



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI COUNTY

COURT NAME: MILIMANI HIGH COURT

CASE NUMBER: HCACECS/E042/2025

ETHICS AND ANTI-CORRUPTION COMMISSION VS PAUL KIMANI WAMATANGI AND
LUB PLUS OIL AND ENERGY COMPANY LIMITED AND 12 OTHERS

RULING

Before this Court are five Applications which in principle seek the striking out of the suit as against the respective Applicants on various grounds.

The first Application is by the **1st Defendant/Applicant dated 2nd January, 2026** seeking the following Orders;

Spent.

The Honourable Court be pleased to strike out the Plaintiff's suit herein as against the 1st Defendant (hereinafter called "the impugned suit" for non-disclosure of a reasonable cause of action; for being scandalous, frivolous and vexatious; and for being an abuse of the court process.

The costs of this application be provided for.

The Application is supported by the affidavit of Hon. Paul Kimani Wamatangi, sworn on the same date. The Applicant avers that he was not a director of the 2nd to 6th Defendants at all material times, nor was he involved in the preparation or submission of any tender application for contracts executed between the said companies and the Kenya Urban Roads Authority (KURA), the Kenya Rural Roads Authority (KERRA), and the Kenya National Highways Authority (KENHA), which formed the basis for payments of Kshs. 813,145,532.40/= to the said companies.

He avers that he never communicated with any employee or officer of any of the road agencies in connection with any of the tenders issued to the respective companies, and therefore could not have influenced the award of those tenders.

It was his deposition that the allegations that he abused his office as a member of the senate to influence the award of the tenders to the said companies from the road agencies, or that he acted in conflict of interest, were unmeritorious on the grounds that a chairman or member of a parliamentary committee cannot be held personally liable for a decision passed by parliament; that a chairman or member of a parliamentary committee cannot officially communicate directly with an employee of a parastatal to improperly influence that employee's decision, and that any communication not made cannot constitute abuse of office; that parliamentary committees can only lawfully act through resolutions passed directly or through various committees, not by an individual; that under Section 11 of the Parliamentary Powers and Privileges Act, proceedings or decisions by parliament cannot be questioned before a court of law; that under Section 12 of the said Act, members of parliament are immunised from any civil or criminal liability in connection with acts or omissions committed or omitted in the discharge of their responsibilities; and that under Article 96(4) of the Constitution, the senate has no oversight mandate over parastatals, its oversight mandate being only against state officers.

On that basis, he avers that the suit herein discloses no cause of action against him but is intended to scandalise him, as he was not involved in any alleged procurement irregularities. He further avers that the institution of this suit is politically motivated, with the Plaintiff being misused by his detractors, whose intention is to wrongly brand him as corrupt and to reduce his chances of re-election as the Governor of Kiambu County. He further avers that the allegations in this suit are being widely circulated, causing irreversible damage to his reputation, which creates a compelling reason for the Court to act without delay.

He further deposes that the suit herein violates the doctrine of sub judice by duplicating issues already before the Court in Constitutional Petition E455 of 2025, where conservatory orders are already in force. He further deposes that, although investigations have been completed, no investigation report or nexus linking him to any proceeds has been produced, and that the suit conflates corporate accounts with personal liability. Hence, with no allegation that funds entered his personal accounts, the pleadings are vague, ambiguous and speculative, making it impossible to frame a defence.

The second Application was filed by the **7th, 9th and 12th Defendants/Applicants on 11th February 2026** and seeks the following orders;

Spent.

The Plaintiff's suit against the 7th, 9th and 12th Defendants be struck out for disclosing

no reasonable cause of action and for being scandalous, frivolous, vexatious and an abuse of the Court's process.

Costs of this application be provided for.

The Application was supported by the affidavit of Charles Kiarie Kimani, sworn on the same date. It is averred that the claim herein is premised on allegations of corruption, conflict of interest and unlawful acquisition of public property, and is directed solely against the 1st Defendant, with no pleaded wrongdoing attributed to the 7th, 9th and 12th Defendants.

It is averred that no tender, contract or transaction undertaken by them in their personal capacity has been questioned or impugned by the Plaintiff or any other investigative agency, and that they have been joined solely as directors of the 2nd to 6th Defendants and on the basis of alleged social associations with the 1st Defendant. It is further averred that the 2nd to 6th Defendants are limited liability companies with separate legal personality, and that no lawful basis has been provided to justify piercing the corporate veil.

It is deposed that no fraud, illegality or misconduct has been specifically pleaded or particularised against them in their personal capacity, and, as such, they cannot be held personally liable for the acts of the corporate Defendants, thereby constituting a misjoinder.

It is their case that the suit can be fully and effectively determined without their participation, that the reliefs sought can be granted without their involvement, and that unless struck out at this stage, they will be subjected to oppressive and unnecessary litigation, causing unjustified financial, reputational and constitutional prejudice.

The third Application by the **4th, 5th, 8th, 12th and 13th Defendants is dated 12th February, 2026** and seeks the following orders;

Spent.

The names of the 8th, 12th and 13th Defendants (being ANNIE MURUGI NJOROGI, MARY ESTHER NJERI and NICHOLAS KIMANI NJOROGI) be struck out from these proceedings as parties improperly enjoined in the proceedings.

