



**Muriu Mungai and Company Advocates v Attorney General (Behalf of the Permanent Secretary Ministry of Co-operative Development); New Kenya Co-operative Creameries Limited (Interested Party) (Miscellaneous Cause 545 of 2007) [2024] KEHC 9571 (KLR) (Civ) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9571 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**MISCELLANEOUS CAUSE 545 OF 2007**

**CW MEOLI, J**

**JULY 31, 2024**

**BETWEEN**

**MURIU MUNGAI AND COMPANY ADVOCATES ..... APPLICANT**

**AND**

**THE ATTORNEY GENERAL ..... RESPONDENT**

**BEHALF OF THE PERMANENT SECRETARY MINISTRY OF CO-OPERATIVE  
DEVELOPMENT**

**AND**

**NEW KENYA CO-OPERATIVE CREAMERIES LIMITED .... INTERESTED  
PARTY**

**RULING**

1. The application for determination is the Notice of Motion dated 29<sup>th</sup> February 2024 (the Motion) brought by New Kenya Co-Operative Creameries Ltd (hereafter the Interested Party) and seeking the orders hereunder:
  - a. Spent.
  - b. That the ruling delivered by this court on 20<sup>th</sup> December 2023 enjoining New Kenya Co-operative Creameries as an Interested Party do apply in:

MA No 532 of 2010, Muriu Mungai & Company Advocates Vs the Attorney General.



MA No 533 of 2010, Muriu Mungai & Company Advocates Vs the Attorney General.

MA No 534 of 2010, Muriu Mungai & Company Advocates Vs the Attorney General.

MA No 544 of 2010, Muriu Mungai & Company Advocates Vs the Attorney General.

MA No 414 of 2010, Muriu Mungai & Company Advocates Vs the Attorney General.

- c. That upon granting prayer number (b) above, this suit consolidated for the purpose of hearing and determination with:-
    - i. MA No 532 of 2010, Muriu Mungai & Company Advocates Vs the Attorney General.
    - ii. MA No 533 of 2010, Muriu Mungai & Company Advocates Vs the Attorney General.
    - iii. MA No 534 of 2010, Muriu Mungai & Company Advocates Vs the Attorney General.
    - iv. MA No 544 of 2010, Muriu Mungai & Company Advocates Vs the Attorney General.
    - v. MA No 414 of 2010, Muriu Mungai & Company Advocates Vs the Attorney General.
  - d. That the Court file herein be designated as the pilot file for the purpose of the court proceedings.
  - e. Spent.
  - f. That costs be provided for.
2. The Motion is expressly brought under Sections 1A, 1B and 3A of the *Civil Procedure Act* (CPA) and Order 11, Rule 3(h) of the *Civil Procedure Rules* (CPR); and supported by the grounds set out on its face and the supporting affidavit sworn by the Interested Party's Company Secretary and Chief Legal Officer, Irene Mbito. To the effect that previously, the Interested Party filed an application dated 15<sup>th</sup> September, 2017 in the present Cause, seeking enjoinder in the proceedings as an interested party, which application was allowed by this court vide the ruling delivered on 20<sup>th</sup> December, 2023.
  3. The deponent further averred that its advocate filed similar applications dated 20<sup>th</sup> December, 2017 in the causes cited in prayer (b) and (c) of the Motion (hereafter the subject causes); that that Muriu Mungai & Co. Advocates (hereafter the Applicant) had previously lodged taxation proceedings in the subject suits and obtained certificates of taxation, which it now seeks to execute against the Interested Party; and that since the Interested Party did not participate in the subject causes, it is practical that the ruling of this court does apply to the subject causes as well, to facilitate the Interested Party's challenge to the said taxation proceedings.
  4. The deponent asserted the necessity to have the subject suits consolidated with the present Cause because they all involve the same subject matter and parties herein. That a consolidation would prevent multiplicity of suits and would assist the court in making a consistent determination on all the issues arising, thus obviating the likelihood of conflicting decisions.
  5. The Applicant opposed the Motion through the replying affidavit sworn by a partner, advocate Peter Munge, on 22<sup>nd</sup> April, 2024. Therein, the advocate stated inter alia, that the Motion lacks merit and



is bad in law because the taxation proceedings in the subject suits which proceeded unopposed, were long determined and that the respective rulings on taxation were never challenged by way of reference.

