

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ELC CASE NO. E005 OF 2022

SAMMY KIPKETER CHERUIYOT
PLAINTIFF/RESPONDENT

VERSUS

NATIONAL LAND COMMISSION..... 1ST
DEFENDANT
THE CHIEF LAND REGISTRAR.....2ND DEFENDANT
PRINCIPAL SECRETARY
MINISTRY OF LANDS & PHYSICAL PLANNING...3RD
DEFENDANT
MINISTRY OF LANDS & PHYSICAL PLANNING...4TH
DEFENDANT
THE COUNTY GOVERNMENT OF
UASIN GISHU 5TH
DEFENDANT/APPLICANT

AND

PETER KIPSIGEI SANG INTERESTED
PARTY

RULING:

1. The 5th Defendant/Applicant filed a Notice of Motion Application dated 26th February, 2024, against the Plaintiff/ Respondent seeking the following orders: -
 1. Spent.
 2. THAT the Honourable Court be pleased to struck out the 5th Defendant/Applicant from the suit.

3. THAT the costs of this Application and the suit be awarded to the 5th defendant/applicant and be borne by the plaintiff/respondent.
2. The application is premised on the 9 grounds on the face thereof and on the Supporting Affidavit sworn by one Daniel Koech, a Director in the Department of Lands and Physical Planning of the 5th defendant/applicant, on even date.
3. He explained that the 5th defendant/applicant is duly established as a county government under the constitution of Kenya as read with the provisions of the County Government Act, 2012.
4. He further stated that one of the statutory duties of the 5th defendant/applicant is to renew and/or extend leases as provided by the law.
5. It is his claim that the 5th defendant/applicant received an application lodged by the plaintiff/respondent to extend the lease with respect to property known as Eldoret Municipality Block 4/335, whose term was about to expire. That upon perusal of the said application, it proceeded to approve the extension of the lease of the suit property after being satisfied that the application was in order. In addition, the applicant went ahead and also approved the development application on the extension of the lease.
6. He maintained that the 5th defendant/applicant only carried out its duty in accordance with the law and that the approvals

followed the due process and all the documents were verified to ascertain their validity before the lease was extended.

7. It was however his contention that the suit property was charged and owing to the plaintiff/respondent's omission, the suit parcel was auctioned in favor of the Interested Party herein.
8. It is therefore his claim that the 5th defendant/applicant ought not to have been enjoined to the suit since it is not a necessary party to the suit as there was no reasonable cause of action against it from the plaintiff/respondent. He added that the 5th defendant/applicant had no useful information or evidence that would be relevant to assist the court in determining the dispute herein since it was not a party to the transactions of either the plaintiff or the interested party.
9. He added that the 5th defendant/applicant's presence in the suit will only serve to delay the adjudication of this matter without justification.
10. In conclusion, he maintained that the joinder of the 5th defendant/applicant in the suit will not only damage its reputation and image to the public eyes but will also result in it having to expend resources to defend the suit which resources could have been utilized for the public good. He thus urged the court to allow the application in the interest of justice and to allow for the matter to proceed with the proper and genuine parties.
11. The application was opposed. The plaintiff/respondent filed Grounds of Opposition dated 10th November, 2025 in response

to the present application. He maintained that the 5th defendant is a proper party in the suit and has been properly included in the suit having met the threshold of a defendant provided under Order 1 Rule 3 of the Civil Procedure Rules.

12. It is the plaintiff/respondent's claim that the present suit revolves on the issue of whether the plaintiff's application for lease extension in respect to the suit land was considered by the defendants, whether the defendants failed to accord the plaintiff pre-emptive rights to allocation of lease and whether the extension of lease was procedurally done.
13. He thus contends that the inclusion of the 5th defendant is necessary and relevant for the determination of the real issues in dispute and in order to enable the court to effectually and completely adjudicate upon and settle all the questions involved in the suit.
14. It is further his claim that pursuant to the provisions of Rule 2 of the Land (Extension and Renewal of Leases) Rules, the 5th defendant is a pivotal party to the suit. He outlined the provisions of the said rule.
15. In conclusion, he stated that the 5th defendant in their Supporting Affidavit annexed PP. A2 Form approving the extension of lease marked as DK -1 and the development approval marked as DK-2. It is his claim that the process leading to the issuance of the said documents is in issue in the present suit and hence the joinder of the 5th defendant in the suit.