The suit be dismissed as against the 8th, 12th and 13th Defendants (being ANNIE MURUGI NJOROGI, MARY ESTHER NJERI and NICHOLAS KIMANI NJOROGI) be dismissed with costs of the Amended Plaint and the instant Application be borne by the Plaintiff.

This Honourable Court be pleased to grant such further or other relief as the ends of justice may require.

The Application is supported by the affidavits of Annie Murugi and Nicholas Kimani Njoroge, sworn on the same date. It is averred that, according to the Amended Plaint, the Applicants herein were solely joined in this suit as directors of the 4th and 5th Defendants, and that no allegation was made against them in their personal capacity as

directors, shareholders, officers or controlling minds of the company. Further, no remedy is sought against the Applicants herein in their personal capacity.

It was also averred that, because the 4th and 5th Defendants are separate legal entities, the Plaintiff has sought to lift the corporate veil, contrary to established jurisprudence on corporate legal personality. It was further averred that the Applicants were not necessary parties to this suit, as the court can effectively adjudicate and settle questions involving the 4th and 5th Defendants without the participation of the 8th, 12th, and 13th Defendants/Applicants.

The fourth Application by the **10th Defendant/Applicant is dated 12th February, 2026** seeking the following orders;

Spent.

The name of the 10th Defendant, Ms Faith Wambui Njeri be struck out from these proceedings as a party improperly enjoined in the proceedings.

The suit be dismissed as against the 10th Defendant, Ms Faith Wambui Njeri be dismissed with costs of the Amended Plaint and the instant Application be borne by the Plaintiff.

This Honourable Court be pleased to grant such further or other relief as the ends of justice may require.

The Application was supported by the affidavit of Faith Wambui Njeri, sworn on the same date. It is averred that, according to the Amended Plaint, the 10th Defendant has been included solely on the basis of her directorship of the 3rd Defendant, without any particular allegation against her in her personal capacity. She averred that the Plaintiff failed to disclose that she is no longer a director or shareholder of the 3rd Defendant, and that no remedy has been sought against her in her personal capacity, making her participation unnecessary in the instant proceedings.

The fifth Application was filed by the **3rd and 11th Defendants dated 5th March, 2026** and seeking the following orders;

Spent

That the name of the 11th Defendant, Joseph Mwaura Kimani, be struck out from these proceedings for having been improperly joined, and that the Plaintiff's suit against the 11th Defendant be struck out for disclosing no reasonable cause of action against him.

That the costs of this application be provided for.

The Application was supported by the affidavit of Joseph Mwaura Kimani, sworn on the same date. He deposed that he was a director of the 3rd Defendant, a limited liability company, a separate legal entity distinct from its directors and shareholders, and that the 3rd Defendant's actions cannot be automatically attributed to its directors.

He averred that no allegation of fraud, illegality, misrepresentation, conspiracy or unlawful conduct was pleaded against him in his personal capacity to justify lifting or piercing the corporate veil. He deposed that his continued inclusion in the suit exposes

him to unnecessary litigation, expense and prejudice without any legal justification and does not assist this court in determining the real issues in dispute; hence the prayer to strike him out of the suit.

RESPONSES

The Plaintiff/Respondent filed separate responses to the Applications herein, the contents of which were largely similar, save for minor alterations to the parties.

In relation to the 1st Defendant/Applicant's Application, a Replying Affidavit, sworn by Anderson Weru on the 23rd of February, 2026, was filed. He averred that the application was incompetent, unknown to law, without merit, and an abuse of court process. He further averred that striking out is a draconian remedy which can only be granted in the clearest of cases and in strict compliance with the rules. He further averred that the grounds for striking out a suit under Order 2 Rule 15 of the Civil Procedure Rules can only be prayed for and argued separately and cannot be combined as the said application purports.

He averred that the 1st Defendant/Applicant filed a bare Affidavit in support of his Application, whereas the Plaintiff's suit is based on written statements and volumes of documents, which could not be summarily dismissed by mere denial.

It is deposed that their investigations established that the 1st Defendant/Applicant influenced the tender processes and awards, engaged in breach of trust, abuse of office, and conflict of interest, resulting in the award of the tenders to the other Defendants and the receipt of a benefit of Kshs. 813,145,532.40/=.

It is averred that the Defendants engaged in fraudulent practices by misrepresenting facts to influence a procurement process within the meaning of section 2 of the Public Procurement and Disposal Act, by submitting forged or falsified bid documents intended to fraudulently win tenders by falsely demonstrating technical and financial capacity to undertake the works, to the detriment of the public.

The Plaintiff/Respondent contends that it was pleaded that the Defendants were awarded the tenders/contracts despite failing to meet certain mandatory conditions in some tenders, resorting to breaches of procurement laws to influence the award of the tenders in their favour. He highlighted a total of nine instances, which he averred were established by their investigations, showing procurement irregularities.

It is deposed that the illegal acts and breach of procurement laws would not have occurred without the active involvement and patronage of the 1st Defendant, who acted in a conflict of interest. There is sufficient evidence showing that the 1st Defendant/Applicant registered the companies, holds a majority shareholding, and is a signatory to the accounts, contrary to his claims that the Plaintiff's allegations are unsubstantiated. Further, investigations established that he received funds directly into his Sacco account at Parliamentary Sacco from the companies' bank accounts.

