

REPUBLIC OF KENYA
ENVIRONMENT AND LAND COURT
AT KWALE
CIVIL SUIT NO. E046 OF 2022

**ELIZABETH STOCKER.....PLAINTIFF/
APPLICANT**

- VERSUS -

**BRUCE MUTUKU
MUTIE.....DEFENDANT/RESPONDENT
DIANI TRAVEL CENTRE LIMITED.....PROPOSED 2ND
DEFENDANT**

AND

**NEW CONNECTIONS SUPPLIERS
LIMITED.....INTENDED INTERESTED
PARTY**

RULING

I. Introduction

1. Before this Honourable Court for determination is the Notice of Motion Application dated 25th July, 2025 filed by *Elizabeth Stocker*, the Plaintiff/Applicant herein. The application was brought under the provision of Sections 1A, 1B, 3A, & 63 (e) of the Civil Procedure Act, Cap. 21, Order 1 Rule 10, Order 7 Rules 11 & 17, Order 8 Rule 3, Order 50 Rule 6, Order 51 Rule 1 of the Civil Procedure Rules, 2010 and all other enabling provisions of

the law. The Applicant sought the leave of Court to join “*Diani Travel Centre Limited*” as the 2nd Defendant, amend the Plaint dated 24th October 2022, and file additional witness statements and supporting documents.

2. Upon service of the Application, the Defendant/Respondent, *Bruce Mutuku Mutie*, opposed it through a Replying Affidavit sworn on 16th September, 2025, Grounds of Opposition dated 15th September, 2025. The Respondent contended “*inter alia*”, that the application is frivolous, an abuse of the Court process, and improperly seeks to introduce a new cause of action relating to Shop No. 6, Kwale/Diani Beach Block/1609/6, which has allegedly been the subject of prior litigation.
3. The Applicant, in rebuttal, filed a Supplementary Affidavit dated 13th October, 2025 together with written submissions dated 17th October, 2025, asserting that she remains the registered proprietor of Shop No. 6 and that the Respondent’s own admission of having let out the premises to Diani Travel Centre Limited demonstrates the necessity of joining the said company as a party to the proceedings.

II. The Plaintiff/ Applicant’s case

4. The Applicant sought for the following orders: -

a) Leave of Court be and is hereby granted to the Plaintiff to join Diani Travel Centre Limited as the 2nd Defendant in the suit.

b) Leave of Court be and is hereby granted to the Plaintiff to amend the *Plaint* dated 24th October, 2022 and filed in Court on 24th October, 2022 in terms of the draft Amended *Plaint* filed herewith.

c) Leave of Court be and is hereby granted to the Plaintiff to file and serve further or additional witness statements, list of witnesses, witness statements and claim supporting documents.

d) The costs of this Application be in the cause or be otherwise provided for.

5. The application was premised on the grounds, facts and testimony on the face of the application and further supported by the 26 Paragraphed annexed affidavit of ELIZABETH STOCKER, the Plaintiff herein dated the same day, together with annexures marked as "ES" annexed thereto. The Affiant averred as follows that:

a) She was the Plaintiff in the suit and the Applicant in the Motion Application filed therewith. She was also conversant with the facts of the suit and therefore competent to swear the Affidavit.

b) In particular, she swore the Affidavit in support of the Motion filed therewith for leave of Court to join the proposed 2nd Respondent as a party to the suit and also to

amend the Plaint in accordance with the attached draft Amended Plaint produced and marked as “ES - 1”.

- c) The proposed further amendments to the Amended Plaint had become necessary for the reasons set out in the paragraphs below.
- d) At the time of instituting the suit on 24th October, 2022, she was the sole Director/Shareholder of Kama Upepo Limited [Hereinafter referred to as “the Company”].
- e) The Company had at the time sanctioned the institution of the suit against the Respondent who was presenting himself as a caretaker to the property known as Umbi Complex situate on Kwale/Diani Block/1609. Umbi Complex comprised 27 units [Apartments and Shops] each owned by different unit owners.
- f) The Respondent had arrogated management powers to himself and had on numerous occasions disturbed the peaceful occupation, enjoyment and use of the units by the legal owners by switching off electricity, water supply, locking the access gate, denying other unit owners access to their designated parking slots and extorting money from tenants and/or their respective unit owners.

- g) By the Complaint filed on 24th October, 2022, the Company sought to have the Respondent restrained from interfering with the peaceful enjoyment and occupation of the units by their owners and further restraining the Respondent from misrepresenting to any unit owner that he had authority to act on behalf of the Company to collect service charge, receive money, supervise and/or manage any of the common areas at the Complex.
- h) The Company also sought a declaration that the Respondent had no authority from the Company to deny any unit owner, their tenants or authorized persons access to electricity, water and access to the premises whatsoever.
- i) In addition to the claim by the Company, she had sought on her own behalf injunctive orders restraining the Respondent from interfering with her quiet enjoyment, occupation and use of ten (10) of her units at the Umbi Complex being Kwale Diani Block/1609/3, 1609/4, 1609/5, 1609/6, 1609/7, 1609/8, 1609/9, 1609/4A, 1609/6A and 1609/8A.

- j) On 14th November, 2022, this Court pursuant to an interim Motion Application filed accompanying the suit, granted an order of injunction restraining the Respondent from interfering with the Company's management of the common areas and provision of services. In particular, the Respondent was restrained from switching off electricity and water supply to all the 27 units of the complex and locking the access gates. Annexed in the affidavit and marked as "ES - 2" was a copy of the Court's Order dated 14th November, 2022.
- k) In addition, the Respondent was restrained from interfering with her peaceful enjoyment, use and occupation of her units registered as Kwale Diani Block/1609/3, 1609/4, 1609/5, 1609/6, 1609/7, 1609/8, 1609/9, 1609/4A, 1609/6A and 1609/8A. These orders were issued pending the hearing and determination of the interim Motion Application.
- l) When the interim Motion Application was determined by a Ruling dated and delivered on 9th December, 2022, the Honorable Court confirmed the orders issued on 14th November, 2022 and extended the same until the hearing

and determination of the suit. Annexed in the affidavit and marked as “ES - 3” was a copy of the Court’s Ruling dated and delivered on 9th December, 2022

m) In a sudden twist of events, and while the suit was still pending, she received through her advocates correspondence vide a letter dated 31st January, 2024 from the Business Registration Services communicating that the Registrar of Companies had, following a complaint lodged by the Respondent, rectified the register of the Company and removed her as Director/Shareholder and in her place appointed Carlos De Pasquale and Marline Loram Pownall as Directors/Shareholders. Annexed in the affidavit and marked as “ES - 4” was a copy of the Letter dated 31st January, 2024.

n) The events that would follow this decision by the Registrar of Companies were that Criminal Proceedings were instituted against me for alleged forgery of a signature of one of the previous Directors- Triani Giovani. The Criminal proceedings are still pending determination in the Magistrate Court.

