



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MILIMANI**

**ELC CASE NO. 812 OF 2015**

**ANDREWS APARTMENTS.....**

**PLAINTIFF**

**-VERSUS-**

**NINETY FOUR EAST CHURCH PROPERTIES LTD.....1<sup>ST</sup>**

**DEFENDANT ASHLEAH DEVELOPERS LTD .....**

**.....2<sup>ND</sup> DEFENDANT BETABASE**

**AUCTIONEERS.....RESPONDENT**

**AND**

**GLOBAL MANAGEMENT CAPITAL INC..... INTENDED**

**INTERESTED PARTY**

**RULING**

**Introduction**

1. The Applicant/intended interested party has filed the notice of motion application dated 28<sup>th</sup> October 2025 seeking the following orders
  - a) Spent
  - b) THAT Global Management Capital Inc. be granted leave to be joined as an Interested Party in these proceedings
  - c) THAT the Intended Interested Party be granted leave to participate fully in these proceedings, including filing pleadings, affidavits, and submissions as the court may direct.
  - d) THAT the costs of this application be provided for.
2. The application was premised on grounds that the Intended Interested Party holds a Decree dated 21<sup>st</sup> December 2018 against

- the 1st Defendant for Kshs. 55,000,000.00, establishing a first-ranking claim over L.R. NO. 1870/VI/94. That the plaintiff has made an application to have the Notification of Sale recalled and annulled and a fresh one issued to another auctioneer of its choice poses which poses a threat to the Intended Interested Party's superior claim potentially defeating its ability to enforce the Decree. That if the application could potentially lead to the sale of the suit property which application if heard without the participation of the intended interested party, would defeat its ability to enforce the Decree
3. That it is necessary to have them enjoined for the court to properly adjudicate having established their interest in the suit property.

**Reply**

4. The plaintiff filed replying affidavit sworn on the 8<sup>th</sup> January by Fredrick Ngatia by Violet Onyangi who deponed that the plaintiff in filing the application dated 4<sup>th</sup> March 2025, to recall the notification of sale was simply intending to execute the decree that was issued by the court in regards to the suit property. That the intended interested party had not established any claim over the suit property as the decree he sort to rely on was in a completely different matter and no evidence had been tendered to show that an attachment for sale had been made on the suit property in regards to the said decree.

He further deponed that the issues raised had been overtaken by events as this court had already decided on the application via a

ruling dated 19<sup>th</sup> December 2025 and allowed the plaintiffs to issue a new notification of sale through auctioneers of their choice.

He deponed that the intended interested party had not demonstrated his interest in the suit and it was not necessary to have them enjoined as the reliefs sought in the application could be granted without their involvement.

**Further affidavit**

5. The interested party filed a further affidavit sworn by Sudhir Pathak where he deponed that the application for joinder was not to the suit but on the application that sort execution. He deponed that they had obtained warrants of attachment upon issuance of the decree on the suit property.

He further deponed that the ruling of 19<sup>th</sup> December 2025 did not make the application moot as the issue of distribution of sale proceeds was still something the court could needed to decide on considering they held a valid decree that was superior to the applicants

**Intended Interested party/Applicant's submissions.**

6. The issues raised for determination was as bellow  
Whether the Intended Interested Party has demonstrated a direct, proximate and legally recognizable interest in the subject matter.  
On this it was submitted that the Intended Interested Party had demonstrated a direct and legally recognizable interest in the suit property, anchored on a subsisting decree and shown steps that they had taken that include warrants of attachment on the suit

property and a Notice to Show Cause against the Judgment Debtor which was reason enough to be enjoined. Counsel relied on the case of **Trusted Society of Human Rights Alliance v Matemo & 5 Others [2014] KESC 32 (KLR)**

The applicant submitted that Joinder at the execution stage was necessary to enable the court to settle all remaining questions, particularly the priority of claims over the only known asset capable of satisfying the Intended Interested Party's Decree.

Plaintiff's submissions

7. The plaintiff filed submissions dated 11<sup>th</sup> March 2026 and submitted as follows

That that a decree obtained from another suit could not be executed in execution proceedings in another suit relying on the case of **Eunice Grace Njambi Kamau & Another Vs Attorney General and 5 others (2022) eKLR**

Counsel further submitted that a party could not be enjoined after judgement has been delivered at the execution stage in a suit that it never participated in.

