



**Gatamah (Suing as an administrator of the Estates of Elizabeth Mukuhi Gatamah & Joel Wambugu Gatamah) v Kabete Dam Limited & 5 others (Commercial Case E063 of 2019) [2025] KEHC 16095 (KLR) (Commercial and Tax) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16095 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E063 OF 2019  
AA VISRAM, J  
NOVEMBER 6, 2025**

**BETWEEN**

**DENNIS WATHIGO GATAMAH (SUIING AS AN ADMINISTRATOR OF THE ESTATES OF ELIZABETH MUKUHI GATAMAH & JOEL WAMBUGU GATAMAH) ..... PLAINTIFF**

**AND**

**KABETE DAM LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**WINLOUKE PROPERTIES LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**WIDNES HOLDING LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**PINNACLES PROJECTS LIMITED ..... 4<sup>TH</sup> DEFENDANT**

**I&M BANK LIMITED ..... 5<sup>TH</sup> DEFENDANT**

**AND**

**ALNIZ POPAT ..... PROPOSED DEFENDANT**

**RULING**

### **Introduction and Background**

1. Before the Court for determination is the proposed 6<sup>th</sup> Defendant's ("The Applicant") chamber summons dated 21<sup>st</sup> October, 2020, where he seeks to be joined as the 6<sup>th</sup> Defendant to the proceedings, that leave be granted to file any necessary pleadings and documents and that an interim injunction be granted preventing the Defendants from dealing with Villa No. 8 on Land Reference No. 2951/36 Nairobi pending arbitration. The Applicant also seeks to set aside Orders No. 2 & 3 issued by the court



- (Muigai J.,) on 15<sup>th</sup> April, 2019, which barred any transfer/registration of the 12 villas on the property to exclude Villa No. 8 because it had already been fully paid for.
2. The Application is supported by grounds on its face and the Applicant's supporting affidavit sworn on 21<sup>st</sup> October, 2020, but there has been no response to the Application by either the Plaintiffs or the Defendants. The Applicant has canvassed the Application by way of written submissions which are on record and I will briefly highlight the same below.
  3. The Applicant submits that he is the legal and beneficial owner of Villa Number 8 in Kabete Gardens on Land Reference Number 2951/36 as he and the 1<sup>st</sup> Defendant entered into a Sale Agreement on 18<sup>th</sup> September, 2014. The Applicant states he paid the full purchase price of Kshs. 60,000,000.00/= for the said Villa No. 8 but the transfer has not been effected due to Order No. 3 issued by the court on 15<sup>th</sup> April, 2019, which bars further transfers of villas in the suit property. He avers that the 1<sup>st</sup> Defendant failed to inform the court that Villa No. 8 had been fully paid for by him, which resulted in the injunctive orders being issued, affecting the Villa. The Applicant is concerned that the Villa will be wrongfully alienated if the Defendants are not restrained.
  4. The Applicant submits that the Civil Procedure Rules under Order 1, rule 10(2) allows the court to add parties necessary for effective and comprehensive settlement of all matters arising from the suit. He restated that he has paid Kshs. 60,000,000.00/= for Villa No. 8 and is in occupation, but the transfer is impeded by the court order and that he will suffer great prejudice if not joined, as the order affects the Villa which is yet to be transferred. He presents that the joinder will not prejudice Defendants and will provide a full picture for the court to determine all questions related to the suit property and that if the Plaintiff succeeds, the Applicant stands to lose both the property and the Kshs. 60,000,000.00/= paid.
  5. The Applicant asserts that he meets the principles for granting injunctions as laid out in *Giella vs. Casman Brown Limited (1973) EA 358*, which require demonstrating a prima facie case with a probability of success, imminent irreparable harm, and a favorable balance of convenience. He avers that the 1<sup>st</sup> Defendant's failure to inform the court that Villa No. 8 was sold creates an apparent infringement requiring an explanation, that he will suffer loss of the purchase price and infringement of his constitutional right to property if Villa No. 8 is disposed of. That due to inflation and property appreciation, monetary compensation would be inadequate and he stands to suffer greater prejudice as the Villa was fully paid for, while the court order was intended for unsold villas.
  6. On setting aside the Order of 15<sup>th</sup> April, 2019, the Applicant insists that Order No. 3 barred transfers of unsold villas, but Villa No. 8, though fully paid for, is affected and that the court was not aware that the Villa had been sold at the time the order was issued due to the 1<sup>st</sup> Defendant's failure to disclose this information and that this constitutes new evidence that could not have been produced earlier. The Applicant requests that if joined, the court should grant prayer No. 5 of his application, seeking to vary the said order of 15<sup>th</sup> April, 2019, to exclude Villa No. 8. As such, The Applicant submits that failure to join him would cause significant prejudice, as he is the beneficial owner of Villa No. 8, and its transfer is impeded by the court order, that if the Plaintiff succeeds, he faces irreparable loss and therefore, joinder is essential for the court to fully and conclusively settle all issues in dispute.