It is further deposed that, as a state officer, the 1st Defendant failed to avoid any

conflict between his personal interests and his public or official duties, used his office to confer an improper benefit on himself, and failed to maintain high standards of personal and professional integrity. According to the case of *Standard Chartered Bank vs Pakistan National Shipping Corporation & others* (no2) [2003] 1 All. E.R. 173, no one could escape liability for fraud by asserting that the fraud was committed on behalf of someone else and that the individual was not personally liable.

He further averred that companies, by themselves, are incapable of committing fraud without human intervention. He further averred that the court should decline the invitation to determine the matter summarily without testing the parties' evidence through hearing and cross-examination of witnesses. The Plaintiff/Respondent denied that the suit herein amounts to sub judice, as the conservatory orders in Constitutional Petition E455 of 2025 only prohibit the ODPP from charging him.

In response to the contention that works were carried out, completion certificates were issued, and the payments do not constitute proceeds of crime, it is contended that the contracts awarded herein, on the basis of fraud, misrepresentation and illegality, are null and void ab initio, and that the 1st Defendant/Applicant is personally liable in restitution and damages for breach of trust.

The Plaintiff/Respondent also filed a Replying Affidavit dated 23rd February, 2026 in response to the Application of the 7th, 9th and 12th Defendants/Applicants. Its contents were largely similar to those highlighted above. It was further averred that the Plaintiff/Respondent has specifically pleaded fraud, illegality, conflict of interest, trading in influence, breach of Chapter 6 of the Constitution and breach of trust against the Defendants; that the Defendants have been unjustly enriched, jointly and severally, at the expense of the public; and that an order for restitution should issue, thereby disclosing a cause of action against the Applicants.

It is averred that the Applicants were personally liable for the deceitful and illegal actions and could not hide behind the corporate veil. Accordingly, a reasonable cause of action was disclosed against them, warranting their participation in the suit.

The Plaintiff also filed a Replying Affidavit dated 28th of April, 2026, in response to the 3rd and 11th Defendants' Application dated 5th March, 2026; and Replying Affidavits dated 25th May, 2026, in response to the 4th, 5th, 8th, 12th and 13th Defendants' Application and to the 10th Defendant's Application, both dated 12th February, 2026, whose contents were similar and I need not reiterate.

REJOINDERS

The 11th Defendant/Applicant filed a Supplementary Affidavit dated 30th June, 2026, denying any engagement in fraudulent conduct, misrepresentation or unlawful practice in relation to any procurement process, and specifically denying the preparation, signing, submission or authorisation of any forged, falsified or fraudulent bid in respect of any tender. He reiterated that no particulars of any misrepresentation or unlawful

conduct by him have been pleaded, nor has any alleged forged or falsified document bearing his signature been exhibited.

The 4th, 5th, 8th, 12th and 13th Defendants/Applicants also filed a Supplementary Affidavit, sworn on 30th June, 2026. They reiterated that nothing in the Amended Complaint is pleaded against the 8th, 12th and 13th Defendants/Applicants, save that they are directors of the 4th and 5th Defendants. Beyond that office, no single act, bid, forged document, award procured, authorised payment or benefit received has been disclosed. The irregularities pleaded are against the conduct of the companies, not the personal acts of either director.

It was their deposition that every sum alleged to be proceeds of corruption was received into the 4th and 5th Defendants' accounts, not into any directors' accounts, and that, as such, the corporate veil cannot be lifted unless upon pleaded and proven facts of abuse. Further, that the separate personality of a company is not displaced by the bare fact that a company acts through people, and that reliance on the case of **Standard Chartered Bank vs Pakistan National Shipping Corporation & others (no2) [2003] 1 All. E.R. 173** strengthens their point, as it fixes liability on a person for their own deceit upon representation identified by its date, content and receipt, none of which has been pleaded against the directors at all.

It was also averred that the Plaintiff/Respondent in Misc. Application E028 of 2025 obtained preservation orders over the accounts of the 2nd to 6th Defendants, not those of the directors, and that the apprehension that a company may not pay is no ground for pursuing its directors. Further, kinship is not an act of fraud and is not a ground for piercing the corporate veil.

The 10th Defendant/Applicant filed a Supplementary Affidavit, sworn on 29th June, 2026. She averred that the Plaintiff's case rests solely on her alleged historical association with the 3rd Defendant, and that no individual act, omission, representation, instruction, signature, vote, payment authorisation, procurement intervention, receipt of funds, or personal benefit is pleaded against her. She further averred that she was never a public officer, so there is no basis for a breach of Chapter 6 of the Constitution.

She also averred that allegations of fraud, collusion, misrepresentation, breach of trust and unlawful enrichment are quasi-criminal in nature and must be specifically pleaded and particularised against the person accused, which is not the case here. Further, it was averred that there has been no challenge before the Public Procurement Administrative Review Board or the Public Procurement Oversight Authority raising any concern, irregularity or impropriety in the tendering process relating to any of the tenders impugned in these proceedings.

