



**Kenya Railways Corporation & another v Kenya Finance Investment Company Ltd
& 3 others; Kenya Deposit Insurance Corporation & another (Interested Parties)
(Environment & Land Case E151 of 2023) [2024] KEELC 3845 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 3845 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E151 OF 2023**

MD MWANGI, J

MAY 9, 2024

BETWEEN

KENYA RAILWAYS CORPORATION 1ST PLAINTIFF

ETHICS AND ANTI CORRUPTION COMMISSION 2ND PLAINTIFF

AND

KENYA FINANCE INVESTMENT COMPANY LTD 1ST DEFENDANT

NENO EVANGELISM CENTER REGISTERED TRUSTEES 2ND DEFENDANT

JAMES RAYMOND NJENGA 3RD DEFENDANT

CHIEF LANDS REGISTRAR 4TH DEFENDANT

AND

KENYA DEPOSIT INSURANCE CORPORATION INTERESTED PARTY

NATIONAL LAND COMMISSION INTERESTED PARTY

*(n respect to the application dated 29th January, 2024 by the 1st Interested Party
and the Intended Defendant seeking to have the Intended Defendant joined into these
proceedings as a Defendant and the 1st Interested Party struck out from the proceedings)*



RULING

Background

1. This ruling is in respect to the Notice of Motion application dated 29th January 2024 by the Intended Defendant and the 1st Interested Party. The Applicants seek 3 main prayers, namely:
 - a. That the Intended Defendant/Applicant {Kenya Finance Bank Ltd (IL)} be granted leave to join and participate in these proceedings as a Defendant.
 - b. That leave be granted to the Intended Defendant to file its Defence and necessary pleadings as a Defendant in these proceedings.
 - c. That the name of the Interested Party (Kenya Deposit Insurance Corporation) be struck out from these proceedings for being improperly joined.
2. The application is premised on the grounds on the face of it and on the supporting affidavit of David Irungu sworn on the 29th January 2024. The Applicants' argument is that the Intended Defendant is a necessary party to these proceedings having facilitated the sale of the suit property by way of a transfer by chargee between Kenya Finance Investment Company Ltd, the 1st Defendant herein and apostle James Maina Ng'ang'a T/A Faith Broadcasting Network. The title was the subject of a charge.
3. The Applicants aver that the Intended Defendant holds relevant information necessary for the effective and conclusive determination of the issues raised by the parties in this suit. They assert that it is only the Intended Defendant who can clarify to the court how the property was transferred to the current owner. That is the reason why the Intended Defendant prays to be joined into these proceedings as a Defendant.
4. On the other hand, the Applicants argue that the 1st Interested Party, being a liquidator of the Intended Defendant cannot be sued to assume the liabilities of the Intended Defendant. It is the Applicants' position that under the provisions of the [*Kenya Deposit Insurance Act*](#), Cap 487 Laws of Kenya (KDI Act), the 1st Interested Party is protected as a liquidator of the institutions under liquidation from assuming any liability against the institution in liquidation. Any claim arising out of a transaction conducted by the institution during liquidation or facilitated by the liquidator on behalf of the institution in liquidation can only be made against such an institution. The institution in liquidation has the capacity to be sued in its own name despite being in liquidation.
5. The 2nd Defendant opposed the second limb of the application only through the Replying Affidavit sworn by apostle James Maina Ng'ang'a on 16th February 2024. The 2nd Defendant's argument is that the 1st Interested Party cannot be struck out from the suit as it is a necessary party in these proceedings. The 2nd Defendant insinuates that it is likely to raise a counter-claim against the 1st Interested Party. The 2nd Defendant further averred that the 1st Interested Party was joined into the proceedings on the court's own initiative.
6. The 2nd Defendant too pointed out that the transaction forming the subject matter of this suit happened way back in the year 2008. At that time, the predecessor of the 1st Interested Party, the Deposit Protection Fund did not enjoy the 'immunity' from suits. Joinder of a party in any event is at the discretion of the court.
7. The Plaintiffs and the 1st, 3rd and 4th Defendants did not participate in the hearing of the application.