- o) In light of the turn of events, it was no longer tenable for her to sustain the claim by the company as against the Respondent up and until the issues of directorship of the company was substantively resolved. Therefore, there was need to amend the Plaint accordingly. The Affiant's claim against the Respondent in respect to her units still subsisted
- p) Further, and from post-suit investigations through her advocates on record, she had recently established that despite there being orders against the Respondent, his servants, agents or persons purportedly acting on his instructions from interfering with her peaceful enjoyment, use and occupation of her ten units, a company known as Diani Travel Centre Limited in which the Respondent was a Director and sole shareholder had since occupied one of her units being Kwale Diani Block/1609/6 [Shop] and was operating a Tours and Travels Agency known as Diani Travel, Tours & Safari. Annexed in the affidavit and marked as "ES - 5" was a copy of a CR-12 as at 3rd July, 2025 in respect of Diani Travel Centre Limited.

- q) Since she purchased the said unit in January 2013, she had not been able to obtain vacant possession, occupy or enjoy the said unit as the Respondent had been occupying and using it illegally. The Respondent had been asserting that he was the owner of the said unit. There was therefore need for the Court to determine who the legitimate owner of the said unit was as efforts to have him vacate the unit had been unsuccessful.
- r) In the premises, so as to enable the Court determine the real issues now in controversy between the parties and do justice to the parties, she was advised by her Counsel on record that it was vital that the proposed 2nd Defendant be joined into the suit.
- s) Further, and for the same reasons, so as to align the substantive reliefs sought by the Applicant vide the draft Amended Plaint with the additional facts or evidence unearthed by the Applicant, it was fair and just that the Plaint be amended as sought and that the Applicant be also granted leave to file additional witness statements together with additional list of witnesses and additional claim supporting documents.

- t) Save in respect of costs, the amendments and the additional filings sought to be made would not in any way prejudice any of the affected parties since they would all be able to respond if deemed necessary, well before the suit was finally set down for hearing.
- u) The Court's duty to dispense substantive justice to the parties would, without a doubt, be served by allowing the Motion as presented.

III. The responses by the Defendant

6. As indicated above, the Defendant, Bruce Mutuku Mutie responded to the Application through a 20 paragraphed Replying Affidavit sworn on 16th September, 2025 together with annexetures marked as "BMM" annexed thereto. He averred as follows that:-

- a) He was a male adult of sound mind and the Defendant herein, well versed with the facts and hence competent to swear the affidavit.

- b) He was both the Defendant/Respondent in the matter and also a director/shareholder in the proposed 2nd Defendant company.
- c) The Plaintiff's/Applicant's Notice of Motion application dated 25th July, 2025 had been read to him and its contents explained by his Advocate on record, and he wished to respond as set out.
- d) The proposed 2nd Defendant was a company where he was a director/shareholder jointly with other persons who were directors of the company and who were not parties to the suit in their individual capacity as he was.
- e) The proposed 2nd Defendant was his tenant at Shop No. 6 within Umbi Complex in Diani along Diani Beach Road and had remained a tenant. He annexed a copy of the tenancy agreement marked as "BMM - 1".
- f) The Plaintiff, through the application, was seeking to amend the Plaint and shift the suit from one on management of Umbi Complex, where she had alleged to be the sole director of Kama Upepo Limited, to a suit against the 1st Defendant and the 2nd Defendant for Shop No. 6 contained in property number Kwale/Diani Beach Block/1609/6.

- g) The said property had been subject to litigation since the year 2013 when the Plaintiff filed ***“Kwale CMCC No. 75 of 2013; Elizabeth Stocker - Versus - Bruce Mutie Mutuku”***, seeking the very orders she now sought from the Court.
- h) The said suit was filed in May 2013 and sought vacant possession from him as Defendant together with costs.
- i) The claims in Suit No. 75 of 2013 confirmed that he had all along been in possession of the property since 2011, having had it transferred to him that year.
- j) The Plaintiff wrote a letter through her advocates on 23rd April, 2014 addressed to the Court informing them that Suit No. 75 of 2013 had been withdrawn under Order 25 Rule 1 of the Civil Procedure Rules, 2010. He annexed the letter dated 23rd April, 2014 marked as “BMM – 2”.
- k) On 14th May, 2014 the Plaintiff wrote a letter to her advocates M/s. Gikandi & Co. Advocates stating that one Aldo Pasini had lied to her about selling Shop No. 6 to him, yet he was the rightful owner, and that Pasini had used a forged document to dupe her into believing he owned Shop No. 6. He annexed the letter dated 14th May, 2014 marked as “BMM – 3”.

- l) When his previous tenant's lease ended in 2022, the Plaintiff through her advocates hired goons who forcefully took possession of the subject despite there being a tenant. As a result, both he and the Plaintiff were sued in "**BPRT No. E213 of 2022**" at Mombasa where an order was issued directing that the tenant's shop be opened and the OCS Diani Police Station provide security during execution.
- m) On 13th April, 2021 the Plaintiff filed an application seeking to reinstate Kwale CMCC No. 75 of 2013. However, the Court in its ruling of 12th July, 2023 dismissed the application with costs to him. He annexed the ruling marked as "BMM - 4".
- n) The Court rightly pointed out that there had been unreasonable and unexplained delay on the part of the Plaintiff and therefore there could be no reason to reopen the matter 10 years after filing. As at the time of the instant application, the dispute regarding Kwale/Diani Beach Block/1609/6 had been pending for 12 years and 5 months.
- o) The Court could by then notice the tendency of the Plaintiff in her cases: every time a matter was ruled against her, she abandoned the suit and filed a new one over the same

subject. She had never appealed any of the decisions issued by the Magistrates Court at Kwale or the BPRT, nor moved to have the proceedings set aside.