She averred that the allegation that she owned M/S Prime Auto and General Trading Enterprises Limited, or that she procured a reference letter from it to aid the 3rd

Defendant's bid, appears for the first time in the Replying Affidavit, is not pleaded in the Plaint, and is unsupported by any exhibited document, as the company is not a party to this suit. She further averred that she resigned as a director of the 3rd Defendant in May 2020, a resignation acknowledged by the Plaintiff/Respondent, and that no act of fraud, forged document, resolution, instruction, payment authorisation, or procurement decision has been attributed to her personally. Further, that the funds alleged to constitute proceeds of corruption were received into the 3rd Defendant's account and not into her personal account.

The Applications were canvassed by way of Written Submissions.

1st Defendant/Applicant's Submissions

The 1st Defendant/Applicant filed written submissions dated 1st July, 2026 in support of his Application dated 2nd January, 2026. He argued that the offence of conflict of interest, on which the Plaint is based, does not exist because Section 42(3) of the Anti-Corruption and Economic Crimes Act (ACECA) has been repealed. He further argued that, for a conflict of interest to arise, there must be a principal-agent relationship, a decision must be made, and the agent must harbour an interest in that decision. None of these elements were present in this case.

He argued that his name does not appear in any of the tender documents awarded to the 2nd to 6th Defendants, and that the Plaintiff/Respondent seeks to link the 1st Defendant to the rest of the Defendants on the basis of beneficial ownership, on the ground that the 1st Defendant is a signatory to the accounts.

It was his further submission that the suit against him contravenes sections 11 and 12 of the Parliamentary Powers and Privileges Act, as the actions complained of were committed during his tenure as chair of the Senate Standing Committee on roads and transport and are tied to official functions. He thus argued that this court is deprived of jurisdiction to entertain the present suit by the protection accorded to the 1st Defendant under those provisions. He thus urged the Court to strike out the 1st Defendant/Applicant from the suit herein.

The 7th, 9th and 12th Defendants/Applicants Submissions

The 7th, 9th and 12th Defendants/Applicants filed their written submissions, dated 24th June, 2026, in support of their Application dated 11th February, 2026. They argued that no cause of action is disclosed against them and that the reliefs sought in the amended Plaint are directed at the monies allegedly received by the 2nd to 6th Defendants, not at them as directors of the 2nd and 6th Defendants. They relied on the case of **Taj Villas Management Limited v Taj Mall Limited [2018] eKLR** for the principles governing striking a party from the suit.

They further argued that the test for determining a necessary party, as set out in **Kundu v Mbugua & 3 others [2025] KEHC 5404 (KLR)**, was not satisfied, and that their continued inclusion serves no legitimate purpose. They also relied on **EACC v**

Kanani & 5 Others [2024] KEHC 16638 (KLR) regarding joinder of a party as a respondent.

It was further argued that their joinder offends settled principles of separate legal personality and limited liability, and that the Plaintiff/Respondent ought to have sought the Court's leave to lift the corporate veil, an exceptional remedy available only in clear and well-established circumstances, such as fraud, improper conduct, or where the company is used as a sham or facade. They relied on the Supreme Court's decision in *Gatuma v Kenya Breweries Limited & 3 Others [2024] KESC 52 (KLR)*. They therefore argued that the pleadings disclose no cause of action against the Applicant herein and prayed that they be struck out of the suit.

3rd and 11th Defendants/Applicants Submissions

The 3rd and 11th Defendants/Applicants filed their written submissions, dated 30th June, 2026, in support of their Application dated 5th March, 2026. It was submitted that the pleadings in this matter do not disclose a cause of action against the 11th Defendant, who has only been joined as a director of the 3rd Defendant. Reliance was placed on the case of *Independent Electoral and Boundaries Commission & another v Stephen Mutinda Mule & 3 Others (2014) eKLR*, in which the court held that parties are bound by their pleadings and that evidence not in support of pleaded facts is of no consequence.

Reliance was also placed on the case of **Vijay Morjaria v Nasingh Madhusingh Darbar & another [2000] eKLR**, which held that fraud must be specifically pleaded, that the particulars must be set out, and that fraud should not be inferred from the pleadings. They argue that this was not done in this case. It was their further submission that the alleged justification of the 11th Defendant/Applicant for lifting the corporate veil is against established legal principles, as the corporate veil is not lifted as a matter of course or by inference, but only in clear and specific circumstances.

They relied on the case of **Victor Mabachi & another v Nurtun Bates Limited [2013] eKLR** regarding the distinct legal entity of corporate bodies. They argued that piercing the corporate veil requires a legally recognised basis, and that none has been pleaded in this case. The 11th Defendant's continued inclusion exposes him to unnecessary litigation, reputational harm and expense, without any pleaded cause of action. He thus urged the Court to strike out the 11th Defendant from the suit.

8th, 12th and 13th Defendants/Applicants Submissions

The 8th, 12th and 13th Defendants/Applicants filed their written submissions dated 30th June, 2026. They submitted that a company is a distinct entity from its members, as established in **Salomon v Salomon & Co. Ltd [1897] AC 22** and codified in section 19 of the Companies Act, 2015. They also relied on the cases of **Victor Mabachi & another v Nurtun Bates Limited [2013] eKLR** and **Riccatti Business**

College of East Africa Ltd v Kyanzavi Farmers Co. Ltd [2016] eKLR to support the proposition that the corporate veil could not be pierced merely because the individual was a director and sole shareholder. They argued that no particulars against them have been pleaded, save that they were directors of the 4th and 5th Defendants, and that even the forfeiture orders sought are against the 2nd to 6th Defendants, not against them as directors.

