



REPUBLIC OF KENYA



KENYA LAW

THE NATIONAL COUNCIL FOR LAW REPORTING

Where Legal Information is Public Knowledge

**R World Enterprises Limited v Devji & 6 others (Civil Case E144 of 2025)
[2025] KEHC 13444 (KLR) (Commercial and Tax) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13444 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E144 OF 2025
PM MULWA, J
SEPTEMBER 25, 2025**

BETWEEN

R WORLD ENTERPRISES LIMITED PLAINTIFF

AND

NASIM DEVJI 1ST DEFENDANT

DIAMOND TRUST BANK KENYA LIMITED 2ND DEFENDANT

MOHAMMED MADHANI 3RD DEFENDANT

WESTWOOD VILLAS LIMITED 4TH DEFENDANT

NAYOMIE CONSTRUCTION LTD 5TH DEFENDANT

PLENCE ARCHITECTS 6TH DEFENDANT

TLEN CONSULTANTS 7TH DEFENDANT

RULING

1. This is a ruling on the preliminary objections raised by the 3rd Defendant in opposition to the Plaintiff's application dated 28th February 2025. The application seeks a temporary injunction restraining the Defendants from interfering with the Plaintiff's possession and the builder's lien over L.R. No. 330/383, Lavington, known as the Terraces Development.
2. The 3rd Defendant filed Grounds of Opposition dated 13th March 2025, challenging the Court's jurisdiction on the basis of clause 31 of the sub-contract between the Plaintiff and the 5th Defendant, which provides that disputes are to be resolved through arbitration. It was further contended that:
 - i. The application is an abuse of court process, misconceived, and filed in bad faith;



- ii. The 3rd Defendant is a stranger to the contract between the Plaintiff and the 5th Defendant, and therefore improperly joined;
 - iii. Any lien lies only against the 4th Defendant, the developer, and cannot be enforced against the 3rd Defendant;
 - iv. The Plaintiff is attempting to circumvent a binding contract containing a dispute resolution mechanism.
3. The 3rd Defendant placed reliance on *China Wu-Yi Company Limited v Suraya Property Group Limited & 2 others* [2020] KEHC 10254 (KLR) where the Court held that a party cannot extend liability to persons who were not privy to the contract, and that unregistered interests must be pursued against the contracting party.
 4. Conversely, the Plaintiff contends that its claim against the 3rd Defendant extends beyond the sub-contracts, arising also from representations and assurances made by the 1st and 3rd Defendants to induce it to undertake construction works amidst the financial distress of the 4th Defendant. The Plaintiff argues that arbitration does not extend to non-parties to the sub-contract, and that this Court remains the appropriate forum for resolution.
 5. The 1st and 2nd Respondent contends that the subject property of these proceedings is LR. No. 330/1383 (formerly LR. 330/64) which was transferred to Ambato Residency Limits pursuant to a transfer dated 4th November 2023. That Ambato Residency is not a party to the proceedings. The 2nd Defendant holds a registered charge over the suit property to secure a loan facility of Kshs. 1,960,000,000/- advanced to Ambato Residency Limited. Prior to the transfer the property was registered to Westwood Villas Limited, who undertook the development of the residential property known as the Terraces Apartments on the suit property. To develop the property Westwood took a loan from the 2nd Defendant and used the suit property as collateral, the 5th Defendant was engaged by Westwood Villas as a contractor who later subcontracted the applicant. The 1st and 2nd Defendants were not privy to the contract.
 6. By the directions of this court the 3rd Defendant's grounds of opposition were canvassed first by way of written submissions.

Analysis and Determination

7. From the pleadings and submissions, two issues arise for determination:
 - i. Whether this Court has jurisdiction in view of the arbitration clause in the sub-contract between the Plaintiff and the 5th Defendant.
 - ii. Whether the 3rd Defendant is properly joined to these proceedings.
8. It is axiomatic that jurisdiction is everything; without it, a court must decline to hear a matter, as established in *Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1.
9. Clause 31 of the sub-contract mandates arbitration for dispute resolution. Section 6(1) of the *Arbitration Act* empowers the Court to stay proceedings and refer parties to arbitration when the parties have agreed to arbitrate.
10. However, as was held in *UAP Provincial Insurance Company Ltd v Michael John Beckett* [2013] eKLR, arbitration is consensual and cannot bind a party who was not privy to the arbitration agreement.



The Court of Appeal emphasized that only those who are parties to the arbitration agreement can be compelled to arbitrate.

