



Sharia Na Haki Human Rights Institute v Arts 680 Limited & 4 others; Kenya Agricultural and Livestock Research Organization & another (Interested Parties) (Environment and Land Petition E015 of 2024) [2025] KEELC 5497 (KLR) (24 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5497 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND PETITION E015 OF 2024**

**JO OLOLA, J
JULY 24, 2025**

BETWEEN

SHARIA NA HAKI HUMAN RIGHTS INSTITUTE PETITIONER

AND

ARTS 680 LIMITED 1ST RESPONDENT

MIDDLE EAST BANK KENYA LIMITED 2ND RESPONDENT

THE DISTRICT LAND REGISTRAR MOMBASA 3RD RESPONDENT

THE CHIEF LAND REGISTRAR 4TH RESPONDENT

THE HON. ATTORNEY GENERAL 5TH RESPONDENT

AND

KENYA AGRICULTURAL AND LIVESTOCK RESEARCH ORGANIZATION INTERESTED PARTY

THE NATIONAL LAND COMMISSION INTERESTED PARTY

RULING

1. By a Chamber Summons dated 19th February, 2025, Middle East Bank Kenya Limited (the 2nd Respondent) prays for an order that the Petition herein dated 19th June, 2024 and the accompanying application be struck out and this suit be dismissed with costs in so far as it relates to the 2nd Respondent. In the alternative, the 2nd Respondent prays for an order that its name be struck out from this Petition.
2. The Application is supported by an Affidavit sworn by the 2nd Respondent’s Manager in Charge of Special Projects one Solomon Odiero and is premised on the grounds:



- i. That the 2nd Respondent was improperly joined in this suit by the Petitioner;
 - ii. That joinder of the 2nd Respondent is entirely speculative and without any proper grounds;
 - iii. That no relief is sought against the 2nd Respondent either in the Petition or in the accompanying application;
 - iv. That in the section for description of parties, no description is given in relation to the 2nd Respondent;
 - v. That the 2nd Respondent is not listed among the parties upon whom service of process in relation to the matter was to be done;
 - vi. That no evidence was disclosed of the 2nd Respondent ever creating any charge against L.R. No. MN/III/3028; and
 - vii. That it is in the interest of justice for the 2nd Respondent to be struck out of this suit to facilitate the faster and effectual adjudication and determination of all the questions arising in the Petition and accompanying application between the proper parties.
3. Sheria Na Haki Human Rights Institute (the Petitioner) is opposed to the application. In its Replying Affidavit sworn on 17th March, 2025 by its Representative Etoe John Akaran, the Petitioner asserts that it is indeed true that the 2nd Respondent did collude with the 1st Respondent to illegally deprive the 1st Interested Party of the suit property.
 4. The Petitioner avers that as evidenced by a Letter of Offer dated 24th August, 1998, the 2nd Respondent had agreed to advance a bank loan of Kshs. 10,000,000/= and a bank overdraft of Kshs. 30,000,000/= to the 1st Respondent. It is their case that upon allegedly concluding due diligence on the suit property, the 2nd Respondent proceeded to charge title documents which charge was registered on the title on 8th October, 1996.
 5. I have carefully perused and considered the 2nd Respondent's application as well as the response thereto by the Petitioner. I have similarly perused and considered the submissions and authorities placed before me by the Learned Counsels representing the parties. The 1st, 3rd, 4th and 5th Respondents as well as the 2nd Interested Party had no objection to the application. The 1st Interested Party supported the Petitioner in its opposition to the application.
 6. The application by the 2nd Respondent has been brought under Order 1 Rule 10 (2), and Order 1 Rule 14 of the Civil Procedure Rules. By its application before the Court, the 2nd Respondents prays that its name be struck out of the Petition.
 7. The basis of the application is that the 2nd Respondent is not a necessary party to the suit and that it has been improperly joined therein as a party. According to the 2nd Respondent, it is in the interest of justice that its name be struck out of the suit to facilitate a faster and effectual adjudication and determination of all the questions arising in the Petition and the accompanying application between the proper parties.
 8. The Petitioner is opposed to the application stating that the 2nd Respondent is a necessary party herein as it was the 2nd Respondent who colluded with the 1st Respondent to illegally deprive the 1st Interested Party of the suit property. That position is supported by the Kenya Agricultural and Livestock Research Organization (the 1st Interested Party) which submits that the 2nd Respondent's role as a financial institution that extended a facility to the 1st Respondent to secure the suit property renders it a necessary party for the effective adjudication of the dispute.



9. Order 1 Rule 10 (2) of the Civil Procedure Rules gives the Court the discretion to strike out a party who is not necessary in a suit. It 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 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.”

10. In *Werrot & Company Ltd & Others –vs- Andrew Douglas Gregory & Others* (1998) eKLR, it was held that:

“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 proceedings in question; and
- ii. it should not be possible to pass an effective decree in the absence of such a party.”

11. The question of who a necessary party is was equally considered in the English Case of *Amon –vs- Raphael Tuck & Sons Ltd* (1956) 1 A11 ER 273, where Delvin J. held as follows:

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 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.”

12. In the matter before me, it was evident from the Petitioner’s prayers that no relief is sought as against the 2nd Respondent. On the basis of a Letter of Offer issued by the 2nd Respondent to the 1st Respondent, the Petitioner accuses the 2nd Respondent of colluding with the 1st Respondent to help the 1st Respondent to acquire the suit property.

13. As it were, if indeed the 1st Respondent had used the suit property as collateral to acquire a loan from the 2nd Respondent, it could only mean that by then the property was already registered in the name of the 1st Respondent. I was unable to comprehend how the advancement of money if at all by the 2nd Respondent in such circumstances could amount to collusion to warrant the 2nd Respondent to be made a party herein.

14. In the result, I am in agreement with the 2nd Respondent that its joinder as a party herein is entirely speculative and without any proper basis.

15. Accordingly, I do find merit in the Chamber Summons dated 19th February, 2024 and hereby allow the same in terms of Prayer No. (a) thereof with costs which I assess at Kshs. 100,000/= to be borne by the Petitioner.



**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT
MOMBASA THIS 24TH DAY OF JULY, 2025**

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J.O. OLOLA

JUDGE

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Mr. Egunza Advocate for the Petitioner
- c. Mr. Peter holding brief for Omyambo Advocate for the 2nd Respondents
- d. Ms. Ogada for the 1st Interested Party
- e. Mr. Kiprono holding brief for Waga for the 3rd, 4th and 5th Respondent.

