

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MOMBASA
ELC CIVIL CASE NO. 218 OF 2021

JAMES MWANGI GACHERU PLAINTIFF

VERSUS

READY CONSULTANCY CO. LTD 1ST DEFENDANT

BROWNBARK ENGINEERING SYSTEMS LTD 2ND DEFENDANT

CHRISTOPHER NGURU WARUTERE 3RD DEFENDANT

AND

ABDALLA HAYTHAM AHMED BADBESS 1ST THIRD PARTY

WALID OMAR 2ND THIRD PARTY

SHABAN MWALIMU 3RD THIRD PARTY

SULEIMAN MWALIMU T/A KHASH VENTURE .. 4TH THIRD PARTY

RULING

1. By a Chamber Summons application dated 1st July 2025, Shaban Mwalimu Chengo (the 3rd Third Party) prays for the following orders:

- a) That the Honourable Court orders that the Third party is wrongly sued in this case and should be removed/ struck out as a Third Party in this matter;**

- b) That the Honourable Court directs the Plaintiff to amend the Plaint and remove the Third Party in this matter; and**
- c) That costs of this application be borne by the 3rd Defendant.**

2. The application is supported by an Affidavit sworn by the 3rd Third Party/Applicant and is premised inter alia, on the grounds that:

- i. The Applicant was brought into the suit as a Third party yet no cause of action arises against him and he is not a necessary party in this suit;**
- ii. The Applicant was brought into the suit by the 3rd Defendant claiming indemnity as one of the proprietors of Khash Ventures yet at the time, the Applicant was not a proprietor of the said Khash Ventures;**
- iii. The Applicant ceased to be a partner in Khash Ventures on 12th May 2020 while according to the Plaint the cause of action arose on 24th July 2021;**

- iv. There is no relief which flows from the Plaintiff to the 3rd Defendant that can be granted against the Applicant herein;**
- v. It is in the interest of justice, that the Court removes the Applicant as a party herein to allow for credible, effective and judicious determination of the suit.**
3. Martin Mwangi Gacheru (the Plaintiff) is opposed to the application. In his unsworn Replying Affidavit filed herein, the Plaintiff avers that the application is premature, misconceived and an abuse of the Court process. The Plaintiff further avers that the 3rd Third Party was joined by the 3rd Defendant pursuant to a Third Party Notice and that the question of liability between the Defendants and the Third Party is dependent on the Court's determination of the primary dispute between the Plaintiff and the Defendants.
4. The Plaintiff further avers that this application is an attempt by the 3rd Third Party to escape responsibility before the Court has considered the merits of the substantive issues in the main suit.

5. I have carefully perused and considered both the application as well as the response thereto. I have similarly perused and considered the submissions placed before the Court by the Learned Advocates representing the parties.
6. By his application before the Court, the 3rd Third Party prays for an order that his name be struck out from the suit on account of the fact that he has been wrongly enjoined to the suit. According to the 3rd Third Party he was brought into this suit by the 3rd Defendant claiming indemnity on account that he was a partner in an entity known as Khash Ventures. It is the 3rd Third Party's case that as at the time the cause of action accrued herein, he had long ceased to be a partner in the said firm and that it was in the interest of justice that his name be struck out from the suit.
7. From a perusal of the record herein it was apparent that by a Chamber Summons application dated 31st October 2024, the 3rd Defendant sought to enjoin the 3rd Third Party to this suit on the grounds inter alia, that:

a) The Intended 3rd and 4th Third Parties hired an excavator from the 3rd Defendant;

b) The said Intended Third Parties were the ones who pointed out the parcels of land and facilitated the excavator to the parcels of land the excavations were to be carried out.”

8. Having heard the application and in a Ruling delivered herein on 17th January 2025, the Honourable Justice L. Naikuni then seized of the matter, allowed the application after noting that it is the Intended Third Parties who had pointed out the suit property to the 3rd Defendant and had facilitated the movement of the excavator to the suit property. The Learned Judge concluded that a nexus had been established between the Plaintiff, the Defendant and the Third Parties and that it was necessary for the Court to hear from them all for a full and final determination of the dispute.
9. That being the case, I did not think the 3rd Third Party could without seeking a review of those orders approach the Court in the manner he has done seeking to be discharged from the suit on account that he had been wrongly enjoined thereto.
10. While the 3rd Third Party asserts that he was only enjoined to the suit on account of the fact that he was a partner in Khash

Ventures, there was no mention of the said firm in the Chamber Summons application that led to his joinder herein. The 3rd Defendant was instead categorical that it was the 3rd and 4th Third Parties herein who had pointed out the suit property for excavation and moved the excavator thereto. That being the case, the role played by the 3rd Third Party and whether or not he ceased to be a partner in Khash Ventures before the cause of action accrued are matters which can only be clarified upon a trial.

11. In the circumstances herein it was clear to me that the 3rd Third Party had not only been rightfully enjoined in this suit but that he is also a necessary party for the Court to adjudicate and settle all issues arising in this dispute.
12. In the premises I find no merit in the Chamber Summons dated 1st July 2025 and it is hereby dismissed.
13. I make no order as to costs.

Ruling dated, signed and delivered in open court and virtually at Mombasa this 5th day of March, 2026.

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J.O. OLOLA
JUDGE

In the presence of:

- a) Ms. Firdaus Court Assistant.
- b) Mr. Mwai Advocate for the Plaintiffs
- c) Mr. Jesse Kariuki Advocate for the 2nd and 3rd Defendants
- d) Mr. Otieno Advocate for the 3rd Third Party
- e) Mr. Ondieki holding brief for Mrs. Kyalo for the 1st Defendant