- p) The suit was initially not about Shop No. 6 but sought to cite him for interference due to her claim that he had appointed himself manager/caretaker of the property.
- q) Now that the Plaintiff was no longer a director of the company at the time of instituting the suit, the suit had to be changed to a dispute over Shop No. 6. He maintained that he was still the property manager and that the Plaintiff was currently paying service charge for her units to him or to the company.
- r) He swore the affidavit in opposition to the application and prayed that it be dismissed, and that the Plaintiff be directed to file a proper suit for Kwale/Diani Beach Block/1609/6 so that it could be heard and determined separately without being mixed up with other prayers compromised in the criminal matter against her.
- s) He swore the affidavit in opposition to the application and prayed that the same be dismissed with costs.

IV. The Grounds of Opposition by the Defendant

7. In addition to the above replies, the Defendant also filed 7 paragraphed grounds of opposition in response to the Application by the Plaintiff for joinder on the following grounds that:-

- a. The Application was frivolous, vexatious and an abuse of the Court process.
- b. The Application was intended to unprocedurally and unlawfully introduce a totally different cause of action and claim and enjoin a party that was a total stranger in the proceedings and dispute between the Plaintiff and Defendant.
- c. The Application was a desperate attempt by the Plaintiff to breathe a modicum of life into the suit after the First Plaintiff, Kama Upepo Limited, was struck out by an order of this Honourable Court given on 27th August, 2024.
- d. The Plaintiff was at liberty to institute a separate suit against DIANI TRAVEL CENTRE LIMITED since the Company is a separate legal person capable of being sued independently of the Defendant.

- e. The matters in issue in this suit involve the running and management of UMBI COMPLEX by the Defendant as an agent of KAMA UPEPO LIMITED.
- f. As set out in Ground No. 13 in the body of the Notice of Motion application the dispute between the Plaintiff and DIANI TRAVEL CENTRE LIMITED is only one Shop known as KWALE/ DIANI BLOCK 1606/6 amongst the TEN (10) units set out in Ground 6 in the body of the application.
- g. It was in the interest of justice that the Instant application be dismissed with costs.

V. The Supplementary Affidavit by the Plaintiff

8. The Plaintiff, Elizabeth Stocker, filed a 11 paragraphed supplementary affidavit to reiterate the contents of her supporting affidavit sworn on 25th July, 2025 sworn on 13th October, 2025 where she averred that: -
- i) She was the Applicant herein, fully conversant with the facts of the matter and hence competent to swear the Supplementary Affidavit in support of the Application.
 - ii) She reiterated the contents of her Supporting Affidavit sworn on 25th July, 2025 in support of the Motion Application filed therein. She had also read and

understood the Replying Affidavit dated 16th September, 2025 sworn in opposition to the Motion by the Respondent, and where necessary her advocate on record had explained. In response, she stated as follows.

- iii) As at 22nd September, 2025, records at the Land Registry of Kwale indicated that she was the registered proprietor of the premises known as Kwale/Diani Beach Block 1609/6 [Hereinafter referred to as “Shop No. 6”]. This was one of the ten units she owned at Umbi Complex. She annexed a Certificate of Official Search dated 22nd September, 2025 marked as “ES - 6”.
- iv) The Respondent, in Paragraphs 4 and 5 of the Replying Affidavit, had expressly admitted that he had let out Shop No. 6 to the proposed 2nd Defendant and had annexed a Tenancy Agreement executed between himself and the proposed 2nd Defendant.
- v) On the basis of the Respondent’s own admission, and given that she was the registered proprietor of Shop No. 6, it was evident that the proposed 2nd Defendant was a necessary and proper party to the proceedings, thereby

necessitating the proposed amendments to the already filed Plaint.

- vi) Contrary to the allegations contained in Paragraph 6 of the Respondent's Replying Affidavit, the suit was not limited to issues concerning the management of Umbi Complex. As deposed in her Supporting Affidavit sworn on 25th July, 2025, the suit had initially been instituted by Kama Upepo Limited ("the Company") and herself as Plaintiffs. The Company sought orders restraining the Respondent from interfering with the peaceful enjoyment and occupation of the units by their respective owners and from misrepresenting to any unit owner that he had authority to act on behalf of the Company to collect service charge, receive monies, supervise, and/or manage the common areas within the Complex. On her part, she sought injunctive orders restraining the Respondent from interfering with her quiet enjoyment, occupation, and use of her ten (10) units within the Umbi Complex, being Kwale Diani Block/1609/3, 1609/4, 1609/5, 1609/6, 1609/7, 1609/8, 1609/9, 1609/4A, 1609/6A, and 1609/8A.

- vii) As elaborated in her Supporting Affidavit sworn on 25th July, 2025, she was keen on pursuing her claim against the Respondent and the proposed 2nd Defendant in respect of her units within Umbi Complex.
- viii) The averments of the Respondent in Paragraphs 7 to 18 of the Replying Affidavit appeared to reinforce the necessity of granting leave to amend the Plaintiff. A cursory perusal of the draft Amended Plaintiff annexed to the Application revealed that some of the averments by the Respondent formed part of the set of facts which she sought to introduce through the amendments.
- ix) The premises, since no compelling reason had been advanced by the Respondent as to why the leave sought to amend the Plaintiff, join a second Defendant and to file additional statements and supporting documents should be denied, the Court ought to allow the Application.
- x) The interest of justice, it was just and equitable for the Honourable Court to grant the orders sought in the Motion Application filed therein.

VI. Submissions

9. On the 18th September, 2025, while the parties were present in Court, directions were issued that the Notice of Motion Application dated 25th July, 2025 filed by the Plaintiff/Applicant and the Replying Affidavit dated 16th September, 2025 together with Grounds of Opposition dated 15th September, 2025 filed by the Defendant/Respondent be disposed of by way of written submissions. All parties duly complied with the Court's directions. Pursuant thereto, a ruling date was reserved on notice. Eventually, on 22nd April, 2026 the Honourable Court delivered its Ruling accordingly.

