



West Park Hotels Nairobi Limited v Baitul Hikma International Group of Schools & 2 others (Land Case E321 of 2025) [2026] KEELC 1208 (KLR) (19 February 2026) (Ruling)

Neutral citation: [2026] KEELC 1208 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE E321 OF 2025
CG MBOGO, J
FEBRUARY 19, 2026**

BETWEEN

WEST PARK HOTELS NAIROBI LIMITED PLAINTIFF

AND

BAITUL HIKMA INTERNATIONAL GROUP OF SCHOOLS .. 1ST DEFENDANT

UMULKHER HARUN MOHAMED 2ND DEFENDANT

AND

HARAMBEE SACCO & COOPERATIVE SOCIETY LIMITED INTENDED DEFENDANT

RULING

1. Before this court for determination is the notice of motion dated 4th November, 2025 filed by the intended 3rd defendant/applicant and it is expressed to be brought under Order 1 Rule 10(2) of the [Civil Procedure Rules](#) and Sections 1A, 1B and 3A of the [Civil Procedure Act](#) seeking the following orders:
 1. Spent.
 2. This court be pleased to join the applicant as the 3rd defendant in these proceedings relating to L.R. No. 209/7546.
 3. Upon joinder, the applicant be granted leave to file and serve such pleadings, affidavits, and documents as may be necessary for the determination of the issues herein.
 4. Costs of this application be provided for.
2. The application is premised on the grounds inter alia that the plaintiff filed this suit seeking orders in their favour in relation to LR. No. 209/7546 maisonette no.1 without material disclosure that the



- Sacco is the registered owner of the suit property. The application was supported by the affidavit of Tikoishi Koitaat, the legal officer of the intended 3rd defendant/applicant which was sworn on even date.
3. It was deposed that on 8th January, 2004 and 23rd January, 2004 respectively, the intended 3rd defendant/applicant advertised for sale various properties including all masonette units G, H and I which are the individual masonettes erected on L.R no. 209/7546, the suit property. The intended 3rd defendant/applicant's deposed that it was an unequivocal term of the said advertisement that the sacco intended to sell the mentioned three (3) four-bedroomed maisonettes each with a carport and staff quarters and not the undeveloped portions of the suit property.
 4. Further, various parties expressed interest in the purchase but Toshike Construction Company Limited (the purchaser) successfully bid to purchase the suit property and their bid was accepted. Hence, both Toshike Construction Company Limited and the intended 3rd defendant/applicant entered into a sale agreement dated 17th March, 2006, in which one of the terms was to pay a deposit of Ksh.2,010,000/= which was done and acknowledged.
 5. The intended 3rd defendant/applicant deposed that it was agreed that it would subdivide the suit property into three (3) separate titles and would transfer only the portions that were developed to Toshike Construction Limited but would retain the portion of the title of the undeveloped land. It was further deposed that the process of survey began so as to facilitate the subdivision. However, the same was not completed for reasons beyond the control of the intended 3rd defendant/applicant.
 6. As a result of this, Toshike Construction Company Limited instituted a suit referenced *ELC No. 230/2019 (Formerly Civil Case Number 121/2011)* seeking, among others, an order for specific performance of the sale agreement dated 17th March, 2006 and the Court granted Toshike Construction Company Limited their prayer for specific performance.
 7. That being dissatisfied with the trial court's judgement, the intended 3rd defendant/ applicant filed an appeal in *civil appeal no. E536 of 2022*, and that the plaintiff in this suit is a stranger having filed this suit without granting them an opportunity to put forward their interest in the suit property, which is intended to defeat the appeal. In light of the circumstances, the intended 3rd defendant/applicant prays that it should be joined in this suit and be granted leave to defend this suit.
 8. The application was opposed by the replying affidavit of Felisters Bochaberi Onkware, one of the directors in the plaintiff company sworn on 1st December, 2025. She deposed that the application is not merited, and that it is an abuse of the court process. Further, the intended 3rd defendant/applicant has no interest in this matter and that it is not a necessary party to this matter, as they acknowledged that judgement was delivered on the 20th of December, 2021 declaring Toshike Construction Company Limited the legal and bonafide owner of the suit property herein. Therefore, the intended 3rd defendant/applicant is not being truthful when it states that it is the registered owner of the suit property.
 9. The plaintiff/respondent deposed that it has informed this court that it is a sister company to Toshike Construction Company Limited, who signed a deed of assignment allowing it to lease the developments to the defendants, which deed they annexed to their affidavit. Further, it was deposed that Toshike Construction Company Limited is yet to be issued with the certificate of lease, because the government initiated a conversion of the title numbers in Nairobi and that it has yet to gazette the block where the suit property is located.



