that an effective decree on the substitution of securities cannot be issued in the absence of the 3rd defendant.
13. Striking out and/or substitution of parties to a suit is provided for under the provisions of Order 1 Rule 14 of the Civil Procedure Rules, 2010, which states that-

“ 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.”
14. I am however of the considered view that in order to determine this application, I should be guided by the provisions of Order 1 Rule 10(2) of the Civil Procedure Rules, 2010, which provide as hereunder -

“ 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.”

15. The import of the above provisions is that this Court has the requisite jurisdiction and discretion to either have a party improperly before it struck out from the proceedings or have a necessary party joined in the proceedings. In order to aptly determine this application, this Court has to first establish who is “a necessary party” to a suit and whether the 3rd defendant is “a necessary party” to this suit. The Court in the case of *Werrot & Company Ltd & others v Andrew Douglas Gregory & others* [1998] eKLR, identified two tests to be considered by Courts in ascertaining whether a party is “a necessary party” to a suit. It stated thus -

“For determining the question of who is a necessary party there are two tests;

- i. there must be a right to some relief against such a party in respect of the matter involved in the proceeding in question and
- ii. it should not be possible to pass an effective decree in the absence of such a party.”

16. A necessary party to a suit was also defined by the Court in the oft cited case of *Amon v Raphael Tuck & Sons Ltd* (supra) as hereunder -

“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.”

17. I have carefully examined the application, affidavits filed, the plaint and the prayers sought herein and the submissions made. While the underlying dispute appears primarily centered on the internal affairs of the 2nd plaintiff, I note that the plaintiffs have pleaded allegations directly implicating the 3rd defendant’s conduct affecting the management and control of the 2nd plaintiff. The plaintiffs have also pleaded allegations of misconduct touching directly on the 3rd defendant’s role as the holder of the charged securities and as the bank managing the 2nd plaintiff’s account. Furthermore, it is clear from the reliefs sought by the plaintiffs that they seek specific orders relating to the substitution of the charged securities, which relief is incapable of being granted without the participation of the 3rd defendant in this suit, as substitution of the securities without its participation may adversely affect it.

18. The allegations against the 3rd defendant of collusion, breach of statutory duty, or refusal to effect substitution of the charged properties have merit is a question reserved for trial. However for the purpose of joinder, the Court needs only to be satisfied that a prima facie claim exists against the 3rd defendant and not whether the claim will ultimately succeed, and that the 3rd defendant’s presence is necessary for an effective and comprehensive adjudication of the issues between the parties herein.



19. Additionally, the reliefs relating to the properties charged to the 3rd defendant as securities and the questions surrounding the 3rd defendant's obligations under the charge instrument cannot be determined without affording the 3rd defendant an opportunity to be heard. Having in mind the test of who is "a necessary party" to a suit as laid down by the Court in the case of *Amon v Raphael Tuck* (supra), I am persuaded that striking out the 3rd defendant from this suit at this juncture would render the Court incapable of determining the prayers relating to substitution of securities charged to the 3rd defendant or any alleged breach of duty on the part of the 3rd defendant.
20. In view of the foregoing, this Court finds that the plaintiffs have demonstrated that there exists a substantive relief being sought against the 3rd defendant and that its presence is necessary for the effectual and complete adjudication of the dispute between the parties herein. I am therefore not persuaded that the 3rd defendant would suffer any prejudice that outweighs the necessity of its participation in these proceedings.
21. I hold that the threshold for striking out a party from a suit as set out under the provisions of Order 1 Rule 10(2) of the Civil Procedure Rules, 2010, which is a discretionary remedy that is applied sparingly and only in clear cases, has not been met.
22. It is my finding that the 3rd defendant's application dated 27th March 2025 is without merits. It is hereby dismissed with costs to the plaintiffs.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 16TH DAY OF DECEMBER, 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE.

In the presence of:-

Mr. Kiptoo for the plaintiffs

Ms Wanjiru h/b for Aim for the 1st defendant

Ms Kabraj for 2nd defendant

Ms Chepngetich h/b for Mr. Kisila for the 3rd defendant

Ms B. Wokabi – Court Assistant.

NJOKI MWANGI, J.

