

**REPUBLIC OF KENYA**  
**IN THE HIGHCOURT OF KENYA**  
**AT HOMA-BAY**  
**PETITION No. E006 OF 2025**

**MICHAEL KOJO OTIENO.....1<sup>ST</sup>**  
**PETITIONER**

**EVANCE OTIENO OLOO GOR.....2<sup>ND</sup>**  
**PETITIONER**

**VERSUS**

**COUNTY GOVERNMENT OF HOMA BAY.....1<sup>ST</sup>**  
**RESPONDENT**

**GOVERNOR OF HOMABAY COUNTY.....2<sup>ND</sup>**  
**RESPONDENT**

**COUNTY ATTORNEY.....3<sup>RD</sup>**  
**RESPONDENT**

**AND**

**COUNTY ASSEMBLY OF HOMABAY.....1<sup>ST</sup> INTERESTED**  
**PARTY**

**THE NATIONAL ASSEMBLY.....2<sup>ND</sup> INTERESTED**  
**PARTY**

**RULING**

**[1]** The Notice of Motion dated 18<sup>th</sup> July 2025 was filed by the National Assembly, the 2<sup>nd</sup> interested party pursuant to **Order I Rule 10 (2)** of the Civil Procedure Rules 2010 and **Rules 5 (d) & 19** of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, and all other enabling provisions of the Law). The 2<sup>nd</sup> interested party thereby asked for the following orders:

**[a]** Spent

**[b]** Spent

**[c]** This Court be pleased to strike out the 2<sup>nd</sup> interested party as a party in this suit.

**[d]** The costs of this application be provided for.

**[2]** The application was premised on the grounds that:

**[a]** The claims which form the substratum of this matter do not make any case against the 2<sup>nd</sup> interested party, granted that the applicant has not sought any specific relief or orders against the 2<sup>nd</sup> interested party.

**[b]** There is no constitutional violation alleged to have been committed by the National Assembly and therefore the National Assembly has been improperly dragged into the litigation.

**[c]** The applicant has not proved the interest or the identifiable stake that the National Assembly holds in the Petition.

**[d]** The extent to which the grievances are framed against the National Assembly is defective and therefore the name of the 2<sup>nd</sup> interested party should be struck off from the pleadings.

**[e]** The joinder of the National Assembly in these proceedings is a nullity in law that is incurable.

**[f]** The petitioner has brought no specific allegations against the National Assembly nor has he explained the interest that the National Assembly holds in the matter.

**[g]** The petitioner has not demonstrated to this Court that the 2<sup>nd</sup> interested party has any identifiable stake or legal interest in the matter to warrant its joinder as an interested party.

**[h] Rule 5(d)** of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, (the Mutunga Rules) provides that a court may at any stage of the proceedings order the name of any party improperly joined to be struck out.

**[i]** No prejudice shall be suffered by the petitioners if the orders sought are granted

**[3]** The application was supported by the affidavit of **Jeremiah Ndombi, MBS** in which he deposed that the petitioners have brought no specific allegations against the National Assembly, nor have they explained the interest the National Assembly holds in the matter. Consequently, the 2<sup>nd</sup> interested party averred that its joinder herein is improper in so far as the petitioners have not demonstrated to this Court that the 2<sup>nd</sup> interested party has any identifiable stake or legal interest in the matter to warrant its joinder as an interested party. **Mr. Ndombi** further averred that no prejudice shall be suffered by the Petitioners if the orders sought are granted.

**[4]** The 2<sup>nd</sup> interested party filed written submissions dated 8<sup>th</sup> August 2025 in which it contended that the Petition represents a constitutional overreach by drawing into litigation an institution that bears no constitutional or statutory responsibility for the grievances alleged, and against whom no substantive relief is sought. It pointed out that the Petition concerns the relocation of the Homa Bay County Headquarters from Homa Bay Town to Arujo in Homa Bay West Ward; and that the National Assembly is neither involved in this relocation nor does it bear any legal mandate over such county-level administrative decisions; yet the it is named herein as the **2<sup>nd</sup> Interested Party**, without any disclosure as to its involvement or the reliefs against it.

**[5]** Accordingly, the 2<sup>nd</sup> interested party proposed a single issue for determination in respect of the instant application, namely, **Whether the National Assembly is a necessary and proper party to these proceedings.** The National Assembly made reference to **Rule 5(d)** of the Mutunga Rules as well as various authorities including:

**[a] Kamwere v Speaker National Assembly & others** (Petition E399 of 2021) [2023] KEHC 3978 (KLR)

**[b] Kingori v Chege & 3 others** [2002] 2 KLR 243

**[c] Gladys Nduku Nthuki v Letshego Kenya Limited; Mueni Charles Maingi (Intended Plaintiff)** [2022] eKLR

**[6]** A perusal of the Petition confirms that it indeed concerns the relocation of the Headquarters of the County Government of

Homa Bay from Homa Bay Town to new premises at Arujo in Homa Bay West Ward. That being the case, **Section 6A** of the County Governments Act, 2012, as amended in 2020 is explicit that this process is entirely devolved, and therefore the National Assembly has no role, discretion, or duty in its execution. It is also manifest that the Petition does not allege, either expressly or impliedly, any act or omission by the National Assembly in relation to the relocation and that no reliefs are sought against the National Assembly.

**[7] In Kamwere v Speaker National Assembly & 5 others (Petition E399 of 2021) [2023] KEHC 3978 (KLR)**, the Court affirmed that joinder or striking out of parties is a discretionary power, exercised where a party's presence is either necessary for complete adjudication or where its joinder is improper.

**[8] Similarly, in Kingori v Chege & 3 Others [2002] 2 KLR 243**, the Court distinguished between a **necessary party** without whom no decree can be passed; and a **proper party** whose presence is necessary for a complete and final decision, even if no relief is claimed against them. Lastly, in **Abdullahi v Director of Public Prosecutions & another** (Petition E102 of 2022) [2023] KEHC 19275 (KLR), it was held that only parties directly implicated in the alleged violations or whose presence is necessary for adjudication should be joined.

**[9]** More importantly, **Rule 5(d)** of the Mutunga Rules provides that:

**“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 just—**

- (i) order that the name of any party improperly joined be struck out; and**
- (ii) that the name of any person who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court to adjudicate upon and settle the matter, be added.”**

**[10]** I therefore find merit in the Notice of Motion dated 18<sup>th</sup> July 2025. The same is hereby allowed and orders granted as follows:

**[a]** That the 2<sup>nd</sup> Interested Party be and is hereby struck out from the Petition and is excused from further participation in these proceedings.

**[b]** Granted that this is a public interest litigation, each party to bear own costs of the application.

Orders accordingly

**DATED, SIGNED AND DELIVERED VIRTUALLY AT HOMA BAY  
THIS 12<sup>TH</sup> DAY OF MARCH 2026**

.....

**OLGA SEWE**

**JUDGE**