A. The Written Submissions by the Plaintiffs/Applicants

10. The Plaintiffs/Applicants through the Law firm of Messrs. Gitari N. Law Advocates filed their written submissions dated 17th October, 2025. M/s. Gitari Advocate submitted that by the Notice of Motion Application dated 25th July, 2025, the Applicant's sought for the above stated orders.

11. The Learned Counsel averred that the Application was based on the grounds enumerated in the Application as well as in the sworn Supporting Affidavit of Elizabeth Stocker dated 25th July,

2025 and the Supplementary Affidavit dated 13th October, 2025. The Applicant wholly relied on the grounds, averments and supporting documents annexed thereto. In simple words, the Notice of Motion Application dated 6th May, 2024 sought for the leave of the Court to join Diani Travel Centre Limited as and Defendant, amend the Plaintiff dated 24th October, 2022 in terms of the Draft Amended Plaintiff attached thereto and a leave to file additional statements and documents. The Notice of Motion Application is opposed by a Replying Affidavit dated 16th September, 2025 sworn by the Respondent, Bruce Mutie Mutuku.

12. The Learned Counsel submitted that they discern the following three (3) issues for determination by the Honourable Court. These are, firstly on whether this Honourable Court should grant leave to the Applicant to join another Defendant to the suit. The Learned Counsel submitted that joinder of parties in proceedings is governed by the provisions of the provision of Order 1 Rule 10 (2) of the Civil Procedure Rules, 2010. Further, under the provision of Order 1 Rule 3 of the Civil Procedure Rules, a person may be joined in a suit as a Defendant against

whom any right to relief arising out of an act or transmission is alleged to exist. Order 1 Rule 3 provides 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 transaction 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.”

13. It is trite that the power of a court to order joinder of a party is one based on its own discretion which must be exercised judiciously and in accordance with the parameters set out in Order 1 Rule 10(2) of the Civil Procedure Rules, 2010, enumerated above. This position had been affirmed in a plethora of cases. They were guided by the findings in the case of:- **“Civicon Limited - Versus - Kivuwatt Limited and 2 Others [2015] eKLR”** where the Court held as follows:-

“Again the power given under the Rules is discretionary which discretion must be exercised judicially. The objective of these Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined...from the foregoing, it may be concluded that being a discretionary order, the court may

allow the joinder of a party as a defendant in a suit based on the general principles set out in Order 1 Rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the Plaintiff should succeed. 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.”

14. Further, the Court in the case of:- ***“Joseph Njau Kingori - Versus - Robert Maina Chege & 3 Others [2002] eKLR”*** distilled the guiding principles in considering whether to allow joinder of an intending party as follows:-

“a. He must be a necessary party.

b. He must be a proper party.

c. In the case of the defendant, there must be a relief flowing from the defendant to the Plaintiff.

d. The ultimate order or decree cannot be enforced without his presence in the matter.

e. His presence is necessary to enable the Court effectively and competently adjudicate upon and settle all questions involved in the suit.”

15. According to the Learned Counsel, without rehashing the contents of the Applicant’s Supporting Affidavit and Supplementary Affidavit in which the Applicant concisely enumerates to the Court the basis upon which there was need

to join the proposed 2nd Defendant to the suit, it was clear that the proposed 2nd Defendant was a necessary and proper party to these proceedings. This position has been confirmed by the Respondent in his Reply Affidavit where the Respondent confirms that the proposed 2nd Defendant is his tenant and had gone ahead to even annex an executed Tenancy Agreement, this was notwithstanding the fact that the Applicant was the registered owner of the property.

16. Further, the Draft Amended Plaintiff annexed to the Application demonstrated that there were reliefs flowing from the said Defendant to the Plaintiff/Applicant, should the suit succeed. And, if the 2nd Proposed Defendant was not joined in the suit, the ultimate decree/order cannot be enforced without the 2nd proposed Defendant. Lastly, if the 2nd proposed Defendant was not joined in this suit, this Court would not be able to effectively and competently adjudicate upon and settle all questions involved in the suit.

17. It was thus their humble submission that the 2nd proposed Defendant ought to be joined in this suit to enable the Court dispense substantive justice to the parties. The leave sought should therefore be granted.

18. Secondly, on whether the Honourable Court should grant leave to the Applicant to amend the Plaint. The Learned Counsel submitted that the legal principles on amendment of pleadings are provided for under the provision of Order 8 Rules 1, 2 and 3 of the Civil Procedure Rules, 2010. In this case, the provisions of Order 8 Rule 3 of the Civil Procedure Rules, 2010 apply. These provisions provide as follows;

Amendment of pleading with leave [Order 8, Rule 3.]

(1) Subject to Order 1, Rules 9 and 10, Order 24, Rules 3, 4, 5 and 6 and the following provisions of this rule, the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings.

(2) Where an application to the court for leave to make an amendment such as is mentioned in Sub Rule (3), (4) or (5) is made after any relevant period of limitation current at the date of filing of the suit has expired, the court may nevertheless grant such leave in the circumstances mentioned in any such sub rule if it thinks just so to do.

(3) An amendment to correct the name of a party may be allowed under sub rule (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or intended to be sued.

(4) An amendment to alter the capacity in which a party sues (whether as Plaintiff or as Defendant by counterclaim) may be allowed under sub rule (2) if the capacity in which the party will sue is one in which at the date of filing of the plaint or counterclaim, he could have sued.

(5) An amendment may be allowed under sub rule (2) notwithstanding that its effect will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the suit by the party applying for leave to make the amendment.

19. Further, the provision of Order 8 Rule 5 [1] of the Civil Procedure Rules, 2010 provides that:-

“For the purpose of determining the real question in controversy between the parties, or correcting any defect or error in any proceedings, the Court may either on its own motion or on the application of any party order any document to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.”

20. In the case of:- ***“Central Kenya Ltd - Versus - Trust Bank Ltd, Trust Finance Limited, Floriculture International Limited, First National Finance Ltd & Registrar of Titles [2000] KECA 367 (KLR)”***, the Court of Appeal opined as follows in respect to amendment of pleadings;

“The settled rule with regard to amendment of pleadings has been concisely stated in Vol.2, 6th Ed. at P.2245, of the AIR

Commentaries on the Indian Civil Procedure Code by Chittaley and Rao, in which the learned authors state:

“that a party is allowed to make such amendments as maybe necessary for determining the real question in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, that no new or inconsistent cause of action is introduced, that no vested interest or accrued legal right is affected and that the amendment can be allowed without injustice to the other side.

