



**Muriu Mungai & Co Advocates v Attorney General for and on behalf of  
the Permanent Secretary Ministry of Co-operative Development; New  
Kenya Co-operative Creameries Ltd (Interested Party) (Miscellaneous Cause  
545 of 2010) [2023] KEHC 27075 (KLR) (Civ) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 27075 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
MISCELLANEOUS CAUSE 545 OF 2010  
CW MEOLI, J  
DECEMBER 20, 2023**

**BETWEEN**

**MURIU MUNGAI & CO ADVOCATES ..... APPLICANT**

**AND**

**THE ATTORNEY GENERAL FOR AND ON BEHALF OF  
THE PERMANENT SECRETARY MINISTRY OF CO-OPERATIVE  
DEVELOPMENT ..... RESPONDENT**

**AND**

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

**RULING**

1. Before the court for determination is the Notice of Motion dated 15<sup>th</sup> September, 2017 (the Motion) brought by New Kenya Co-Operative Creameries Ltd (hereafter the Intended Interested Party) supported by the grounds laid out on its face and the depositions in the affidavit of Peter Kennedy Ombati, its Chief Legal Manager-Legal Affairs. The Motion is seeking enjoinder of the Intended Interested Party in the proceedings; and a further order for leave to enable the firm of M/s Mureka & Company Advocates to formally come on record for the Intended Interested Party and to file any necessary application on its behalf.
2. In his supporting affidavit, the deponent avers that Muriu Mungai & Co. Advocates (hereafter the Applicant) being the Advocate/Applicant in HCMA No. 799 of 2007 (the suit) entered into a consent dated 17<sup>th</sup> April, 2013 with the Intended Interested Party in respect of reconciliation of all taxations and related matters between the parties. The deponent further avers that the listed matters included



taxation in the present Cause. It was stated that Intended Interested Party was not a party to the taxation of the Bill of Costs in the present Cause dated 19<sup>th</sup> November, 2010 which was taxed at the sum of Kshs. 2,657,738/- and that the Intended Interested Party is desirous of challenging both the resultant Certificate of Costs and retainer pertaining to the matter, as against it. hence, it would be in the interest of justice that the orders sought be granted.

3. To oppose the Motion, advocate Peter Munge, partner at the Applicant law firm, was purported to have sworn separate replying affidavits on 28<sup>th</sup> October, 2017 and 23<sup>rd</sup> February, 2022 respectively. However, at the time of writing this ruling, the earlier replying affidavit of 28<sup>th</sup> October, 2017 could not be traced in the court file. In the subsequent replying affidavit on record, the deponent avers that the suit was declared to be the test suit in respect of all matters pending between the parties herein and undergoing taxation and related proceedings. The deponent also avers that from his knowledge, stay orders were issued on all the matters relating to the parties herein pending the reconciliation exercise and including the present cause, and which exercise is yet to be finalized. As such, the deponent urges that the parties do await conclusion of the reconciliation exercise before taking any further action.
4. In rejoinder by way of his supplementary affidavit sworn on 10<sup>th</sup> November, 2017 Peter Kennedy Ombati reiterates his earlier averments, save to add that the Intended Interested Party was not a party to the present cause or to the taxation proceedings that resulted therefrom. That the Certificate of costs resulting from the Bill of Costs herein was incorrectly included in the reconciliation exercise, the Intended Interested Party being a non-party in the Cause. That the Intended Interested Party therefore stands to suffer grave prejudice as it will likely be subjected to payments in a matter to which it was never a party.
5. The parties filed and exchanged written submissions. Counsel for the Intended Interested Party anchored his submissions on the decisions in *Communications Commission of Kenya & 3 others v Royal Media Services Limited & 7 others* [2014] eKLR and *Julius Meme v Republic & another* [2004] eKLR to argue that the Intended Interested Party has met the threshold for joinder in the matter. Having demonstrated its legal stake in the proceedings as well as the potential prejudice to be visited upon it unless the order for joinder is granted, here citing the decision by the Supreme Court of Uganda in *Deported Asians Property Custodian Board v Jaffer Brothers Limited* [1999] IEA 55 (SCU). On those grounds, counsel urged the court to exercise its discretion in favour of his client.
6. On the part of the Applicant, its counsel anchored his submissions on the decisions in *Hadkinson v Hadkinson* [1952] 2 ALL E.R. 567 and *Kanchanben Ramniklal Shah v Shamit Shantilal Shah & 6 Others* (2010) eKLR to the effect that the instant Motion and any other applications touching on taxation proceedings between the parties ought to await the finalization of the reconciliation exercise, pursuant to the court orders issued on 17<sup>th</sup> April, 2013.
7. Counsel further cited *Francis Kariuki Muruatetu & another v Republic & 5 others* [2016] eKLR; *Skov Estate Limited & 5 others v Agricultural Development Corporation & another* [2015] eKLR and *Erastus Ndubiu t/a Emac Enterprises v Mugomoni Farmers Company Limited; Inshwil Builders Engineer Ltd (Interested Party); Benjamin Kamande Gitbuka (Proposed Interested Party)* [2020] eKLR among others. In supporting the submission that the Intended Interested Party has not satisfied the principles for joinder as an interested party, the taxation proceedings having been concluded; that no identifiable stake in the matter has been demonstrated nor likelihood of prejudice to be suffered if enjoyment is denied. Moreover, it was counsel's submission that the Intended Interested Party has not set out the submissions it intends to make before the court in the Cause, to warrant the order sought.