That further the court having rendered its decision on the execution there was nothing left to decide on it which the applicant can claim to seek to be enjoined relying on the cases **Njau Vs Muiruri (Kambo Interested party) (2023)(KEELC)21696(KLR)**

**Analysis and determination**

8. I have reviewed the application dated 28<sup>th</sup> October 2025 the responding Affidavits, and the parties' Submissions. The sole issue for determination is Whether the application is merited

The provisions of Order 1 Rule 10 of the Civil Procedure Rules gives this court discretion to enjoin a party whose presence before the court may be necessary in order to enable the court effectually and completely adjudicate upon and settle all questions in the suit. The threshold for one to be enjoined as an Interested Party is well captured in the case of **Francis Karioki Muruatetu and Another v Republic & 5 Others [2016] eKLR** where the court in dismissing an application for joinder by Katiba Institute as an Interested Party stated that *“the issues to be determined by the court will always remain the issues as presented by the principle parties*

The court of appeal stated in **Mbaruk Abdalla Suleiman & 5 others v Mombasa Cement Limited & 5 others [2018] eKLR:** “The essence of allowing joinder of a party to any proceedings is for the court to achieve the ultimate goal of rendering conclusive determination of the real issues in controversy. In the present application. it is worthy to note that this is a concluded matter as judgment was delivered way back on 6<sup>th</sup> February 2019. The Intended Interested Parties desire that they be given an opportunity to be heard. The question begging for an answer is; “How will the Intended Interested parties articulate their alleged equitable interests in their status as Interested Parties, their

evidence would be based on what pleadings; In essence, what would be the parameters of their participation in the suit? In the present application, the Applicant avers at paragraphs 15 of supporting affidavit that a court can allow joinder of a person a suit if their presence is necessary to enable the Court to effectively and completely adjudicate on all the questions raised and reach a fair and just conclusion. The issues remain the issues that were raised by the parties to the suit and any other matter that was not raised in the proceedings therefore is a non-issue.

At paragraph 9 of the further affidavit the applicant asserts that they seek not to be enjoined in the proceedings but in the execution stage to safeguard their interest. The applicant have no identifiable interest since what they seek to enforce is a decree of a separate suit and as rightly submitted by the plaintiffs this court cannot try enforce a decree issued by another court on the basis that the decree is superior to the decree held by the plaintiff .In **CM**

**Advocates LLP v Cole & Moikobu (Sued as the Administrators of the Estate of Josephine Eleanor Moikobu) & 3 others**

**[2025] KEELC 6583 (KLR)** the Court considered the interplay between Section 34 (1) of the Civil Procedure Act and Order 22 rule 6 of the Civil Procedure Rules and an attempt to enforce orders made in a previous suit through a new suit. The Court held as follows: *Indeed, a reading of the two provisions shows that the proper forum for determining issues relating to the execution, discharge, or satisfaction of a decree or indeed an order, is the court*

*that issued the same, unless there has been transfer of the decree/order.*

Further, the court in **Michael Oringo Alusi & 2 Others vs Jobson Salano Mulanda[2016]eKLR** persuasively stated that issues arising from proceedings anticipated under Section 34, however weighty, do not require the filing of a separate suit. Guided by the above case law I hold the view that no matter how the applicant indicates, it will be prejudiced, the right forum is to seek redress is the court that issued the decree.

**Final disposition**

In view of the foregoing discourse, I hold that the notice of motion application dated 28<sup>th</sup> October 2025 lacks merit and is hereby dismissed with costs to the plaintiff.

**It is so ordered.**

**DATED, SIGNED and DELIVERED** virtually at **NAIROBI** on this **13<sup>th</sup>** of **April 2026.**

**MOHAMMED N. KULLOW**

**JUDGE**

**Ruling delivered in the presence of: -**

**Mr. Ngatia**..... for Decree Holder

**No appearance**.. for the Defendants

**Mr. Koech**..... for the Intended Interested Party

**Philomena W**..... Court Assistant