And at page 2248, they continue to say that an amendment merely clarifying the position put forward in the plaint or written statement of defence must be allowed....

It is also trite law that as far as possible a litigant should plead the whole of the claim which he is entitled to make in respect of his cause of action. Otherwise the court will not later permit him to reopen the same subject of litigation (see O.II rule 1 of the Civil Procedure Rule) only because they have from negligence, inadvertence or accident omitted that part of their case. Amendment of pleadings and joinder of parties is meant to obviate this. Hence the guiding principle in applications for leave to amend 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 (see, *Beoco Limited - Versus - Alfa Laval Co. Limited* [1994]4 ALL ER. 464).”

21. The grounds in support of the Motion before the Court for determination have elaborately outlined the reason why the Applicant requires leave of the Court to amend the Plaint. They

need not rehear the same herein. It was their humble submissions that the proposed amendments are necessary to enable the Court render substantive justice to the parties concerned. Further they submitted that there shall be no prejudice to be suffered by the other party as they shall equally be able to respond to the Amendments.

22. Thirdly, on whether the Honourable Court should granted leave to the Applicant to file and serve further or additional witness statements, list of witnesses, and claim supporting documents. The Learned Counsel averred that it went without saying that if the Court were to allow the Applicant to join the proposed 2nd Defendant as a Defendant in this suit and to amend the Plaint as sought, there would be need for the Applicant to file and serve additional statements and documents. The additional statements and documents would be crucial in assisting the Court do real justice between the opposing parties.

23. They invited the Court to be guided by the holding of the Court in the case of:- **“Barclays Bank of Kenya Limited - Versus - Christopher Orina Kenyariri & Credit Reference Bureau Africa Limited [2017] KECA 479 (KLR)”** whether the Court stated:-

“...litigation is not a war or even a game. It is designed to do real justice between the opposing parties and, if the Court does not have all the relevant information, it cannot achieve this object”.

24. It was therefore their humble submission that this Honourable Court does not grant leave to the Applicant to file and serve further/ additional witness statements, list of witnesses and documents as sought in the Application.

25. In conclusion, they believed their submissions herein were sufficient to warrant the orders sought by the Applicants in the Notice of Motion Application dated 25th July, 2025. Since no compelling reason had been advanced by the Respondent as to why the leave sought to amend the Plaintiff, join a 2nd Defendant and to file additional statements and supporting documents should be denied, they implore the Honourable Court to proceed and grant the reliefs sought.

B. The Written submissions by the Defendant

26. The Defendant through the Law firm of Messrs. C & E Law LLP Advocates filed their written submissions dated 24th November, 2025. Mr. Nyariki Advocate submitted on the Notice of Motion Application dated 25th July, 2025 where the Plaintiff sought to, among other prayers, leave of the court to join another party

i.e. Diani Travel Centre Limited as the 2nd Defendant and leave of the court to amend the Plaint in terms of the Draft Amended Plaint attached to the Application. The Application was opposed for reasons given in the Defendant's Replying Affidavit dated 16th September, 2025.

27. The Plaintiff's claim against the Defendant was initially on the Plaintiff suing on her own behalf and that of Kama Upepo Limited is based on management of the suit premises that were erected by the first Plaintiff, Kama Upepo Limited. In the initial suit, it was the Plaintiff/Applicants contention that the Defendant/Respondent had without authority taken over the management of the Premises and thus excluded the Plaintiff/Applicant from receiving any services in the common areas as well as disconnected her water supply. At this Point, the Plaintiff/Applicant was a director in the 1st Plaintiff.

28. Along the way, however, the 1st Plaintiff, Kama Upepo Limited was dropped and the Plaintiff/Applicant was then the only Plaintiff in the suit. The reasons behind the dropping of the 1st Plaintiff was that the Plaintiff/Applicant was a director through fraudulent means. The present Defendant/Respondent was at the moment a director of the former 1st Plaintiff.

29. According to the Learned Counsel, the Plaintiff/ Applicant had now, noting that the changes in her position in the former 1st Plaintiff, opted to amend the suit so as to now convert the suit on management to a suit against the defendant for an alleged illegal occupation of what's known as Shop No. 6. Simply put, the Plaintiff, upon realizing that she has no valid cause of action, has opted to change the cause of action mid suit instead of filing a fresh suit. Further, the issue being introduced in the amended plaint have already been litigated upon in Kwale CMCC No. 75 of 2013 and thus could not be re-introduced herein.

30. The Learned Counsel relied on the provision of Section 7 of the Civil Procedure Act, Cap. 21 which provides:-

“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”

31. What the amendment seeks to sneak in is an amendment which ought to be filed in another suit altogether. As to why they

would opt to litigate the civil suit “**Kwale CMCC No. 75 of 2013**” in this suit is for reasons best known to themselves.

32. The Learned Counsel relied on the case of “**Institute For Social Accountability and another - Versus - Parliament of Kenya & others (2014) eKLR**”, the Court held that:-

“...an amendment may be allowed provided that there has been no undue delay, no new cause of action or inconsistent cause of action is introduced, and no vested interest or accrued legal right is affected and that the amendment can be allowed without an injustice to the other side.”

33. The Defendant according to the Learned Counsel contended that this motion had been brought in bad faith and it seeks to cure or mend gaps that exist in the suit once the 1st Plaintiff was dropped from the suit and hence left the Plaintiff clutching on no cause of action. The court shouldn't allow amendments made in bad faith. The principles on amendment had also been set out by Kuloba J in the case of:- “**Kassam - Versus - Bank of Baroda (Kenya) Ltd (2002) 1 KLR 294**” to submit on the principles relating to amendment of pleadings.

34. Firstly, that the amendments should be allowed if the court was satisfied that the party applying was not acting mala fide; it will not cause some injury to the other side which could not be

compensated by costs; was not a device to abuse the court process; is necessary for the purpose of determining the real questions in controversy; the amendment would not alter the character of the suit. Secondly, that in case of late amendments, the Applicants must show that the delay was not deliberate and court exercises such discretion for or against the applicant. Thirdly, in exercising discretion, the court ought to consider whether the amendment embodies a legally valid claim; the reasons why the proposed amendment was not included in the original pleading and justification for the delay if any.

