

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT AT MILIMANI**  
**ELCA NO. E079 OF 2025**

---

**MILLENIUM SAVANNA GROUP**

**LIMITED - APPELLANT/ APPLICANT**

**VS**

**BIOMED HEALTH CARE LIMITED - 1ST RESPONDENT**

**A&Z NUTRACEUTICALS LIMITED - 2ND RESPONDENT**

**AND**

**UBA MOHAMMED AHMED - 1<sup>ST</sup> INTENDED**  
**INTERESTED PARTY**

**ENID KANYIRI GIKUNDA - 2<sup>ND</sup> INTENDED INTERESTED**  
**PARTY**

**RULING**

**(In respect of the Appellant's applications dated 5/11/2025 and 15/12/2025)**

1. This Ruling is in respect of the Appellants Chamber Summons application is dated 5/11/2025 and the Notice of Motion application dated 15/12/2025.

**The Chamber Summons dated 5/11/25**

2. Starting with the Chamber Summons; it is expressed to be brought under the provisions of Sections 3 and 19 of the Environment and Land Court Act, Sections 1A and 1B of the Civil Procedure Act and Order 1 Rules 10(2) & 25 of the Civil Procedure Rules, 2010. The Appellant prays for orders that; -

- a. The 1st and 2nd Proposed Interested Parties be joined as Interested Parties in this Appeal;

- b.** The costs for the Application be provided for.
3. The application is premised on the grounds set out on the face of it and further supported by the Affidavit of Jane Murungi, the Appellant's Director, sworn on 5/11/2025. The deponent avers that on 20/9/2021, the Appellant and the 1st Respondent executed an Office Space Agreement for Millenium Business Park, erected on LR No. 2259/802. She avers that the Proposed Interested Parties are the Directors of the Respondents and that, pursuant to Schedule 1 of the said Agreement, the 1st Respondent was to pay rent, service charges, a car park licence fee, and other costs. Further, that under Schedule 7 thereof, the Appellant and the 1st Respondent executed a Guarantee Covenant on 20/9/2021 in fulfilment of the contractual obligations of the 1st Respondent.
  4. She further deposes that paragraph 1 of the Guarantee Covenant makes the Proposed 1st and 2nd Interested Parties jointly and severally liable, not only as guarantors but also as primary obligors, for the payment of rent arrears owed by the 1st Respondent. She further deposes that the Proposed Interested Parties are also liable to indemnify the Applicant for any amounts incurred in enforcing payment or discharge of the 1st Respondent's obligations.
  5. The deponent states that the 2nd Proposed Interested Party, a non-party to the Agreement, acting through the 2nd Respondent, moved the court by application dated 14/2/2025 and obtained ex parte orders authorising the removal of alleged business goods from the premises. That the orders were procured through material non-disclosure, as the 2nd Proposed Interested Party failed to disclose that she is a director of both Respondents and a guarantor under the said Guarantee agreement. That the Respondents stripped the premises, leaving fixtures behind, thereby preventing the Applicant from re-entering and re-letting the unit, and compounding the ongoing loss of income, which stood at Kshs. 13,214,141.16/= as at 31/10/2025. She contends that the Appellant continues to suffer loss of income due to the proposed interested parties'

mischief. That the proposed interested parties are therefore necessary parties hereof and ought to be joined to the proceedings.

**The Notice of Motion dated 15/12/25**

6. The application is anchored on the provisions of Sections 3 and 19 of the Environment and Land Act, Sections 1A and 1B, of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules. The Appellant seeks for orders that;
  - a. The Applicant be granted vacant possession with respect to Unit 1 in Wing A situated on the ground level of the development known as Millenium Business Park constructed on Land Reference Number 2259/802 along Karen-Langata Road pending the hearing and determination of the appeal.
  - b. The 1st and 2nd Respondent be ordered to remove all of their fixtures in Unit 1 in Wing A situated on the ground level of the development known as Millenium Business Park constructed on Land Reference Number 2259/802 along Karen-Langata Road pending the hearing and determination of the appeal.
  - c. The costs for this Application be provided for.
7. The application is, on its face, supported by the Affidavit of Jane Murungi, the Appellant's Director, sworn on 15/12/2025. The deponent reiterates the assertions in the Office Space Agreement executed between the Appellant and the 1st Respondent, as well as the 1st Respondent's default in paying rent. She avers that, due to the 1st Respondent's failure to pay its arrears, the Applicant sought to exercise its right of re-entry under Clause 10 of the Agreement. She further avers that, due to the 1st Respondent's aggressive conduct, the Applicant instituted a suit in the Lower Court vide the Complaint dated 8/1/2025. The 1st Respondent filed a Preliminary Objection dated 17/3/2025, challenging the Court's jurisdiction on the grounds that the Agreement

contained an Arbitration Clause. The 1st Respondent also filed a Defence to that effect.