Reliance was placed on the case of **Macmillan Kenya (Publishers) Ltd v Mount Kenya Sundries Ltd [2008] KEHC 1059 (KLR)** in support of their submission that, when a suit discloses a cause of action, the suit herein does not lie against the Applicants as directors. They submitted at length that directors were not liable for a company's debt unless the Plaintiff demonstrates a basis for personal liability.

In piercing the corporate veil, reliance was placed on the case of **West Palm Logistics Limited v Amkon Construction Limited & 2 others [2026] KEHC 3497**, where the court developed a two-limbed conjunctive test for piercing the corporate veil where there is evidence that the company is a mere sham, facade or device used to defeat public convenience, justify wrong, protect fraud or defend crime, and that the controlling party used the corporate form to evade pre-existing legal obligations, with both limbs satisfied.

It was further submitted that joinder must be purposeful and connected to the reliefs sought. They relied on the case of **Law Africa Publishing Ltd v ProQuest LLC [2025] KEHC 17128**, in which the court struck out a party found to be peripheral to the subject matter of the suit. They argued that the cause of action in this case is against the companies, not the directors, who are not necessary to the determination of this suit. They prayed that their Application dated 12th February, 2026 be allowed as prayed.

10th Defendant/Applicant's Submissions

The 10th Defendant filed written submissions dated 30th June, 2026 in support of her Application dated 12th February, 2026. She also submitted that a company is distinct from its directors, and relied on the cases cited above, noting that she was merely joined in this suit as a former director. She submitted that the pleadings disclose no cause of action against her and that she was not a necessary party in this case. She relied on the cases of **Pravin Bowry v John Ward & Another [2015] eKLR** and **Communications Commission of Kenya & 3 others v Royal Media Services Limited & 7 others [2014] eKLR** on the circumstances in which a party is considered a necessary party to a suit. She argued that she is not a proper party to this suit, as the forfeiture is sought against the corporate accounts rather than her personal accounts. She therefore asked the court to have her struck out of the suit with costs.

Plaintiff/Respondent Submissions

The Plaintiff/Respondent filed written submissions dated 15th July, 2026, opposing all

the Applications above. It was their submission that the Commission acted within its mandate to investigate the Applicants herein and to institute the suit herein, citing sections 25, 25A and 11(1)(j) of the EACC Act. Reliance was placed on the case of **Boniface Katana Kalaveri v EACC & Commissioner of Lands, Civil Appeal No. 27 of 2014.**

With respect to joinder of the Applicants, it was submitted that the commission's investigations established that the defendants acted fraudulently and illegally, resulting in the award of the subject contracts, and that they received a benefit of Kshs 813,145,532.40/=. It was further submitted that the Defendant/Applicants seek to displace those findings with blanket declarations of absence from the scenes of the subject matter.

It was also their argument that dismissal is a drastic step and that courts are slow to dismiss on the basis of a want of cause of action. Reliance was placed on several authorities on the issue of dismissal for want of a cause of action, **including EACC v Maitai & 13 others [2025] KEHC 2464 (KLR), EACC v Stephen Sanga Barawah t/a Mediscope Agencies & 20 others [2018] eKLR, Green Square Limited v Sheladia Associates & 2 others [2017] eKLR, and Shah v Credit Agricole Indosuez Limited (formerly Bank of Indosuez) & 3 others [2023] KEHC 3394 (KLR).** It was their argument that, in this case, the causes of action are not so simple as to be dismissed merely on a look at the pleadings, as they involve narratives and transactions that require attention and detailed explanation, which is proper given that the natural defendants have not denied association with corporate personalities.

It was their submission that proving fraud is an uphill task requiring the examination of evidence and cannot be displaced by the rejection of the Plaintiff's Pleadings without scrutinising the evidence. That the court has to consider the evidence against the relevant Defendants in its entirety before deciding whether the said Defendants were properly joined. Reliance was placed on the case of **Evans Odhiambo Kidero & 9 others v Chief Magistrates of Milimani Law Courts & 6 Others [2020] KEHC 9863 (KLR).** As such, they submitted that the 1st Defendant and the Applicants, who are directors, are necessary parties to the suit.

In relation to personal liability, it was their submission that sections 51 and 52 of ACECA provide for the personal liability of persons who cause loss of public property, and they relied on the case of **Registered Trustees of the Sisters of Mercy (Kenya) t/a Mater Hospital v Muriithi & 5 others KECA 1688 (KLR).** They further submitted that investigations established that the 8th, 12th and 13th Defendants/Applicants are close family, relatives and proxies of the 1st Defendant, who was the chairperson of the Senate Committee on Roads, Transport and Housing.

It was their further submission that the contracts, having been awarded on the basis of fraud, misrepresentation and illegality, are illegal, null and void ab initio, and that the

Defendants are jointly and severally liable in restitution.