35. The Learned Counsel relied on the case of ***“Shah - Versus - Patel & 2 others (Civil Case 437 of 2015) [2025] KEHC 739 (KLR) (Civ) (30 January 2025)”***.

36. In the long run, the Learned Counsel humbly submitted that the present application as filed did not meet the test for the grant of leave to amend and the same ought to be dismissed with costs to the Respondent.

VII. Analysis and Determination

37. I have considered the Notice of Motion dated 25th July 2025 filed by the Plaintiff/Applicant, the Replying Affidavit dated 16th

September 2025 together with the Grounds of Opposition dated 15th September 2025 filed by the Defendant/Respondent, the Supplementary Affidavit sworn on 13th October 2025 by the Applicant, and the written submissions filed by both parties, the relevant provisions of the Constitution of Kenya, 2010 and statutes.

38. From the pleadings, affidavits, and arguments placed before this Honourable Court, in order for it to reach an Informed, Reasonable, Fair and Equitable decision, the following four (4) issues fall for determination in relation to the instant application. These are: -

- a) Whether the Applicant should be granted leave to join Diani Travel Centre Limited as a Defendant.***
- b) Whether leave should be granted to amend the Plaint.***
- c) Whether leave should be granted to file additional witness statements and documents.***
- d) What orders should issue as to costs of the application.***

ISSUE No, a). Whether the Applicant should be granted leave to join Diani Travel Centre Limited as a Defendant.

39. Under this sub-heading the Honourable Court shall decipher whether the joinder of Diani Travel Centre Limited as a 2nd Defendant is necessary for the effective and complete adjudication of the dispute before it.

40. As correctly and comprehensively submitted by the Learned Counsel for the Plaintiff/Applicant, the starting point on the issue of joinder of parties is under the provision of Order 1 Rule 10(2) of the Civil Procedure Rules, 2010, which 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.”

41. This provision empowers the Court, at any stage of the proceedings, to order that the name of any person who ought to have been joined, or whose presence before the Court may be necessary to enable the Court effectually and completely adjudicate upon and settle all questions involved in the suit, be added. The discretion is wide but must be exercised judiciously.

42. In the case of **“Kingori - Versus - Chege & 3 Others [2002] 2 KLR 243”** the court provided the following guiding principles for joinder of a party to a suit:

1. He must be a necessary party.

2. He must be a proper party.

3. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff.

4. The ultimate order or decree cannot be enforced without his presence in the matter.

5. His presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.

43. Similarly, in the case of **“Meme - Versus - Republic, [2004] 1 EA 124”**, the High Court observed that a party could be enjoined in a matter for the reasons that:

(i) Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings;

(ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;

(iii) Joinder to prevent a likely course of proliferated litigation.

44. The Court asks itself the following questions:

a. What is the intended party’s state and relevance in the proceedings; and

b. Will the proposed 2nd Defendant suffer any prejudice if denied the joinder?

45. The Plaintiff/Applicant argued that she is the registered proprietor of Kwale/Diani Beach Block/1609/6 (Shop No. 6), and annexed a Certificate of Official Search dated 22nd September

2025 confirming her proprietorship. She further pointed out that the Respondent himself admitted in his Replying Affidavit that he had let out Shop No. 6 to Diani Travel Centre Limited under a tenancy agreement dated 1st May 2023. On this basis, the Applicant submitted that the company is a necessary party, as its occupation of the suit property is central to the dispute.

46. On the other hand, the Learned Counsel for the Respondent vehemently contended that the application was an abuse of process, arguing that the dispute over Shop No. 6 had already been litigated in Kwale CMCC No. 75 of 2013 and subsequent proceedings. He maintained that the Plaintiff was attempting to re - introduce issues already determined, contrary to the provision of Section 7 of the Civil Procedure Act, Cap. 21, (in essence ***“the Doctrine of Res Judicata”***).

47. The Court notes that the test for joinder is not whether the proposed party will ultimately be found liable, but whether its presence is necessary to enable the Court to resolve the real questions in controversy. In the case of:- ***“Joseph Njau Kingori - Versus - Robert Maina Chege & 3 Others [2002] eKLR”***, the Court distilled guiding principles: a party must be a necessary party, a proper party, there must be relief flowing from the party to the

Plaintiff, and the ultimate order or decree cannot be enforced without their presence.

48. Further in the case of ***“Zephir Holdings Limited - Versus - Mimosa Plantations Limited, Jeremiah Maztagaro and Ezekiel Misango Mutisya (2014) eKLR”***, the court held that: -

“A proper party is one who is impleaded in the suit and qualifies the thresholds of a plaintiff or defendant under Order 1 rule 1 and 2 respectively, or as a third party or as an interested party and whose presence is necessary or relevant for the determination of the real matter in dispute or to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. And the court has a wide discretion to even order suo moto for a party to be impleaded whose presence may be necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. Accordingly, a suit cannot be defeated for mis-joinder or non-joinder of parties.”

49. Applying these principles to the instant case, the Court finds that Diani Travel Centre Limited is in actual occupation of Shop No. 6 pursuant to a tenancy agreement with the Respondent. The Applicant claims ownership of the same property. The determination of the rightful ownership and occupation of Shop No. 6 cannot be made without the participation of the company currently in possession. Any decree issued in its absence would be incapable of enforcement and would prejudice its rights.

50. I have considered the reasons advanced by the Plaintiff and find that the proposed 2nd Defendant is a proper party to this suit. This matter is yet to be heard and the issues raised will be determined upon hearing of the suit on merit.

51. Accordingly, the Court is satisfied that the joinder of Diani Travel Centre Limited as a Defendant is necessary to enable the Court effectually and completely adjudicate upon and settle all questions involved in this suit. The objection raised by the Respondent on grounds of res judicata goes to the merits of the claim and will be addressed at the substantive hearing, but it cannot bar joinder at this stage. The joinder of Diani Travel Centre Limited as the 2nd Defendant is hereby found to be reasonable and attainable and thus granted accordingly.

ISSUE No. b). Whether leave should be granted to amend the Plaintiff.

