



**Esmail v Cine Investment Limited & 2 others (Tribunal Case
E101 of 2025) [2025] KELAT 194 (KLR) (8 October 2025) (Ruling)**

Neutral citation: [2025] KELAT 194 (KLR)

**REPUBLIC OF KENYA
IN THE LAND ACQUISITION TRIBUNAL
TRIBUNAL CASE E101 OF 2025
NM ORINA, CHAIR
OCTOBER 8, 2025**

BETWEEN

FATMABAI SHERALI ESMail CLAIMANT

AND

CINE INVESTMENT LIMITED 1ST RESPONDENT

NATIONAL LAND COMMISSION 2ND RESPONDENT

BUSINESS REGISTRATION SERVICE 3RD RESPONDENT

RULING

1. This matter comes up for directions today in respect of the Claimant's Statement of Claim and Application dated 12th September 2025. In the application filed under Certificate of Urgency, the Claimant seeks, inter alia, leave to serve the 1st Respondent through substituted service and issuance of a temporary injunction against the 4th Respondent (sic) restraining the said Respondent from continuing with the process of compulsory acquisition in respect of a notice of intention to acquire published in Kenya Gazette Notice number 2372 of 24th February 2023.
2. The Claimant avers that the suit is filed in the public interest to protect public funds from possible fraud. It is alleged that the 1st Respondent is a fraudulent entity that has been established with the intention to carry out fraudulent unlawful, illegal activities which involves taking of public funds from the 2nd Respondent. The Claimant further avers that she has been unable to confirm the legal status of the 1st Respondent through a search at the 3rd Respondent's registry and platform. She, therefore, avers that the 1st Respondent "does not exist in law and statutory records."
3. Having perused the instant application and the Statement of Claim, I make the following observations:
 - a. The instant suit is similar to another suit which was struck out by this tribunal for lack of jurisdiction being Esmail v Abdeel Enterprises Limited & 3 others [2025] KELAT 173 (KLR),



where the Tribunal made a determination that the dispute in the case involved a question of the legal status of the then 3rd Respondent who is now the 1st Respondent.

- b. The present suit similarly invites the Tribunal to venture into matters beyond its jurisdiction. The Claimant purports that the 1st Respondent is engaged in fraud but at the same time alleges that the said entity does not exist. These are matters within the mandate of the Ethics and Anti-Corruption Commission.
- c. Even though the Claimant purports to file the instant suit “in the public interest” the background makes it clear that the Claimant is pursuing an underlying dispute before the wrong forum. It is a classic case of abuse of the court process. *Munyao Sila, J in County Council of Nandi vs. Ezekiel Kibet Rutto & 6 Others* [2013] eKLR observed as follows:

A pleading that is an abuse of the process of Court in my view encompasses scandalous, frivolous, or vexatious pleadings but goes a little further to take care of situations that may not otherwise be encapsulated in the definition of the three preceding words. They can encompass a situation where a litigant is using the process of court in the wrong way, not for purposes of agitating a right, but for other extraneous reasons

- 4. Courts of law are not powerless when faced with outright abuse of their processes. Such abuse must be stopped right in its tracks. As observed in *County Council of Nandi* (supra):

The court through the provisions of Order 2 Rule 15 is given leeway to strike out pleadings that are scandalous, frivolous, vexatious or otherwise an abuse of the process of court. Before striking out such pleading, the court needs to make an examination whether such pleadings are scandalous, frivolous, vexatious or otherwise an abuse of the process of law. If they are, then a court would be perfectly entitled to strike such pleadings out because essentially it is not fair and neither is it worthy having a defendant shoulder the burden of such litigation.

- 5. It is my finding that the pleadings in this case are an abuse of the court process and pursuant to Order 2 Rule 15 (1) (d) of the Civil procedure Rules, I hereby strike out the suit in its entirety with no orders as to costs as the Respondents have not filed any responses.

DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8TH DAY OF OCTOBER 2025.

.....

DR. NABIL M. ORINA PhD

CHAIRPERSON

Before:

Mr. Oichoe for the Claimant

Ms. Makana for the 3rd Respondent

Lucy – Court Assistant