16. The Interested Party filed a Replying Affidavit sworn and dated 24.04.2024 in response and support of the present Application, which he regarded as being meritorious and raised weighty issues for consideration.
17. He deponed that the 5th defendant/applicant is a statutory body created by the Constitution of Kenya and the County Government Act, mandated to renew and extend leases. He thus stated that the joinder of the applicant to the suit is an abuse of the court process and is aimed at delaying the expeditious resolution of the present suit.
18. He further deponed that the applicant in exercise of its statutory mandate, renewed the lease on the suit property in favor of the chargee, NCBA Bank, under the statutory power of sale and duly informed the plaintiff of the same. He thus maintained that the applicant rightfully extended the lease without any irregularity upon verifying the requisite documents presented for the renewal of the lease.
19. It is his claim that the plaintiff/respondent has not adduced any iota of evidence alleging the irregularity on the part of the 5th defendant in the renewal of the lease process and thus the inclusion of the 5th defendant as a party is a misjoinder and an abuse of the court process.
20. In addition, he accused the plaintiff/respondent of deliberately and conveniently failing to disclose to the court that his failure to pay back the loan secured on the suit land was the preeminent reason for NCBA Bank exercise of its statutory power of sale and which led to his loss of the suit property.

21. He thus avers that the plaintiff/respondent should have enjoined NCBA Bank as a party to the suit, since they are privy to the material facts of the present dispute instead of the 5th defendant/applicant.
22. In conclusion, he maintained that the 5th defendant/applicant's presence in the suit is not necessary since the plaintiff/respondent has no cause of action against it and if any exists, no substantial cause has been established to sanction their joinder. Further, that the continued joinder is imprudent since the applicant would have to use public resources.
23. He therefore urged the court to find that the application is merited and to order that the 5th defendant/applicant be struck out of the suit.
24. The Application was canvassed by way of written submissions. The Applicant filed their submissions dated 07.11.2025, the Interested Party filed his submissions dated 27.10.2025 while the plaintiff/respondent filed his submissions 10.11.2025 together with authorities which I have read and considered.

Analysis and Determination:

25. I have carefully considered the application, the affidavit in support of the application and the annexures therein, the Replying Affidavit and Grounds of Opposition by the parties as well as the rival submissions in totality. Consequently, it is my considered view that the following issues arise for determination:-

- i. *Whether the 5th Defendant/Applicant is a necessary party in the suit or it should be struck out.*
- ii. *Who shall bear the costs of the application*

Whether the 5th Defendant/Applicant is a necessary party in the suit or it should be struck out;

26. The 5th Defendant/Applicant herein seeks to be struck out from the suit. It is its claim that it is not a necessary party to the suit since there is no reasonable cause of action against it or any useful information or evidence that would be relevant in determining the issues in dispute.
27. They maintained that they acted within its statutory mandate in extending the lease in respect to the suit land and followed the due process.
28. The Interested Party in his Replying Affidavit supported the application and urged the court to find that the inclusion of the 5th defendant is a misjoinder and order that it be struck out from the suit. It was his claim that the plaintiff has no cause of action against the applicant and further that the applicant lawfully exercised its statutory mandate of extending the lease of the suit land without any irregularity.
29. The plaintiff on his part maintained that the presence of the 5th defendant is necessary in the suit and that it met the threshold outlined under Order 1 Rule 3 of the Civil Procedure Rules.

30. The provisions of Order 1 Rule 10(2) of the Civil Procedure Rules empowers the court to strike out the name of any party, who has been improperly joined in a suit, whether as a plaintiff or a defendant. Order 1 Rule 10(2) provides as follows: -

(2) 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.