52. Under this sub-heading the Honourable Court shall decipher whether the Applicant ought to be granted leave to amend the Plaintiff dated 24th October 2022 in terms of the draft Amended Plaintiff annexed to the Motion.

53. The law on amendment of pleadings is well settled. Order 8 rule 3 of the Civil Procedure Rules 2010 provides for amendment of pleadings with leave of the court as follows:

“ (1) Subject to Order 1, rules 9 and 10, Order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, the Court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings.”

54. The provision of Order 8 rule 5 of the Civil Procedure Rules, 2010 provides as follows: -

“For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of its own motion or on the application of any party order any documents to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.”

55. The court has the power to amend pleadings which power can be exercised at any stage of the proceedings before judgment as per **Bullen and Leake & Jacob's Precedents of Pleading, 12th Edition**, which provides as follows concerning amendment of pleadings:

“...power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages); that as a general rule, however late, the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side; that the proposed amendment must not be immaterial or useless or merely technical; that if the proposed amendments introduce a new case or new ground of defence it can be allowed unless it would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action...”

56. Similarly, in **Halsbury's Laws of England, 4th Ed. (re-issue), Vol. 36(1) at paragraph 76**, state the following about amendments of pleadings: -

"...The purpose of the amendment is to facilitate the determination of the real question in controversy between the parties to any proceedings, and for this purpose the court may at any stage order the amendment of any document, either on application by any party to the proceedings or of its own motion. ... The person applying for amendment must be acting in good faith. Amendment will not be allowed at a late stage of the trial if on analysis of it is intended for the first time thereby to advance a new ground of defence. If the amendment for which leave is asked seeks to repair an omission due to negligence or carelessness, leave to amend may be granted if the amendment can be made without injustice to the other side..."

57. The Court of Appeal outlined the relevant guiding principle on amendment of pleadings in the case of ***"Central Kenya Limited - Versus -Trust Bank Ltd & 5 others [2000] eKLR"*** as follows:

"that a party is allowed to make such amendments as may be necessary for determining the real question in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, that no new or inconsistent cause of action is introduced, that no vested interest or accrued legal right is affected and that the amendment can be allowed without injustice to the other side."

58. Additionally, in the case of:- ***"Eastern Bakery - Versus - Castelino (1958) 1 EA 461 (CAK)"***, where the Court held that:-

“Generally speaking, this court will not interfere with the discretion of a judge in allowing or disallowing an amendment to a pleading, unless it appears that in reaching his decision he has proceeded upon wrong materials or a wrong principle.”

59. The court further held: -

“It will be sufficient, for purposes of the present case, to say that amendments to pleadings sought before hearing should be freely allowed, if they can be made without injustice to the other side, and that there is no injustice if the other side can be compensated by costs....the court will not refuse to allow an amendment simply because it introduces a new case.....but there is no power to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject matter of the suit...the court will refuse leave to amend where the amendment would change the action into one of a substantially different character...or where the amendment would prejudice the rights of the opposite party existing at the date of the proposed amendment e.g by depriving him of a defence of limitation accrued since the issue of the writ...the main principle is that an amendment should not be allowed if it causes injustice to the other side.”

60. The jurisprudence is clear that amendments should generally be allowed if they are made in good faith, do not introduce a wholly new or inconsistent cause of action, do not prejudice the other party in a manner incapable of compensation by costs, and are necessary to enable the Court to pronounce on the substantive issues.

61. The Plaintiff/Applicant submitted that the amendments were necessitated by subsequent developments, including the Respondent's admitted letting of Shop No. 6 to Diani Travel Centre Limited, and the Applicant's continued proprietorship of the said unit as confirmed by the Certificate of Official Search dated 22nd September 2025. Counsel argued that the amendments were essential to align the pleadings with the real issues in controversy and to ensure that the Court could dispense substantive justice. Reliance was placed on "**Central Kenya Ltd - Versus - Trust Bank Ltd & Others [Supra]**" and "**Civicon Ltd - Versus - Kivuwatt Ltd & 2 Others [Supra]**", which affirm that amendments should be freely allowed provided they do not occasion prejudice.

62. The Respondent opposed the amendments, contending that they sought to convert the suit from one concerning management of Umbi Complex to a dispute over ownership of Shop No. 6, an issue he argued had already been litigated in **Kwale CMCC No. 75 of 2013** and subsequent proceedings. He invoked the provision of Section 7 of the Civil Procedure Act (on the Doctrine of "**Res Judicata**") and relied on the case of:- "**Institute for Social Accountability & Another - Versus - Parliament of Kenya & Others [Supra]**" and "**Shah - Versus - Patel**"

& 2 Others (Supra)”, submitting that the amendments were brought in bad faith and introduced a new cause of action.

63. The Court observes that while the Respondent raises res judicata, that doctrine goes to the merits of the claim and will be determined at the substantive hearing. At this interlocutory stage, the question is whether the amendments are necessary to enable the Court to determine the real questions in controversy. The Applicant has demonstrated that the occupation of Shop No. 6 by the proposed 2nd Defendant is a live issue, and that her proprietary rights over the unit remain contested. These facts were not fully captured in the original Plaintiff.

64. In the already cited case of:- **“Joseph Njau Kingori - Versus - Robert Maina Chege & 3 Others [Supra]”**, the Court emphasized that amendments should be allowed if they are necessary to bring out the real issues, provided no prejudice is occasioned. The Respondent will have the opportunity to respond to the amended pleadings, and any prejudice can be compensated by costs.

65. Accordingly, the Court is satisfied that the amendments sought are necessary, have been brought without undue delay, and will

enable the Court to determine the real questions in controversy. Therefore, the Honourable Court strongly holds that leave be and is thereby granted to amend the Plaint in terms of the draft annexed.

