



**Ngugi v Samuel Mbugua Karanja t/a Starshineklub Q West, Keg Bar,
Starshine Klub Q – West & 3 others (Environment & Land Petition
2 of 2023) [2024] KEELC 5439 (KLR) (18 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5439 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION 2 OF 2023**

**AA OMOLLO, J
JULY 18, 2024**

BETWEEN

RAPHAEL MURIITHI NGUGI PLAINTIFF

AND

**SAMUEL MBUGUA KARANJA T/A STARSHINEKLUB Q WEST, KEG BAR,
STARSHINE KLUB Q – WEST 1ST DEFENDANT**

ALCOHOLIC DRINKS AND LICENSING BOARD 2ND DEFENDANT

NAIROBI CITY COUNTY 3RD DEFENDANT

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 4TH
DEFENDANT**

RULING

1. For determination is the motion dated 31st January, 2024 brought by the 3rd Respondent. It sought the following orders;
 - a. That the name of the 3rd Defendant/Applicant be struck out as a party improperly joined to the suit.
 - b. That consequently, the suit against the 3rd defendant be struck out with costs.
 - c. That the costs of this application be provided for.
2. The application is supported by the grounds on the face of it which were reiterated in the Supporting Affidavit inter alia;
 - i. That I am an Advocate of the High Court of Kenya having the conduct of this matter on behalf of the National Environment Management Authority, the 3rd defendant/Applicant



herein, and familiar with the facts of this case thus competent and duly authorized to swear this Affidavit on purely points of law.

- ii. That I have read the plaintiff's plaint dated 1st September, 2023 as well as the prayers sought thereunder and it is the applicant's case that the applicant has been improperly enjoined in this suit as a defendant for the reasons stated hereunder.
 - iii. That other than the mention in the descriptive part of the plaint, there is no mention of the 3rd defendant in the plaintiff's pleadings.
 - iv. That no specific allegation is made in the plaint as against the 3rd defendant
 - v. That no specific relief has been sought against the 3rd defendant.
 - vi. That consequently, the plaint dated 1st September, 2023 does not disclose any reasonable cause of action as against the 3rd defendant/applicant.
3. The application is opposed by the Plaintiff/Respondent vide a replying affidavit sworn on 8th April, 2024. The Respondent deposes inter alia that;
- i. That prior to the filing of this suit and follow up by my Advocates on record the 3rd Defendant had not taken any action to stop the operations of the 1st Defendant from making or causing excess noise and vibrations in excess of the noise levels set in the First Schedule of the Environment Management Coordination (Noise and Excessive vibrations pollution control) Regulations of 2009.
 - ii. That it's only afterwards that the 3rd Defendant did send Environmental inspectors on the 13th of October, 2023 who assessed the 1st Defendant and confirmed that my claim about the 1st Defendant is true.
 - iii. That am further informed by Advocates on record that a necessary party is a party from a claim cannot be legally settled by court without them being a party to the proceedings.
 - iv. That further the 3rd Defendant through their director general have already taken steps to address the issues of noise and vibrations that have been occasioned by the 1st Defendant. (I hereby attach a copy of the letter addressed to the 1st Defendant for the club for its closure and mark the same as RMN-1).
 - v. That the 3rd Defendant were enjoined in this proceedings for failure to conduct their duty as set down in law and only took action after this case was filed against them and therefore it will be a miscarriage of justice if their application is allowed.
 - vi. That am verily advised by my Advocates on record that all the averments raised by the 3rd defendant in this current application can be well cured by amendment of the plaint but not drastic measure of striking out the entire proceedings when I do have prima facie case which ought to be determined on merit.
4. I have considered the orders sought, the grounds presented in opposition thereto and the plaint. It is the plaint which constitutes a cause of action. In this case, none of the 15 paragraphs in the plaint touches the name of the 3rd Defendant. The reliefs sought are directed only as against the 1st and 2nd Defendants.
5. Although the plaintiff deposes that the 3rd Defendant is a necessary party to his claim, he has not pleaded anything against it. Indeed, the 3rd Defendant is mandated by law to ensure compliance on



environmental matters. The court can always issue orders directing them to supervise compliance without being made parties to a suit.

6. The Plaintiff also confirms that when he lodged a complaint with the 3rd defendant, the 3rd defendant took action by assessing the noise levels in the impugned premises. Nothing stops the plaintiff from calling the 3rd defendant's representatives as its witness while relying on the report and not parties.

7. I am not persuaded that the failure to disclose the cause of action in this matter can be cured by way of amendment. In the case of D.T Dobie (K) Ltd vs Muchina (1982)KLR 1 it was held;

“The words reasonable cause of action in order VI rule 13(1) means an action with some chance of success, when the allegations in the plaint only are considered. A cause of action will not be considered reasonable if it does not state such facts as to support the claim prayer”

8. When the plaintiff eventually amends the plaint to establish any cause of action, he can always apply for review of this ruling. For now, I find no reason to refuse to allow the motion dated 31st January, 2024. It is allowed with no costs since no defence had been filed. The 3rd defendants name is struck out from these proceedings.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF JULY, 2024

A. OMOLLO

JUDGE