8. The deponent avers that, vide the Ruling dated 1/4/2025, the suit was struck out for want of jurisdiction. It is that Ruling which is the subject of this appeal. She further alleges that, prior to the determination of the Preliminary Objection, the 2nd Respondent, in cahoots with the 1st Respondent, managed to remove its goods and items from the premises vide Order 17/2/2025, but has nevertheless refused to remove its fixtures, thereby rendering the Premises unavailable for letting. That the Premises have been unavailable for letting since February 2025, and that despite efforts to reach a consent with the 1st Respondent to remove its fixtures from the Premises, the same have been unsuccessful.
9. She asserts that it is not in dispute that the 1st Respondent is no longer in possession of or in use of the Premises, and that only the presence of the fixtures prevents the Applicant from gaining vacant possession of the Premises. She contends that the Applicant continues to suffer severe financial loss while the Premises remain unoccupied and unused by the 1st Respondent, who is still in rent arrears, including interest of Kshs. 14,260,864.78 as at 30/11/2025. She further contends that, without the court's intervention, the Applicant will not be able to gain vacant possession of the Premises and fulfil its financial obligations to various parties.
10. The deponent avers that unless the prayers sought herein are granted, the rent arrears will continue to accrue and the Applicant will continue to suffer financial loss. It is in the interests of justice and of all parties herein that the prayers sought herein be granted.
11. Despite the Applications being served and Counsel for the 1st Respondent being granted time to file a response, if any, none was filed. Both applications are therefore unopposed. However, the Appellant/Applicant filed its written submissions dated 5/2/2026. The

court has read and duly considered the Appellant/Applicant's submissions.

### **Analysis and Determination**

12. Having considered the applications, the respective affidavits in support thereof and the Appellant/Applicant's submissions, the court agrees with the Appellant/Applicant that the issues for determination are: -
- a. Whether the Proposed Interested Parties should be joined;
  - b. Whether the Applicant should be granted vacant possession of the Premises; and
  - c. Who should be awarded Costs.

### **Whether the Proposed Interested Parties should be enjoined;**

13. Order 1 Rule 10(2) of the Civil Procedure Rules states as follows: -  
"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 or settle all questions involved in the suit, be added."
14. The term 'interested party' is defined in Black's Law Dictionary, 9<sup>th</sup> Edition, at pg. 1232 as: -  
"A party who has a recognizable stake (and therefore standing) in a matter".
15. An interested party must be a person who has an identifiable stake or legal interest in the proceedings before the court, and whose presence will help to settle the issues in the case. This is to avoid multiplicity of suits or litigation by instalments.
16. The Supreme Court of Kenya in the case of Attorney General -vs- David Ndii & 73 Others (Petition 12 (EO16) of 2020) [2021] KESC 17

(KLR), the court enumerated the applicable principles in an application of joinder by an interested party as follows:

“An Applicant to be enjoined as an Interested Party has to satisfy this Court that it has met the legal requirements for joinder. This court has laid down the guiding principles applicable in determining an application to be enjoined as an interested party in *Trusted Society of Human Rights Alliance -vs- Mumo Matemu & 5 Others SC Petition (Application) No. 12 of 2013*. The principles were affirmed in the case of *Francis Kariuki Muruatetu & another -vs- Republic & 5 Others (2016) eKLR* where the court stated:

“... One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the court; hence, sufficient grounds must be laid before the court, on the basis of the following elements:

- a. The Personal interest or stake that the party has in the matter must be set out in the application. The Interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
- b. The prejudice to be suffered by the intended Interested Party in case of non-joinder, also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.
- c. Lastly, a party must, in its application, set out the case and/or submission it intends to make before the court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the court.”

17. Applying the foregoing principles, the applicant avers that the proposed interested parties are directors of the 1st Respondent who

executed an Office Space Agreement for the suit premises. Further, the Appellant and the 1st Respondent executed a Guarantee Covenant on 20/9/2021 to fulfil the 1st Respondent's contractual obligations. The proposed interested parties are jointly and severally liable as guarantors and as primary obligors for the payment of rent arrears owed by the 1st Respondent.

18. I also note from the Record of Appeal and the Pleadings at the Lower Court that the Proposed Interested Parties, being directors of A& Z Nutraceuticals Limited, the 2nd Respondent herein, commenced a suit, MCCOMM/E170/2025, against the Appellant/Applicant herein on the same premises. Pursuant to the application dated 14/2/2025 filed in that suit, the 2nd Respondent herein sought orders allowing it to access the premises and collect its withheld goods. The record shows that ex parte orders were issued on 17/2/2025, and the 2nd Respondent was granted unrestricted access to the premises to collect its goods and products withheld in the suit premises.

19. The Court of Appeal in the case of 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."

20. In the case of Civicon Limited -vs- Kivuwatt Limited and 2 Others [2015] eKLR stated as follows:

"...the power of the court to add a party to a suit is wide and discretionary, the overriding consideration being whether he has an interest in the suit. The question is whether the right of a person may be affected if he is not added as a party. Generally, in exercising this jurisdiction the court will consider whether a party ought to have been joined as plaintiff or defendant, and is not so joined, or without his presence, the question in the suit cannot be completely and effectively decided. Accordingly, a necessary party is one without

whom no order can be made effectively, while a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceedings...we may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”

21. The Court of Appeal in JMK -vs- MWM & Another [2015] eKLR when it succinctly stated the following:

This Court adopted the same approach in Central Kenya Ltd. V. Trust Bank & 4 Others, Ca No. 222 OF 1998, when it affirmed that the guiding principle in amendment of pleadings and joinder of parties is that:

“all amendments should be freely allowed and at any stage of the proceedings, provided that the amendment or joinder as the case may be, will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs.”