ISSUE No. C). Whether leave should be granted to file additional witness Statements and documents

66. Under this sub-heading the Honourable Court shall decipher whether the Applicant ought to be granted leave to file and serve further or additional witness statements, list of witnesses, and supporting documents.
67. The applicable principle on this legal aspect is found in the provision of Order 7 Rule 5 of the Civil Procedure Rules, 2010, which requires parties to file witness statements and documents they intend to rely upon. However, the Rules do not bar the filing of supplementary statements or documents where leave of Court is sought and granted. The Court retains discretion to allow such filings, provided they are necessary for the just determination of the dispute and do not occasion prejudice to the opposing party.
68. The Applicant submitted that once the joinder of Diani Travel Centre Limited and the amendment of the Plaint are allowed, it

follows that additional witness statements and documents must be filed to support the amended pleadings. Counsel argued that these materials are crucial to assist the Court in determining the real questions in controversy, citing the holding in the case of:- **“Barclays Bank of Kenya Limited - Versus - Christopher Orina Kenyariri & Credit Reference Bureau Africa Limited [Supra]”**, where the Court emphasized that litigation is not a game but a process designed to achieve substantive justice, which requires all relevant information to be placed before the Court.

69. The Supreme Court of Kenya has also laid guidelines for admission of additional evidence in the case of **“Mohamed Abdi Mahamud - Versus - Ahmed Abdullahi Mohamad & 3 Others [2018] eKLR”**, one of the prerequisites is that: -

“...It is shown that it could not have been obtained with reasonable diligence for use at the trial, was not within the knowledge of, or could not have been produced at the time of suit or petition by the party seeking to adduce the additional evidence,”

70. The Defendant/Respondent strenuously opposed the application, contending that the Plaintiff was attempting to cure defects in her case by introducing new evidence belatedly. He

argued that this was prejudicial and amounted to an abuse of process.

71. The Court notes that the Respondent will have the opportunity to respond to any additional witness statements and documents filed, and any prejudice can be compensated by costs. Moreover, the amendments sought introduce new factual issues, particularly concerning the occupation of Shop No. 6 by the proposed 2nd Defendant, which necessitate additional evidence. Denying leave would hinder the Court's ability to fully and fairly adjudicate the matter.

72. Accordingly, the Court is satisfied that the filing of additional witness statements and documents is necessary to enable the Court to determine the real questions in controversy and to dispense substantive justice. Hence, once more, the Court holds that leave is granted to the Applicant to file and serve additional witness statements, list of witnesses and supporting documents.

ISSUE No. d). What orders should issue as to costs of the application.

73. Under this sub-heading the Honourable Court shall decipher what orders should issue regarding costs of the present

application. It is now well established that the issue of Costs is at the discretion of the Court. Costs meant the award that a party is granted at the conclusion of any legal action or proceedings in any litigation. The Proviso of Section 27 (1) of the Civil Procedure Act, Cap. 21 provides that: -

“Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.”

74. This statutory provision establishes that costs ordinarily follow the event, meaning that the successful party is entitled to costs unless the Court directs otherwise for good reason.

75. By the event, it means outcome or result of any legal action. This principle encourages responsible litigation and motivates parties to pursue valid claims. See the cases of **“Harun Mutwiri - Versus - Nairobi City County Government [2018] eKLR”** and **“Kenya Union of Commercial, Food and Allied Workers - Versus - Bidco Africa Limited & Another [2015] eKLR”**, the court reaffirmed that the successful party is typically entitled to costs,

unless there are compelling reasons for the court to decide otherwise. In the case of ***“Hussein Muhumed Sirat - Versus - Attorney General & Another [2017] eKLR”***, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances.

76. In the instant matter, the Court has found merit in the Plaintiff/Applicant’s prayers for joinder of the proposed 2nd Defendant/Respondent, amendment of the Plaint, and filing of additional witness statements and documents. The Defendant/Respondent opposed the application but will not suffer prejudice beyond the ordinary inconvenience of responding to the amended pleadings. The joinder and amendments are necessary to enable the Court to determine the real questions in controversy.

77. Given that the application is interlocutory in nature and the substantive suit is yet to be heard, it is appropriate that costs of the application do not burden either party at this stage. The Respondent will have full opportunity to contest the merits of the claim during trial, and any prejudice can be compensated by costs at the conclusion of the suit.

78. Accordingly, the Court orders that the costs of this application shall be in the cause.

VIII. Conclusion and Disposition.

79. Having carefully considered the Notice of Motion application dated 25th July, 2025 filed by the Plaintiff/Applicant, the Replying Affidavit dated 16th September, 2025 and Grounds of Opposition dated 15th September, 2025 filed by the Defendant/Respondent, the Supplementary Affidavit sworn on 13th October, 2025, together with the written submissions filed by both parties, and having applied the relevant statutory provisions and case law cited, the Honourable Court arrives at the following conclusions:-

- a) THAT the Notice of Motion application dated 25th July 2025 filed by the Plaintiff/Applicant be and is hereby merited and is hereby allowed.**
- b) THAT leave of Court be and is hereby granted to join Diani Travel Centre Limited as the 2nd Defendant in these proceedings.**
- c) THAT leave of Court be and is hereby granted to amend the Complaint dated 24th October 2022 in terms of the draft Amended Complaint annexed to the Motion ie 14 days.**
- d) THAT leave of Court be and is hereby granted to the Plaintiff/Applicant to file and serve additional witness**

statements, list of witnesses, and supporting documents within fourteen (14) days from the date hereof.

e) **THAT** the Defendant/Respondent and the newly joined 2nd Defendant shall have twenty-one (21) days thereafter to file their responses to the amended pleadings and any additional documents.

f) **THAT** for the sake of expediency there be Pre - Trial Conference conducted on 20th July, 2026 in accordance with the provision of Order 11 of the Civil Procedure Rules, 2010. There be a hearing on 27th October, 2026 preferably thorough Physical Means.

g) **THAT** the costs of the Notice of Motion application dated 25th July 2025 shall be in the cause, in accordance with Section 27(1) of the Civil Procedure Act, Cap. 21 to be determined at the conclusion of the substantive suit.

IT IS SO ORDERED ACCORDINGLY.

RULING DELIVERED THROUGH MICROSOFT TEAM VIRTUAL MEANS, SIGNED AND DATED AT KWALE THIS.....22NDDAY OFAPRIL.....2026.

.....
**HON. MR. JUSTICE L. L. NAIKUNI,
ENVIRONMENT AND LAND COURT
AT
KWALE**

Ruling delivered in the presence of:

- (a) M/s. Asmaa Maftah, the Court Assistant.
- (b) M/s. Nancy Gitari Advocate for the Plaintiff; and
- (c) Mr. Nyariki Advocates for the Defendant.