



**Watima v Azan Motors Limited & another (Civil Suit E055 of 2025)
[2025] KEMC 335 (KLR) (11 December 2025) (Ruling)**

Neutral citation: [2025] KEMC 335 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CIVIL SUIT E055 OF 2025
PA NDEGE, SPM
DECEMBER 11, 2025**

BETWEEN

EDITH NAMWEYI WATIMA PLAINTIFF

AND

AZAN MOTORS LIMITED 1ST DEFENDANT

THOMAS WAFULA OKUMU 2ND DEFENDANT

RULING

1. The 1st Defendant/ Applicant filed an application dated 04/06/2025 seeking to be removed from the suit for misjoinder. The application is brought pursuant to the provisions of Order 1, rules 9 and 10(2), Order 51 rules 1 and 3 of the *Civil Procedure Rules*, 2010. The grounds on the face of the application are mainly that the 1st defendant/ applicant sold the suit vehicle to the 2nd defendant, who had the subject motor vehicle insured. That at the time the suit accident occurred, i.e. on 01/01/2024, the 2nd defendant had not completed payment of the full purchase price and therefore the only remaining interest on the part of the applicant is the balance of the purchase price before it transfers ownership to the 2nd defendant.
2. The application is not opposed by the 2nd defendant. The plaintiff however filed a replying affidavit sworn on 12/08/2025 where she contends that the 1st defendant/applicant is properly in the suit and as an essential party to the instant proceedings. It is the plaintiff's contention that the 1st defendant's admission that they are still holding ownership documents of the suit vehicle until the balance of the purchase price is cleared by the 2nd defendant, reinforces the fact that they are the registered owners of the vehicle as rightly captured at paragraph 3 of the amended plaint. It is the plaintiff's contention that a motor vehicle search was conducted after the suit accident occurred, which shows that the 1st defendant is the registered owner of the vehicle. It is the plaintiff's further contention that the 1st



defendant's evidence in support of the instant application is a private contract between the defendants, which shows that the contractual relationship between the parties will subsist up to 03/09/2026.

- Parties filed their written submissions, citing impressive authorities. I have gone through the application, the grounds, the affidavits and the authorities cited. The 1st defendant has confirmed that he is still the registered owner of the suit vehicle herein and I do therefore find no case of misjoinder herein. It has confirmed that it still has an interest in the vehicle on account of the unresolved or incomplete sale of the same to the 2nd defendant, and because of that I do agree with the plaintiff that it is premature to strike him out herein. Order 1, rule 9 forbids defeating a suit for misjoinder, rather all necessary parties should remain so that the real matters in controversy are determined once and for all. The ownership of the suit vehicle herein is definitely at the centre of the claim herein especially when it comes to the issue of liability. The plaintiff is at liberty to fashion her case or claim the way she deems fit, obviously at a risk of payment of costs, and I do therefore dismiss this application with costs to the plaintiff.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 11TH DAY OF DECEMBER 2025

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Plaintiff's counsel: Kimotho h/b Wairimu

1st Defendant's Counsel: Cherop

2nd Defendant's Counsel: Kemboi

Plaintiff: n/a

2nd Defendant: n/a

Kimotho: We take a mention date for PTD. The plaintiff has complied.

Cherop: 1st defendant has complied.

Kemboi: We have complied.

CT: PTD on 17/03/26. Leave to parties to file further compliance dox, if necessary.