We would however agree with the respondent that Order 1 Rule (10) (2) contemplates an application for amendment or joinder of parties where proceedings are still pending before the Court. Sarkar’s Code, (supra) quoting as authority, decisions of Indian Courts on the provision, expresses the view that an application for joinder of parties can be filed only in pending proceedings. In the same vein, the Court of Appeal of Tanzania, while considering the equivalent of Order 1 Rule 10(2) of our Civil Procedure Rules, in Tang Gas Distributors Ltd v Said & Others[2014] EA 448, stated that the power of the court to add a party to proceedings can be exercised at any stage of the proceedings; that a party can be joined even without applying; that the joinder may be done either before, or during the trial; that it can be done even after judgment where damages are yet to be assessed; that it is only when a suit or proceeding has been finally disposed of and there is nothing more to be done that the rule becomes

inapplicable; and that a party can even be added at the appellate stage.”

22. Considering the facts of this case, it is my finding that the Proposed Interested Parties have a legal interest in the matter, warranting their joinder. They will be affected by any decisions of this Court regarding the suit property. They are therefore necessary parties to this suit. It has not been shown that joinder of the Proposed Interested Party will prejudice the Respondents. It is therefore in the interests of justice that they be joined and afforded an opportunity to be heard.

**Whether the Applicant should be granted vacant possession of the Premises;**

23. The Appellant/Applicant seeks orders for re-entry and for vacant possession of the subject premises. The Appellant/Applicant contends that it continues to suffer economic loss, namely the loss of rental income, because it is unable to let the premises to a new Tenant. The Appellant/Applicant submits that it needs to mitigate its losses by placing the property on the market and finding an alternative tenant. That option is unavailable at the moment, as the 1st Respondent has mischievously refused to grant it vacant possession of the Premises by maintaining its fixtures therein.
24. As earlier stated and evident from the Memorandum of Appeal filed herein, this appeal concerns the Ruling dated 17/3/2025 in respect of the 1st Respondent’s Preliminary Objection, which challenged the Court’s jurisdiction on the ground that the Agreement contained an Arbitration Clause. The Lower Court, in upholding the Objection, struck out the suit for want of jurisdiction vide the Ruling dated 1/4/2025. The contention before this Court is therefore on the Lower Court’s jurisdiction to determine the dispute between the parties.
25. The orders of re-entry and vacant possession were not pronounced upon by the Lower Court. In view of the Lower Court’s finding on jurisdiction, this court, being an appellate court and the Memorandum of

Appeal being the pleading herein, can only issue orders to preserve the suit property in the interim pending the determination of the appeal. This court cannot determine issues outside the Memorandum of Appeal, let alone issue final orders such as those sought herein before the determination of the appeal. Granting the orders sought is tantamount to summarily finding that the court has jurisdiction rather than arbitral proceedings before determining the appeal on the merits.

26. Further, a perusal of the Record of Appeal shows that the Appellant/Applicant filed a similar application dated 9/12/2025 before the Lower Court, seeking orders similar to those sought herein. From the Memorandum of Appeal, the Appellant/Applicant contends that the Lower Court has jurisdiction to determine the dispute. It is self-contradictory for the Applicant to argue, on the one hand, that the Lower Court has jurisdiction to hear and determine the dispute, including its application dated 9/12/2025, and, on the other hand, to seek similar orders in the appellate court. In essence, this offends the doctrine of sub judice under Section 6 of the Civil Procedure Act. In my view, the appeal will determine the forum that will hear and decide the dispute. If the appeal is determined in favour of the Appellant/Applicant, it will still have the opportunity to prosecute its application before the Lower Court.
27. It is therefore my finding that the orders sought in the Notice of Motion cannot be issued in the instant appeal. The application is therefore unmerited and it is hereby dismissed with no orders as to costs.

28. **Final orders for disposal**

Based on the foregoing analysis, the Chamber Summons application dated 5/11/2025 and the Notice of Motion application dated 15/12/2025 respectively are hereby determined in the following terms;

- a.** Uba Mohammed Ahmed and Enid Kanyiri Gikunda shall be joined in the suit as Interested Parties.

**b.** The Notice of Motion application is unmerited and it is hereby dismissed.

**c.** There shall be no orders as to costs in respect of both applications.

29. It is so ordered

**DATED, SIGNED & DELIVERED AT NAIROBI VIA MICROSOFT  
TEAMS THIS 16<sup>TH</sup> DAY OF APRIL 2026.**

**J G KEMEI**

**JUDGE**

**Delivered Online in the presence of:**

1. Mr Mangu HB for Mr Mengich for the Appellant
2. Ms Maiga HB for Mr Matheka for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents
3. CA - Ms. Elizabeth