31. The question that therefore follows is whether the 5th defendant/applicant is a necessary party to the suit herein or whether it should be struck out for misjoinder. To answer this, it is important for the court to critically analyze the plaintiff's claim in the plaint and the orders sought therein vis-à-vis the grounds of the present application.

32. I have carefully looked at the plaintiff's claim as contained in the plaint dated 20.01.2020. It is his claim that he was registered as the proprietor of the remaining leasehold

interest in respect to the suit land, which was to expire on 01.07.2018.

33. At paragraphs 12, 13, 14, 15, 16 and 18, the plaintiff explains how he applied for the renewal of the lease, the various statutory requirements and mandate on the part of the defendants on the lease renewal process and outlined the alleged fraud on the part of the defendants jointly and severally in the renewal and registration of the lease in respect to the suit property herein.
34. This court is mindful not to delve into the substantive issues of the main suit at this interlocutory stage. However, I must comment that the process of lease renewal and/or extension in respect to the suit property is an integral question at the center of the dispute herein.
35. In the case of **Departed Asians Property Custodian Board vs. Jaffer Brothers Ltd [1999] 1 EA 55** it was held as follows:

“A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the Court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involve in the suit. A party may be joined in a suit, not because there is a cause of action against it, but because that party’s presence is necessary in order to enable the court effectually and completely adjudicate

upon and settle all the questions involved in the cause or matter...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 a 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.”

36. As held in the above-mentioned case, a party whose presence in the suit is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the suit, may be enjoined/included in the suit and not necessarily because there is a direct cause of action against it.
37. It is common ground that one of the statutory mandates and/or roles of the 5th defendant is the renewal and/or extension of leases. The 5th defendant/applicant and the

Interested Party maintain that the applicant acted within its statutory mandate in renewing the lease of the suit land, followed the due process and acted without any irregularity. Now, whether or not the 5th defendant/applicant acted fraudulently, irregularly and/or unlawfully, in contravention of any statutory requirement as alleged is a question that can only be answered at the substantive hearing of the suit, to enable each party present their evidence in support of their rival positions.

38. Further, I have looked at the prayers sought by the plaintiff in his plaint, particularly prayer nos. (b), (d) and (f) which directly touch on the 5th defendant/applicant and its statutory mandate of renewing and/or extension of leases.
39. The law on who may be joined as a defendant is found under Order 1 Rule 3 which provides as follows: -

“All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise.”

40. It is therefore my considered opinion that the 5th defendant is a necessary party in the present suit particularly in answering

the questions touching on the process of renewal and/or extension of the lease in respect of the suit land, its legality, validity and any other questions thereto as well as the subsequent registration of the interest therein in favor of the interested party as alleged. The validity or otherwise of the interested party's ownership claims is linked to the said process.

41. Consequently, it is the finding of this court that the presence of the 5th defendant as a party in the instant proceedings is necessary and will assist the court in adjudicating upon and settling all questions involved in the dispute herein.
42. The upshot of the above is that the 5th defendant/applicant has not proved its application to the required standard to warrant the grant of the order of striking it out as sought in the application and the same is therefore not merited.

Who shall bear the costs of the application

43. It is well settled that costs follow the event unless the court directs otherwise as provided under section 27 of the Civil Procedure Act.
44. In the present case, having held that the 5th defendant/applicant has failed to prove its application to the required standard, I direct that the plaintiff/respondent be awarded the costs of defending the application.

CONCLUSION:

45. In view of the foregoing, it is the finding of this court that the Notice of Motion Application dated 26th February, 2024 is **not**

merited and is hereby **dismissed** with costs to the plaintiff/respondent.

46. It is so ordered.

DATED, SIGNED and DELIVERED in ELDORET this 22nd day of JANUARY, 2026.

**HON. C. K. YANO
ELC, JUDGE**

Ruling delivered in the virtual presence of: -

Mr. Keaton for Plaintiff/Respondent.

Ms. Ruto for 5th Defendant/Applicant.

Ms. Aketch holding brief for Mr. Kigen for Interested party.

Mr. Kwame holding brief for Ms. Cheruiyot for 2nd -4th Defendants.

No appearance for 1st Defendant.

Court Assistant - Laban