Determination

8. Order 1 rule 10 of the Civil Procedure Rules gives the court the discretion to order that that the name of any person who ought to have been joined, whether as a Plaintiff or Defendant, or whose presence before the court may be necessary in order to enable the court effectively and completely adjudicate upon and settle all questions involved in the suit be added as a party to the suit. The intention as explained in the case of *Civicon Ltd -vs- Kivuwatt Ltd and 2 others* (2015) eKLR, is to bring on record all persons who are parties to the dispute relating to the subject matter so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Therefore any party reasonably affected by the pending litigation is a necessary and proper party and should be joined into the proceedings.
9. There is a primary precept governing administration of justice that no man is to be condemned unheard, and therefore as a general rule, no order should be made to the prejudice of a party unless he has had the opportunity of being heard in defence. Joinder of all necessary and proper parties to proceedings before a court of law enables the realization of this principle.
10. The Applicants have made a case for the joinder of the Intended Defendant/Applicant who is a necessary and proper party in these proceedings to enable the court determine all the issues arising having actively participated in the sale of the suit property to the 2nd Defendant. Since the Plaintiffs' case is that the suit property is public property, the Intended Defendant, who has admitted having facilitated the sale of the suit property by way of a transfer by charge, may be directly affected by the decision of the Court. The Intended Defendant ought to be a party in these proceedings. Indeed the Applicants have categorically stated that the Intended Defendant holds relevant information necessary for the effective and conclusive determination of the issues raised by the parties in this suit. For that reason, the Court allows the application by the Intended Defendant/Applicant and joins it as the 5th Defendant in this case.
11. Accordingly, Kenya Finance Bank Ltd (IL) is granted leave to participate in these proceedings as a Defendant.
12. In respect to the prayer by the Interested Party (KDIC), it was rightly pointed out by the 2nd Defendant that KDIC was joined into these proceedings on 22nd November, 2023, on the Court's own initiative, suo moto, under the provisions of Order 1 Rule 10 of the Civil Procedure Rules.
13. The 1st Interested Party's submissions is that as a liquidator, it does not assume liability on behalf of the institution in liquidation. It has been submitted further that the KDI Act expressly prohibits any suits against the Liquidator. Section 50(5) of the KDI Act provides that:

“Where the Corporation exercises one or more powers under this section, the corporation shall not, by reason of the exercise of such powers, be held to have assumed or incurred any obligation or liability of the institution for its own account”.
14. KDIC however, is in these proceedings only as an Interested Party; not as a Principal Party; it is neither a Plaintiff nor a Defendant. No claim whatsoever has been sought against it.
15. The logic behind the need to join an Interested Party against whom there is no cause of action but because that Party's presence is necessary to enable the Court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter before it was discussed in the case of *Departed Asians Property Custodian Board -vs- Jaffer Brothers Ltd* [1999] I EA 55 as cited by Odunga,



J in the case of Gladys Nduku Nthuki –vs- Mueni Charles Maingi (Intended Plaintiff) [2022] eKLR. The Court in the former case held that:

“ 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 involved 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 questions involved in the cause or matter.”

16. The court in this matter already found the presence of the 1st Interested Party necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit hence the order to have it joined as an Interested Party. Accordingly, the prayer that the 1st Interested Party be struck out of the proceedings is disallowed.
17. Consequently, the application dated 29th January 2024 succeeds only on the first aspect; the Intended Defendant/Applicant, Kenya Finance Bank Ltd (IL), is joined into this suit as the 5th Defendant. Accordingly, Kenya Finance Bank Ltd (IL) is granted leave to participate in these proceedings as a Defendant. The prayer that the 1st Interested Party be struck out of the proceedings is disallowed. The costs of the application shall be in the cause.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 9TH DAY OF MAY, 2024.

M.D. MWANGI

JUDGE.

In the virtual presence of:

Ms. For the Intended Defendant/Applicant and the 1st Interested Party

Ms. Namai for the 3rd Defendant

Ms. Muindi for the 2nd Defendant

Mr. Allan Kamau for the 4th Defendant

Mr. Obuya for the 1st Plaintiff

N/a for the 2nd Plaintiff and 1st Defendant and the 2nd Interested Party

Yvette: Court Assistant

M.D. MWANGI

JUDGE.

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