11. It is pertinent to examine the background of this dispute. The Plaintiff was contracted in 2018 to undertake construction and finishing works on the Terraces Apartments project. Originally, Westwood Villas Limited, the 4th Defendant, was the developer, with Nayomie Construction Limited (the 5th Defendant) as the main contractor. Facing financial difficulties, the developer involved the 1st and 3rd Defendants, Ms. Nasim Devji and Mr. Mohammed Madhani respectively, to ensure project continuity by providing assurances of prompt payment upon certification by the architect, the 6th Defendant. The Plaintiff entered into two sub-contracts with Nayomie Construction Limited, a Structural Sub-Contract on 15th August 2018, and a Finishes Sub-Contract on 9th April 2019.
12. The Plaintiff's claim is that the dispute arises from non-payment for work completed and encompasses parties not privy to the sub-contracts containing arbitration clauses. The 3rd Defendant, against whom allegations of inducement and misrepresentation are made, was not a party to those agreements.
13. Given that Clause 31 only binds the Plaintiff and the 5th Defendant, and that the 3rd Defendant was not a signatory or privy to the sub-contracts, applying the Arbitration Act, Section 6, the Court recognizes that arbitration cannot be enforced against him. The law is settled that arbitration clauses cannot extend to third parties who did not consent thereto, as underscored in Kenya Ports Authority v Modern Holdings (EA) Limited [2017] eKLR.
14. Nonetheless, the Plaintiff has alleged that the 1st and 3rd Defendants made inducements and assurances that led it to commence works, and that subsequent partial payments were made. These claims, if proven, could form a basis for claims of misrepresentation or estoppel, which are independent of the written sub-contracts. These allegations are serious and are within the jurisdiction of this Court, thus rendering the claim against the 3rd Defendant appropriate for judicial determination. The Court does not find the claim frivolous or misconceived at this preliminary stage.
15. The reliance by the 3rd Defendant on China Wu-Yi Company Limited v Suraya Property Group Limited & Others [2020] KEHC 10254 (KLR), regarding the enforcement of unregistered interests against third parties, is distinguishable. In the present case, the Plaintiff's claim against the 3rd Defendant arises from alleged inducements, representations, and assurances made by him, independent of contractual rights or interests, and not from enforcement of unregistered interests or property rights.
16. Turning to jurisdiction, it is clear that the arbitration clause in Clause 31 of the sub-contracts cannot oust this Court's jurisdiction concerning non-parties, such as the 3rd Defendant. The Court must retain jurisdiction over claims that are based on extra-contractual conduct, such as misrepresentation or inducements, which involve parties not bound by the arbitration agreement. Section 6 of the Arbitration Act therefore does not apply to the 3rd Defendant's alleged conduct.
17. On whether the 3rd Defendant is a proper party to the proceedings, he contends that he is improperly joined, arguing a lack of contractual nexus and that any lien is enforceable only against the 4th Defendant, the developer. He claims that his inclusion amounts to misjoinder.
18. The law is clear that the joinder of parties in civil proceedings is not restricted to those who are in direct contractual relationship with the claimant. Order 1 Rule 3 of the Civil Procedure Rules provides that:

“ All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist,



whether jointly, severally, or in the alternative, where if separate suits were brought against such persons any common question of law or fact would arise.”

19. This provision provides that parties can be joined if their presence is necessary to determine whether liability exists, even absent direct contractual privity. Specifically, if the Plaintiff’s case involves allegations that the 3rd Defendant made representations or assurances that induced the Plaintiff to act, then the 3rd Defendant’s presence is crucial to the determination of the matter.

20. Moreover, Order 1 Rule 9 states that:

“No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.”

21. In the case of *William Kiprono Towett & 1597 others v Farmland Aviation Ltd & 2 others* 2016 eKLR, the Court of Appeal held:

“Most critically Order 1 Rule 9 of the *Civil Procedure Rules [2010]* makes it abundantly clear that misjoinder or non-joinder of parties cannot be a ground to defeat a suit.”

22. The Plaintiff’s pleadings clearly state that the claims against the 3rd Defendant are founded on alleged inducements, representations, and assurances that influenced the Plaintiff to undertake works. These allegations are material and require the Court’s examination to establish whether liability can be attributed to the 3rd Defendant independently of the contractual relationship.

23. Therefore, the Court finds that the 3rd Defendant is a proper party to these proceedings within the meaning of the governing *Civil Procedure Rules*, as his inclusion is necessary for the just and complete adjudication of the issues

24. Based on the foregoing analysis, the Court makes the following determinations:

- i. The Court has jurisdiction to hear and determine the claim against the 3rd Defendant, as the dispute involves allegations of conduct that are outside the scope of the arbitration clause, and the claims are not barred by it.
- ii. The 3rd Defendant is properly joined to the proceedings as his presence is necessary to fairly and completely resolve the issues of inducement, misrepresentation, and liability.

25. Accordingly, the 3rd Defendant’s Grounds of Opposition dated 13th March 2025 are dismissed.

Orders accordingly.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 25TH DAY OF SEPTEMBER 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Otwal for Plaintiff/Applicant

Mr. Chacha Odera for 1st & 2nd Defendants

Mr. Mwangi for 3rd Defendant



Court Assistant: Carlos

