



Crescent Construction Company Limited v Detho & 2 others; Kenya Deposit Insurance Corporation & another (Intended Interested Party) (Constitutional Petition 75 of 2010) [2023] KEHC 2617 (KLR) (Constitutional and Human Rights) (31 March 2023) (Ruling)

Neutral citation: [2023] KEHC 2617 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
CONSTITUTIONAL PETITION 75 OF 2010**

AC MRIMA, J

MARCH 31, 2023

BETWEEN

CRESCENT CONSTRUCTION COMPANY LIMITED PETITIONER

AND

ROSE DETHO & 2 OTHERS RESPONDENT

AND

**KENYA DEPOSIT INSURANCE CORPORATION INTENDED
INTERESTED PARTY**

**CHARTERHOUSE BANK LIMITED (IN LIQUIDATION INTENDED
INTERESTED PARTY**

RULING

1. The application under consideration in this ruling is the notice of motion dated August 16, 2021. It was taken out by Kenya Deposit Insurance Corporation and Charterhouse Bank Limited (in liquidation) as the applicants.
2. The application was not opposed by any of the parties.
3. I have carefully perused the application and the submissions by the applicants.



4. This court dealt with the issue of joinder of interested parties in Nairobi High Court constitutional petition No E371 of 2021 *Esther Auuor Adero Ang'awa v Cabinet Secretary responsible for matters relating to Basic Education & others* (unreported). This is what I rendered: -

12. The starting point is the Constitution. Rule 2 of The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (hereinafter referred to as 'the Mutunga Rules') define an 'interested party' to mean: -

a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation;

13. The Supreme Court in *Trusted Society of Human Rights v Mumo Matemu & 5 others* [2014] eKLR observed as follows: -

... 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.

14. Later, the Supreme Court further delimited the legal principles applicable in joinder applications. That was in petition No 1 of 2017 *Raila Amolo Odinga & another v Independent Electoral and Boundaries Commission & 2 others & Michael Wainaina Mwaura (as Amicus Curiae)* [2017] eKLR and in petition No 15 as consolidated with petition No 16 of 2013 *Francis Kariuki Muruatetu & another v Republic & 5 others* [2016] eKLR.

15. In *Francis Kariuki Muruatetu & another v Republic & 5 others* petition 15 as consolidated with 16 of 2013 [2016] eKLR the Supreme Court identified the following applicable conditions, and, stated as follows: -

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:

(i) 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.

(ii) The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the court. It must also be clearly outlined and not something remote.

(iii) Lastly, a party must, in its application, set out the case and/or submissions 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.



16. Apart from the three principles developed by the Supreme Court, rule 2 of the Mutunga Rules clarifies that a party seeking to be enjoined as an interested party ought to demonstrate that he/she/it has an identifiable stake or legal interest or duty in the proceedings before the court.
5. Deriving from the foregoing, the following conditions are relevant in the consideration of joinder applications: -
 - (i) The party intending to be enjoined has an identifiable stake which is proximate enough and not merely peripheral.
 - (ii) The party has a clear legal interest in the matter.
 - (iii) The party has a defined duty in the proceedings.
 - (iv) The party is not directly involved in the litigation. In other words, the party is not one of the main parties in the proceedings that is either as a petitioner or a respondent.
 - (v) The party will be affected by the decision of the court when it is made, either way.
 - (vi) The party demonstrates that his or her or its interest will not be well articulated unless he himself or she herself or itself appears in the proceedings, and champions the cause. Differently put, the party must demonstrate that it stands to be prejudiced if it does not take part in the proceedings.
 - (vii) The party should not expand the prevailing cause of action or introduce a new cause of action.
6. I will now apply the foregoing considerations to the application at hand.
7. The petitioner's claim was inter alia prompted by the action of the 2nd respondent acting with the approval of the 3rd respondent in revoking the powers and mandate of the board of directors of the 2nd intended interested party and vesting the same in the 1st respondent as the statutory manager with knowledge that the declaration of moratorium would deprive the petitioner its deposits held by the 2nd intended interested party. The petitioner alleged that, as a result thereof, it suffered colossal losses in several contracts which it was to undertake using the money it had, specifically and with the knowledge of the 2nd intended interested party, deposited for purposes of the contracts.
8. The Kenya Deposit Insurance Corporation (1st Intended interested party) is the current liquidator of the Charterhouse Bank Limited (in liquidation), the 2nd intended interested party.
9. Given the nature of the petitioner's claim, it is imperative that the intended interested parties be heard on the dealings of the 2nd intended interested party with the petitioner. That way, this court will be in a position to adequately deal with the dispute at hand. In fact, without the input of the 2nd intended interested party, then the petitioner will be raising issues against parties who cannot really attest to.
10. The intended interested parties have satisfied most of the conditions for joinder. It is in the best interest of justice that they be enjoined.
11. Having said so, it is this court finding and holding that the application for joinder is merited.



Disposition:

12. In the end, the following final orders do hereby issue: -

- (a) The notice of motion dated August 16, 2021 by the intended interested parties is hereby allowed.
- (b) The Kenya Deposit Insurance Corporation shall henceforth appear as the 1st interested party and the Charterhouse Bank Limited (in liquidation), as the 2nd interested party.
- (c) Costs of the applications shall be in the petition.
- (d) This matter shall be placed before the presiding judge for further directions.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KITALE THIS 31ST DAY OF MARCH, 2023

A. C. MRIMA

JUDGE

Ruling delivered virtually in presence of:

Mr. Kagongo, Counsel for the Petitioner.

Miss Kipgeno for Mr. Muchiri, Counsel for the proposed 1st & 2nd Interested parties.

Miss Ann Kime for Mr. Chacha Odera, Counsel the 1st & 2nd Respondents.

N/A, for the 3rd Respondent.

Regina/Chemutai – Court Assistants