6. The advocate also stated that in MA No 533 of 2010, Muriu Mungai & Company Advocates Vs the Attorney General in particular, the Interested Party had filed an application seeking to be enjoined as an interested party, which application was dismissed by a ruling delivered on 8<sup>th</sup> June, 2023. Moreover, the Interested Party had filed a similar application in MA No 414 of 2010, Muriu Mungai & Company Advocates Vs the Attorney General which application was later withdrawn on 3<sup>rd</sup> October, 2018.
7. The advocate asserted that the Interested Party is guilty of inordinate delay and intent on frustrating the reconciliation exercise arising from the respective taxation proceedings, through a myriad of applications brought too late in the day.
8. In rejoinder Irene Mbitio by a supplementary affidavit sworn on 7<sup>th</sup> June, 2024 reiterated her earlier depositions, adding that the Applicant erroneously included the Certificate of Costs resulting from the taxation proceedings in both the present Cause and the subject suits, in the reconciliation exercise. Yet the Intended Interested Party was not a party to and did not participate in the subject suits. She further stated that the Interested Party was unaware of the existence of the subject suits as well as the present cause, at all material times; and could not therefore have challenged the taxation proceedings or rulings at an earlier date. That it is therefore imperative that the orders sought in the instant Motion be granted.
9. Directions were given for the Motion to be canvassed through written submissions. However, at the time of writing this ruling, the only submissions on record were by the Interested Party. Counsel for the Interested Party essentially reiterated the depositions in her respective affidavits, citing the provisions of Section 1A of the [CPA](#) regarding the overriding objective of the said Act.
10. Concerning consolidation, counsel relied on the decision in [Nyati Security Guards & Services v Municipal Council of Mombasa](#) [2004] eKLR where the court defined the term consolidation and its purpose. Counsel proceeding to reiterate that the subject suits as well as the present Cause, all concern the same parties and the same subject matter, and hence consolidation thereof is necessary. Especially in light of the ongoing reconciliation exercise pertaining to the taxation proceedings in the subject suits.
11. Which taxation proceedings the Interested Party seeks to challenge on the ground that it was neither a party thereto nor served with the respective Bill of Costs prior to delivery of the respective rulings on taxation. Citing the decisions in [Korean United Church of Kenya & 3 others v Seung Ho Song](#) [2014] eKLR and [Abdalla v Hassan & 15 others](#) (Civil Suit 210 of 2021) [2022] KEELC 13582 (KLR) (5 October 2022) (Ruling) counsel argued in closing that if granted, the consolidation order will save the court's time and prevent a multiplicity of suits over the same subject matter. For those reasons, the court was urged to allow the Motion as prayed.
12. The Attorney General for and on behalf of the Permanent Secretary Ministry of Co-Operative Development (hereafter the Respondent) did not participate at the hearing of the Motion.
13. The court has considered the rival affidavit material canvassed in respect of the Motion as well as the submissions on record. In the court's view, the entire Motion stands or falls on the prayer (b) seeking that the ruling delivered by this court on 20<sup>th</sup> December 2023 herein, allowing the joinder of the Interested Party herein, does apply to the subject suits.
14. The record shows that the Interested Party filed an application dated 15<sup>th</sup> September 2017 in the present Cause, seeking to be enjoined in the proceedings as an interested party. Upon hearing the said



application, this court by way of the ruling delivered on 20<sup>th</sup> December, 2023 granted the order for enjoinder.

15. The court has considered the assertions by the Interested Party that similar applications were filed in the subject suits and the response by the Applicant that one of the cited applications was subsequently dismissed, and another subsequently withdrawn by the Interested Party.
16. Upon perusing the record and more particularly the documents annexed to the rival affidavits, the court observed that the Interested Party annexed to the supporting affidavit copies of the applications dated 20<sup>th</sup> December, 2017 in respect of three causes, namely, MA No 533 of 2010, Muriu Mungai & Company Advocates Vs the Attorney General; MA No 534 of 2010, Muriu Mungai & Company Advocates Vs the Attorney General; and MA No 414 of 2010, Muriu Mungai & Company Advocates Vs the Attorney General as Annexures “IM 2”, “IM 3 and “IM 4”. Patently, the said applications also sought similar orders for enjoinder of the interested party. As the Interested Party did not avail any copies of similar applications in respect of the remaining suits, it is difficult to ascertain whether any such applications were filed as averred.
17. The Applicant on its part exhibited a copy of the ruling of Mulwa, J. delivered on 8<sup>th</sup> June, 2023 in MA No 533 of 2010, Muriu Mungai & Company Advocates Vs the Attorney General (annexure marked “PM-9”) dismissing the application dated 20<sup>th</sup> December, 2017 in that particular cause. Thus, the application in that cause has since been determined, contrary to the assertions made by the Interested Party. However, the true status or fate of other applications annexed to the supporting affidavit to the Motion, remain unclear. The court is unable in the circumstances to ascertain whether they were ever prosecuted and/or determined.
18. The court is in the circumstances hesitant to grant prayer (b) of the Motion and no purpose will be served by addressing the prayer seeking consolidation of the subject suits. In the result, the Notice of Motion dated 29<sup>th</sup> February 2024 fails and given the obtaining circumstances, the most appropriate order is to strike out the Motion with costs to the Applicant.

**DELIVERED AND SIGNED ELECTRONICALLY AT NAIROBI ON THIS 31<sup>ST</sup> DAY OF JULY 2024.**

**C.MEOLI**

**JUDGE**

**In the presence of:**

**For the Interested Party: Ms. Njoroge h/b for Mr. Mereka**

**For Applicant: Ms. Kinyua h/b for Mr. Munge**

**C/A: Erick**

Page | 3