In relation to piercing the corporate veil, their submission was that the circumstances in this case entitle the Court to pierce the veil to establish that the Defendants were the people behind these companies. Reliance was placed on the cases of **Jones & another v Lipman & another [1962] 1 All ER 442**, **Trustor AB v Smallbone & others (No. 2) [2001] 3 All ER 987** and **Adams & others v Cape Industries PLC & another [1991] 1 All ER**, to show when the Court should pierce the corporate veil. They submitted that, since the companies were incapable of committing fraud by themselves, the human hands, being the directors, cannot escape liability.

It was their submission that the question of conflict of interest by the 1st Defendant/Applicant is a question of fact to be determined by reference to the totality of the evidence on record.

In relation to the issue of parliamentary powers and privileges, it was their submission that these powers and privileges do not extend to the matters under investigation herein, namely entering into contracts through private companies in which he is a beneficial owner. They cited the case of **Hon. Elizabeth Manyala & 12 others v AG and EACC, ACEC No. 42 of 2016**, in that regard. Further reliance was placed on the cases of **Francis Matheka & 9 others, Misc. Application No. 362 of 2014**, and **Republic v EACC Ex parte Nairobi City County Assembly & 13 others [2019] KEHC 10914 (KLR)**. It was their submission that the Parliamentary Powers and Privileges Act does not apply to the 1st Defendant/Applicant in this case.

In conclusion, it was their submission that the Defendants/Applicants were necessary parties to this suit, and they urged the court to dismiss the Applications.

ANALYSIS AND DETERMINATION.

I have considered the Applications, the Replying Affidavits, the Supplementary Affidavits and the rival Submissions. The following issues arise for determination ;

Whether the suit herein is sub judice?

Whether the suit offends the Parliamentary Powers and Privileges Act?

Whether the 1st and 7th to 13th Defendants/Applicants are proper and necessary parties in this suit?

Whether the suit herein is sub judice?

The 1st Defendant/Applicant contends that the suit herein is sub judice to Constitutional Petition No. E455 of 2025, in which conservatory orders are in force. Section 6 of the Civil Procedure Act addresses the sub judice rule and provides as follows;

No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under

the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.

The Supreme Court of Kenya in **Kenya National Commission on Human Rights vs Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties)** (Advisory Opinion Reference 1 of 2017) [2020] KESC 54 (KLR), stated therein as follows: -

“ 67.... A party that seeks to invoke the doctrine of res sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.”

In this case, the 1st Defendant/Applicant has merely told the court that the suit herein is sub judice to the Constitutional Petition. He has, however, failed to inform this Court, nor has he provided any documentation showing that the parties in that case are similar to those in this case, or that the issues raised therein are the same as those in this suit. Furthermore, the Plaintiff/Respondent averred that in Constitutional Petition E455 of 2025, conservatory orders were issued only to prevent the ODPP from charging the 1st Defendant/Applicant and have no bearing on the issues in this case, which relate to forfeiture.

Therefore, the 1st Defendant/Applicant has not sufficiently established that the suit is sub judice.

Whether the suit property offends the Parliamentary Powers and Privilege Act?

The 1st Defendant averred that the suit herein, as framed, relates to his conduct while he was chair of the Senate Committee on Roads, Transport and Housing, conduct protected under sections 11 and 12 of the Parliamentary Powers and Privilege Act. Section 11 of the Act provides as follows;

“No proceedings or decision of Parliament or the Committee of Powers and Privileges acting in accordance with this Act shall be questioned in any court.”

Section 12 further provides as follows;

(1) No civil or criminal proceedings shall be instituted against any Member for words spoken before, or written in a report to Parliament or a Committee, or by reason of any matter or thing brought by him or her therein by a report, petition, Bill, resolution, motion or other document written to Parliament.

(2) No civil suit shall be commenced against the Speaker, the leader of majority party, the leader of minority party, chairpersons of committees and members for any act done or ordered by them in the discharge of the functions of their office.

(3) The Clerk or other members of staff shall not be liable to be sued in a civil court or joined in any civil proceedings for an act done or ordered by them in the discharge of their functions relating to proceedings of either House or committee of Parliament.

A reading of the above provisions indicates protection against prosecution for the discharge of their lawful functions. However, the said provisions were not intended to shield the members from alleged unlawful conduct. In the case of **Matheka & 10 others v Director of Public Prosecutions & another [2015] KEHC 7642 (KLR)**, the Court held as follows.

‘It is to be recognised that privilege essentially belongs to the House as a whole; individual Members can only claim privilege insofar as any denial of their rights, or threat made to them, would impede the functioning of the House. In addition, individual Members cannot claim privilege or immunity on matters that are unrelated to their functions in the House. It follows that the special privileges of Members are not intended to set them above the law; rather, the intention is to give them certain exemptions from the law in order that they might properly execute the responsibilities of their position. In this context, it would be difficult to envisage a criminal act which would fit into or be a part of a parliamentary proceeding save for those contemplated under section 4 of the Privileges Act as read with section 16 of the CGA. A criminal offence which immediately comes to one’s mind in this respect is criminal libel. Similarly, the right to freedom from interference in the discharge of parliamentary duties does not apply to actions taken by Members outside parliamentary proceedings which could lead to criminal charges. No Member may claim immunity from arrest or imprisonment on such charges. Whereas the Speaker must always ensure that the privileges of the House and its Members are respected, he must at the same time ensure that the privileges accorded to Members are not misused to obstruct justice.’

