



**Erdermann Property Limited v Credit Bank Limited; Mavoko Water
Sewerage Company Ltd (MAVWASCO) (Applicant) (Civil Case E419 of 2022)
[2024] KEHC 10207 (KLR) (Commercial and Tax) (16 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10207 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E419 OF 2022
A MABEYA, J
AUGUST 16, 2024**

BETWEEN

ERDERMANN PROPERTY LIMITED PLAINTIFF

AND

CREDIT BANK LIMITED DEFENDANT

AND

MAVOKO WATER SEWERAGE COMPANY LTD (MAVWASCO) APPLICANT

RULING

1. Before Court is an application dated 10/2/2023 brought under Order 1 rule 10(4) and 14, Order 51 rule 1 of the *Civil Procedure Rules*, section 1A, 1B and 3A of the *Civil Procedure Act*.
2. The application sought joinder of the applicant as an interested party in the suit. In support of the application the applicant relied on the grounds on the face of the application and the supporting affidavit of Michael Mangeli.
3. The applicant's contention was that the plaintiff had entered into a build operate transfer agreement with the applicant for the construction of a sewer situate at the suit property. That the applicant being the body mandated to provide sewerage services had to take over the ownership and management of the system. It was contended that the applicant had an interest in the property and therefore should be enjoined as an interested party in the suit.



4. There was no response filed with respect to the application. I have considered the application. Order 1 Rule 10(2) of the Civil Procedure Rules provides: -

“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.”

5. The applicant has sought to be enjoined as an interested party to the suit for reason that it entered into an agreement with the plaintiff for construction, operation and transfer of the plaintiff's sewer system. That on behalf of the public, the applicant had an interest in the said property.

6. In Communications Commission of Kenya and 4 others v Royal Media Services Limited & 7 others Petition No 15 of [2014] eKLR, the Supreme Court of Kenya relied on its earlier decision in the Mumo Matemu and held: -

“An interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. Similarly, in the case of Meme v 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.

We ask ourselves the following questions:

- a) what is the intended party's state and relevance in the proceedings and
- b) will the intended interested party suffer any prejudice if denied joinder?”

7. And in Kingori v Chege & 3 others [2002] 2 KLR 243, the court set out the guiding principles for joinder as follows; that the applicant must be a necessary party, he must be a proper party, in the case of a defendant, there must be a relief flowing from that defendant to the plaintiff, the ultimate order or decree cannot be enforced without his presence in the matter. Finally, that the presence of the party to be joined is necessary to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit.

8. In view of the foregoing, has the applicant satisfied the criteria to joined as an interested party in these proceedings? I have perused the documents on record, and it is evident that the applicant had a contract with the plaintiff for the construction of the subject plant. Whatever decision is arrived at the end, it will affect the applicant. I therefore find that the applicant has demonstrated, on a balance of probabilities, that it has a clear and identifiable stake in the proceedings.



9. Accordingly, I find merit in the application dated 10/2/2023 and allow the same with no order as to costs.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 16TH DAY OF AUGUST, 2024.

A. MABEYA, FCI ARB

JUDGE