10. In conclusion, the plaintiff/respondent deposed that the intended 3rd defendant/applicant is not a necessary party to this matter, and that it is being used by the defendants to icy and muddle the proceedings herein and aide the defendants to escape liability for demolishing its property without any right.
11. In response thereto, the intended 3rd defendant/applicant filed its supplementary affidavit sworn on 22nd January 2026, and deposed that it has now managed to retrieve a copy of the title annexed in support of its claim that it is the registered owner of the suit property and the claim that Toshike Construction Company Limited is the owner is misleading.
12. Further, that the plaintiff/respondent’s averment that Toshike Construction Company Limited is yet to be issued with the certificate of lease due to the conversion process which is yet to be finalized is false as they are the registered owner of the suit property.
13. The application was canvassed through written submissions. The intended 3rd defendant/applicant filed its written submissions dated 22nd January, 2025. The plaintiff/respondent did not file its written submissions. Be that as it may, the court has duly considered the application, the replies thereof and the submissions filed. The issue for determination is whether the intended 3rd defendant/applicant ought to be joined in these proceedings.
14. The intended 3rd defendant/applicant herein seeks to be joined as a defendant in this suit. The rules governing joinder of a party are found in Order 1 Rule 10(2) of the [Civil Procedure Rules](#) which provides that:

“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.”
15. The [Black’s Law Dictionary](#) defines a “Necessary Party” as:-

“a party who being closely connected to a lawsuit should be included in the case if feasible but whose absence will not require dismissal of proceedings.”
16. The Court of Appeal in [Civicon Limited v Kivuwatt Limited & 2 others](#) [2015] eKLR that was cited and relied upon by the intended 3rd defendant/applicant herein quoted as such:-

“In the case of *Gurtner v Circuit* (1968) I All ER 328 it was held that, a party may be enjoined if he can demonstrate that any order in the action would directly affect him either legally or financially. (Denning, M.R.) stated thus:-

“...The bureau clearly had a commercial interest in resisting the declaration; but that is not enough. John Stephenson J accepted the analysis of the rule and the many previous decisions under it contained in the exhaustive judgment of Devlin, J., in *A Amon v Raphael Tuck & Sons, Ltd.* (1956) 1 All ER 273 and took the view



that the court had no jurisdiction to add a party against the will of the plaintiff unless the person seeking to be added was:

“...at least able to show that some legal right enforceable by him against one of the parties to the action or some legal duty enforceable against him by one of the parties to the action will be affected by the result of the action...”

...The only reason which makes it necessary to make a person a party to an action is so that he may be bound by the result of the action, and the question to be settled therefore, must be a question in the action which cannot be effectively and completely settled unless he is a party...”

17. Thus, the measure of whether a party should be joined in a civil suit is therefore that their presence is necessary to effectually and completely to adjudicate upon and settle all questions involved in the suit. In my view, the intended 3rd defendant/applicant has demonstrated by way of documents that it is registered as the proprietor of the suit property as entry number 6 to the title LR. 209/7546, entered within grant number IR 24823.
18. They have also demonstrated through correspondence that they were in the process of subdividing the suit property into 3 separate titles for the benefit of the said Toshike Construction Company Limited, which they did not complete and gave rise to high court case no. 121/2011 which was later transferred to the ELC court and also gave rise to civil appeal no. E536 of 2022.
19. The plaintiff/respondent has acknowledged the said Toshike Construction Company Limited is its sister company, claiming that it ought to be the registered owners of the suit property, only that the process of conversion is underway.
20. It is quite evident that the intended 3rd defendant/applicant is a necessary party, who has been involved in the substratum of the suit and its presence will be important in effectually and completely adjudicating upon and settling all questions involved in the suit.
21. From the above, I find merit in the notice of motion dated 4th November, 2025 and I issue the following orders:-
 - i. The intended 3rd defendant/applicant is hereby joined in this suit as the 3rd defendant.
 - ii. The 3rd defendant shall have 21 days from the date of this ruling to file its statement of defence and/or counterclaim if need be, witness statements and bundle of documents.
 - iii. Mention on 12th March, 2026 to confirm compliance and for further directions.
 - iv. Costs shall be in the cause.

It is so ordered.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 19TH DAY OF FEBRUARY, 2026.

HON. MBOGO C.G.

JUDGE

19/02/2026.

In the presence of:

Ms. Benson Agunga - Court assistant



Mr. Ruiru for the Plaintiff/Respondent

Ms. Andenyi holding brief for Ms. Gichuhi for the Intended 3rd Defendant/Applicant

Ms. Njenga holding brief for Mr. Bashir for the 1st, 2nd and 3rd Defendants