8. The Attorney General for and on behalf of the Permanent Secretary Ministry of Co-Operative Development (hereafter the Respondent) opted not to file any documentation in respect of the Motion.

9. The court has considered the rival material canvassed in respect of the Motion. The term ‘interested party’ as defined under Rule 2 of the [Constitution of Kenya \(Protection of Rights and Fundamental Freedoms\) Practice and Procedure Rules, 2013](#) was echoed by the Supreme Court in the case of [Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others](#) [2015] eKLR as follows:

“interested party” means 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.”

10. Regarding the principles for consideration in determining an application for enjoinder of a party as an interested party, the Supreme Court pronounced itself in the following manner, in [Communications Commission Of Kenya & 4 Others v Royal Media Services Limited & 7 Others](#) Petition No. 15 OF 2014:

“In determining whether the applicant should be admitted into these proceedings as an interested party we are guided by this Court’s decision in the Mumo Matemo case where the court (at paragraphs 14 and 18) 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.?”

11. Applying the foregoing principles to the Motion now before the court, it is noted that the Intended Interested Party’s averment and argument on the one part is that it has a legal stake in the proceedings by virtue of the fact that the taxation resulting in the present Cause was included in the list of matters for reconciliation between itself and the Applicant, and yet it was never a party to the Cause. The Applicant’s retort on the other part is that the proceedings have since been finalized by way of taxation and hence the Intended Interested Party has no basis on which to come in at this stage. Further stating and submitting that in any event, service of the Certificate of Taxation was effected upon the Intended



- Interested Party on 13<sup>th</sup> July, 2012 accompanied by a notice requiring the latter to settle the taxed amount.
12. Upon considering the rival arguments above, notwithstanding the fact that the taxation proceedings have taken place, it is apparent that the Intended Interested Party is aggrieved with the inclusion of the relevant taxed costs in the reconciliation statement of account in the suit. In the court's view therefore, there is nothing precluding the said party from seeking joinder in the proceedings even at this stage.
  13. Upon the court's study of the record, it is apparent that the Applicant had previously filed an Advocate-Client Bill of Costs dated 19<sup>th</sup> November, 2010 against the Respondent herein, and which was taxed by the taxing master in the sum of Kshs. 2,657,738/-, resulting in the Certificate of Taxation dated 31<sup>st</sup> March, 2011. It is also apparent that the taxed costs were included in the reconciliation accounts between the Applicant and the Intended Interested Party, and that all the while, the latter was not a party to the present Cause and did not therefore participate in the said proceedings.
  14. In light of the foregoing factors, the court is satisfied that the Intended Interested Party has shown that it has a legal stake in the proceedings. Regarding likelihood of prejudice to be suffered, the court considered the averments by the Intended Interested Party that unless the order for joinder sought is granted, it may be compelled to pay to the Applicant the taxed sum pursuant to the reconciliation exercise, and yet it was never a party to the Cause or the taxation proceedings. The court similarly considered the averments brought forth by the Applicant to the effect that the Intended Interested Party was served with a copy of the Certificate of Taxation.
  15. Upon weighing the rival arguments against each other, the court concurs with the sentiments by the Intended Interested Party on the likelihood of prejudice being visited upon it should it be compelled to pay the taxed sums reconciled in the suit, in view of the fact that it was not a party to the Cause.
  16. Moreover, in the court's view the inclusion of the Intended Interested Party may assist in the promotion of its relevant rights including the right to be heard on any pending issues, such as issues surrounding payment of the taxed sums. In this respect, the court is guided by the decision of the Court of Appeal in *Yawa & 35001 others v Chome (Suing as the administrator of the Estate of the Late Mumba Chome Ngala (Deceased) & 19 others* (Civil Application 100 of 2018) [2018] KECA 35 (KLR) thus:

“In any event, courts all over have been consistent on the importance of observing the rules of natural justice and in particular hearing a person who is likely to be adversely affected by a decision before the decision is made. This much was appreciated by this Court in *Mbaki & Others v Macharia & Another* [2005] 2 EA 206, at page 210, as follows:

“The right to be heard is a valued right. It would offend all notions of justice if the rights of a party were to be prejudiced or affected without the party being afforded an opportunity to be heard.”
  17. In view of all the foregoing circumstances, the court is satisfied to exercise its discretion in favour of the Intended Interested Party by granting the order for enjoinder.
  18. On the second prayer seeking leave for the firm of M/s Mereka & Company Advocates to formally come on record for the Intended Interested Party, it is apparent from the record that the said firm of advocates filed its Notice of Appointment on 12<sup>th</sup> July, 2017. In view of the court's earlier decision granting the order for joinder, the court sees no reason to decline to grant this particular order as a result.
  19. Consequently, the following orders are granted:



- a. The Notice of Motion dated 15<sup>th</sup> September, 2017 is hereby allowed as prayed.
- b. Leave be and is hereby granted to New Kenya Co-Operative Creameries Ltd to be joined in the present proceedings as an Interested Party.
- c. Leave be and is hereby granted to the firm of M/s Mereka & Company Advocates to formally come on record for the Interested Party.
- d. In the circumstances, costs of the Notice of Motion dated 15<sup>th</sup> September, 2017 will be in the cause.

**DELIVERED AND SIGNED ELECTRONICALLY AT NAIROBI ON THIS 20<sup>TH</sup> DAY OF DECEMBER 2023.**

**C.MEOLI**

**JUDGE**

In the presence of

For the Applicant: Ms. Njoroge h/b for Mr. Mereka

For the Respondent: Mr. Kinyua h/b for Mr. Munge