This position was adopted in the case of **Republic v Ethics and Anti-Corruption Commission Ex parte Nairobi City County Assembly & 13 others [2019] KEHC 10914 (KLR)**. In that case, the Plaintiff/Respondent submitted that the 1st Defendant/Applicant used his position to confer personal benefit and failed to avoid a conflict of interest. The allegations against him are not privileged and therefore do not warrant protection, as they do not and cannot impede the functions in question. Accordingly, I find that sections 11 and 12 of the Parliamentary Powers and Privilege Act are inapplicable to the suit herein.

Whether the 1st and 7th to 13th Defendants/Applicants are proper and

necessary parties in this suit?

The 1st Defendant/Applicant has sought to be struck out of these proceedings on the ground that no cause of action is disclosed against him, as he is not a director of the 2nd to 6th Defendants, and that the pleaded conflict of interest issue is non-existent in law.

The 7th to 13th Defendants/Applicants also filed Applications seeking to have them struck out of the suit on the basis that the suit did not disclose a cause of action against them and that they were not necessary parties to this suit, having been joined merely by virtue of being directors of the 2nd to 6th Defendants. Their main argument is that the Plaintiff/Respondent has sought to irregularly pierce the corporate veil in the absence of pleadings that precisely identify their fraudulent conduct to warrant piercing the corporate veil.

The Plaintiff/Respondent, on the other hand, maintained that the 1st Defendant presided over the award of the tenders to the 2nd to 6th Defendants, in respect of which he held a beneficial interest and from which he received a direct benefit by virtue of being a signatory to their bank accounts. Further, the 7th to 13th Defendants/Applicants were necessary parties, as corporate persons could not, by themselves, engage in fraud, which required the human hand, being the directors herein, and therefore necessitated piercing the corporate veil. They further argued that, by virtue of their fraudulent actions, which enabled them to obtain the contracts to the tune of KShs 813,145,532.40/=, they were personally liable for the restitution of the funds, as the contracts were void ab initio.

Reliance was placed on Order 2 Rule 15 of the Civil Procedure Rules, which provides for striking out pleadings as follows:

At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—

**(a) it discloses no reasonable cause of action or defence in law;
or**

(b) it is scandalous, frivolous or vexatious; or

(c) it may prejudice, embarrass or delay the fair trial of the action; or

(d) it is otherwise an abuse of the process of the court

I however note that the most relevant provision in this instance to be Order 1 Rule 10(2) of the Civil Procedure Rules which provides as follows;

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.

Distinction has been drawn between a proper party and a necessary party. In *Directline Assurance Company Ltd v AKM Investments Ltd & 6 others* [2021] KEHC 13338 (KLR), the Court distinguished between a necessary party, whose presence is indispensable to the constitution of a suit, and a proper party, whose presence facilitates a complete and effectual determination of a dispute, as follows.

“There is a vital distinction between a necessary and a proper party to a suit. A necessary party is one whose presence is a sine qua non to the constitution of the suit and without whom, no effective order can be passed with respect to the questions arising before the court. In contradistinction to this, a proper party is one in whose absence although an effective order can be passed, but whose presence is necessary for a complete and final decision on the questions involved in the proceeding...”

Further, in the case of [Kundu v Mbugua & 3 others](#) [2025] KEHC 5404 (KLR), the Court held as follows regarding the issue of striking out a party from a suit;

“From an appreciation of the law as espoused above, it goes beyond any peradventure that the issue as to whether a party ought to be substituted, added or struck out of civil proceedings is an issue of fact. As such, evidence must be availed to that end.”

I have read the prayers sought in the Amended Complaint dated 4th November, 2025. The Plaintiff/Respondents seek, jointly and severally, against the Defendants, the sum of Kshs 813,145,532.40/=, together with an order for the forfeiture of sums held in the bank accounts of the 2nd to 6th Defendants.

In the case of *Isaiah Ondiba Bitange v & 3 others v Institute of Engineers of Kenya another* [2017] KEHC 7565 (KLR) the Court articulated what constitutes a cause of action as follows:

“ A cause of action was defined by Obi Okoye — Essays on Civil Proceedings,[1] thus —“By a cause of action is meant any facts or series of facts which are complete in themselves to found a claim or relief. ”[2] In the case of *Drummond Jackson v. British Medical Associations & Ors.*,[3] Lord Pearson stated as follows:-

“..... the expression “reasonable cause of action”[4]No exact paraphrase can be given, but I think “reasonable cause of action” means a cause of action with some chance of success when..... only the allegations in the pleading are considered, if it is found that the alleged cause of action is to fail, the

statement of claim should be struck out.”

The Supreme Court of Nigeria in the case of Oshoboja v. Amuda & Ors;[5] held that a reasonable cause of action means a cause of action with some chances of success, when only the allegations in the Statement of Claim are considered. Our law is the law of the practitioner rather than the law of the philosopher. Decisions have to draw their inspiration and their strength from the very facts which framed the issues for decisions.”