### **Analysis and determination**

7. I have considered the Application together with the submissions and the applicable law.
8. I note from the outset that the Application is grounded under Section 7 of the [Arbitration Act](#) and rule 2 of the Arbitration Rules as well as Section 3A of the [Civil Procedure Act](#).



9. Having grounded the Application under the provisions of the *Arbitration Act*, it is not immediately clear to this Court if the Applicant seeks to be joined to arbitral proceedings, or to ongoing proceedings in the High Court.
10. Further, noting the contents of the supporting affidavit, as well as the record, it is clear that at some point, the present dispute was referred to arbitration between the proposed interested party and the Defendant. It is not however clear if that process was completed, if the same is ongoing, or if an award was published arising out of those proceedings.
11. Having stated the above, out of abundance of caution, and so as not to prejudice the Applicant, I will still consider the Application seeking to join proceedings before this court.
12. On joinder, Order 1, rule 3 and Order 1, rule 10(2) of the Rules provide as follows:-

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.

(2) 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. (Emphasis mine)
13. Thus, under Order 1, rule 3, a person may be joined as a Defendant if a right to relief in respect of the same act or transaction is alleged to exist against him. The Plaintiff has not pleaded any claim against the Applicant for him to be included as a Defendant. The Court may not compel the Plaintiff to amend his plaint to accommodate the Applicant in the absence of good reason or a clear claim or cause of action between the parties. As the court held in *Marigat Group Ranch & 3 others v Wesley Chepkoimot & 19 others* [2014] KEHC 2589 (KLR):-

“...Caution needs to be exercised when a party wants to join proceedings as Defendant. This is because the court would not want to impose a party upon the Plaintiff unless it will not be prudent to determine the matter without such party being Defendant. .... But where the Plaintiff has chosen to assert his rights against certain Defendants and not others, the court should be slow in imposing other Defendants upon him, for each person has a right to choose against whom to assert his claims against.” (Emphasis mine)
14. In the foregoing, I am not persuaded that the Applicant may be joined as a Defendant to the proceedings. However, it is also evident, that from a practical perspective the Applicant has a clear and identifiable stake in the matter. He has a proprietary interest in Villa No. 8, and at present, is entirely locked out of the proceedings. In the circumstances, because the subject matter of the dispute includes his home, it is only fair that he has an opportunity to express his views, and to participate in that process.
15. I find it is in the interest of justice that he be joined to the proceedings, and be afforded an opportunity to be heard, and to protect his interests. I therefore invoke the court’s inherent powers under Section 3A and the overriding objective of the court under Section 1A of the *Civil Procedure Act* and hereby join the Applicant as an Interested Party to the proceedings.



16. The above reasoning is in line with the principle that all parties are entitled to access to justice, and accords with the duty of the court pursuant to Section 1B of the Civil Procedure Act.
17. As regards the remaining prayers; namely prayer no 3, 4, 5, 6, 7, I find that the same are defective and are hereby struck out. This is because an application for review may not be grounded under Section 7 of the Arbitration Act, which is the case here. And an application for injunctive relief under Order 40 of the Civil Procedure Rules similarly may not be grounded under Section 7 of the Arbitration Act either. Section 7 of the Arbitration Act is applicable only to interim relief during the course of arbitral proceedings. The procedure applicable to court process and arbitral process are different and may not be conflated.
18. I will therefore not address the merits of the above said prayers. The Applicant remains at liberty to move the court as may be appropriate and in accordance with the relevant provisions of the Civil Procedure Rules, or as may be appropriate.

**Conclusion and Disposition**

19. In the foregoing, I issue the following orders: -
  - a. The Application dated 21<sup>st</sup> October, 2020, is allowed in part only and to the extent that the Applicant, Alniz Popat is hereby joined to this suit as the 4<sup>th</sup> Interested Party
  - b. Prayers 3, 4, 5, 6, and 7 are struck out.
  - c. Costs shall be in the cause.

**DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2025**

**ALEEM VISRAM, FCIArb**

**JUDGE**

In the presence of;

Court Assistant: Lispa

.....for Plaintiff  
 .....for 1<sup>st</sup> Defendant  
 .....for 2<sup>nd</sup> Defendant  
 .....for 3<sup>rd</sup> Defendant  
 .....for 4<sup>th</sup> Defendant  
 .....for 5<sup>th</sup> Defendant  
 .....for proposed 6<sup>th</sup> Defendant