The Defendants/Respondents aver that, from the pleadings, no reasonable cause of action has been disclosed against them. I have examined paragraphs 25, 26 and 29 of the Amended Plaint, in which the Plaintiff/Respondent asserts that the Defendants misrepresented facts, submitted forged/falsified documents, were awarded tenders on that basis and with the influence of the 1st Defendant/Applicant. It is not in dispute that the said tenders/contracts were awarded to the 2nd to 6th Defendants, identified as companies. The 1st Defendant has likewise not disputed that he is a signatory to the bank accounts of the 2nd to 6th Defendants, and the 7th to 13th Defendants have likewise not disputed that they are directors of the said companies, save for the 10th Defendant/Applicant, who is said to have resigned in 2020.

The long-standing principle in law is that a company, once incorporated, becomes a separate legal entity from its members and is capable of suing and being sued in its own name. This principle was established in **Salomon v Salomon & Co Ltd [1897] AC 22** and has been repeatedly affirmed in Kenyan jurisprudence, including in **Victor Mabachi & Another v Nurtun Bates Ltd [2013] eKLR**.

The Applicants thus argue that, on that basis, the Plaintiff/Respondent ought to pursue the 2nd to 6th Defendants rather than the Applicants as directors, in the absence of any particularisation of fraudulent conduct or misrepresentation, and solely on the basis of their being directors of their respective companies.

In the case of **Symon Wairobi vs Kenya Breweries Limited & 3 others (SC Petition No. E023 of 2023)**, the Supreme Court, while citing various decisions from local and other jurisdictions, held as follows:

“From the above authorities the principles of Salomon vs Salomon (supra) are applicable in the context where corporates are involved. The prima facie position reached by applying the principle in Salomon in corporate groups is that each member company or corporate group is a separate legal entity. Liability will generally fall on the member and the group can structure itself so that liability from its activities will fall on a particular member and that member only. The corporate veil can only be pierced or lifted in exceptional circumstances, such as when the court is construing a statute, contract or other document which requires the veil

to be lifted; when it can be shown that the company is being used as a mere façade or sham to perpetrate fraud, avoid legal obligations, or achieve some other improper purpose and, when it can be established that the company is an authorized agent of its controllers or its members, corporate or human.”

In this case, the question that lingers is whether the Plaintiff/Respondent has made out a case warranting the lifting of the corporate veil. In my considered view, that question is not ripe for determination at this stage, as the suit is still in its preliminary stages. The 7th to 13th Defendants/Applicants have been sued alongside the 2nd to 6th Defendants, who are their directors.

In the face of the pleadings, there are allegations of fraud, misrepresentation and falsification of documents, which resulted in the 2nd to 6th Defendants being awarded the tenders. These allegations must be substantiated by evidence and tested at the hearing. In **D.T. Dobie & Company (Kenya) Ltd v Muchina [1982] KLR**, the Court stated as follows:

“The court ought to act very cautiously and carefully and consider all facts of the case without embarking upon a trial thereof before dismissing a case for not disclosing a reasonable cause of action or being otherwise an abuse of the process of the court. At this stage, the court ought not to deal with any merits of the case for that is a function solely reserved for the judge at the trial as the court is not usually fully informed so as to deal with the merits without discovery, without oral evidence tested by way of cross-examination in the ordinary way (Seller LJ(supra). As far as possible indeed, there should be no opinions expressed upon the application which may prejudice the fair trial of the action or make it uncomfortable or restrict the freedom of the trial judge in disposing of the case in the way he thinks right.”

In conclusion, I am inclined to disallow the Applications to strike out the 1st and 7th to 13th Defendants/Applicants at this stage, on the ground that the pleadings, as drawn, are not so hopeless as against them as to warrant striking them out. This Plaintiff/Respondent is required to prosecute their case and to provide sufficient evidence in that regard. Should the Court find that no cause of action has been pleaded against them in their personal capacity, the Court is empowered to dismiss the suit.

Consequently, I make the following orders:

The 1st Defendant/Applicant’s Application dated 2nd January, 2026 is hereby dismissed.

The 7th 9th and 12th Defendants/Applicants Application dated 11th February 2026 is hereby dismissed.

The 10th Defendant/Applicant’s Application dated 12th February, 2026 is

hereby dismissed.

The 4th, 5th 8th, 12th and 13th Defendants/Applicants' Application dated 12th February, 2026 is hereby dismissed.

The 3rd and 11th Defendants/Applicants' Application dated 5th March, 2026 is hereby dismissed.

I direct that costs of these Applications be in the cause.

Signed, Dated and Delivered Virtually on this 1st Day of October 2026

R.E. OUGO

JUDGE

In the presence of:

Miss Murugi -For the Plaintiff

Mr. Ometo - For the 1st Defendant

Mr. Muchiri - For the 2nd , 6th , 7th & 9th Defendants

Mr. Okatch - For the 3rd & 11th Defendants

Mr. Nkarichia - For the 4th , 5th ,8th ,10th, 12th & 13th Defendants.

Adan/Minah - C/As

ACEC CIVIL SUIT NO. E042 OF 2025- RULING

SIGNED BY/FOR:



THE JUDICIARY OF KENYA

HON. LADY JUSTICE ROSE OUGO

Milimani High Court

High Court Anti Corruption and Economic Crimes

Date: 2026-10-02 11:09:32