



CIC General Insurance Company Limited v Njihia & another; Supati & another (Intended Interested Party) (Suing as administrators of the estate of the late Simon Mwaniki Ng'ang'a) (Miscellaneous Civil Suit E028 of 2021) [2022] KEHC 15318 (KLR) (28 June 2022) (Ruling)

Neutral citation: [2022] KEHC 15318 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
MISCELLANEOUS CIVIL SUIT E028 OF 2021
SN MUTUKU, J
JUNE 28, 2022**

BETWEEN

CIC GENERAL INSURANCE COMPANY LIMITED PLAINTIFF

AND

MARGARET AMBOGO NJIHIA 1ST DEFENDANT

DANIEL NJIHIA MBUGUA 2ND DEFENDANT

AND

NAIPANOI SUPATI INTENDED INTERESTED PARTY

ZIPPORAH MUKAMI NG'ANG'A INTENDED INTERESTED PARTY

**SUING AS ADMINISTRATORS OF THE ESTATE OF THE LATE SIMON
MWANIKI NG'ANG'A**

RULING

Background

1. The background of this case is that the deceased, Simon Mwaniki Ng'ang'a, was involved in a fatal traffic accident. His wife and mother, the intended interested parties, filed for compensation claim *vide* Kajjado CMCC No E036 of 2011. They obtained a judgment against the plaintiff insurance company in the sum of Kshs 1,796,640 plus costs and interest. The plaintiff declined to pay the decretal sum on behalf of its insured.
2. The plaintiff/applicant herein has sued the defendants/respondents through an ex parte originating summons dated May 7, 2021 seeking, *inter alia*, leave to file a declaratory suit against them after limitation period. That pleading has attracted a notice of preliminary objection dated October 11, 2021



raised by the intended interested party contesting the jurisdiction of this court to hear and determine the ex parte originating summons. That notice of preliminary objection is pending.

3. The intended interested party has also filed the notice of motion dated December 3, 2021 which notice of motion has given rise to this ruling.

The Notice of Motion

4. The intended interested parties seek one main prayer: leave be granted to them, suing as the administrators of the estate of the late Simon Mwaniki Ng'ang'a, to be enjoined as interested parties and costs of the application.
5. In the grounds in support of the notice of motion to be found on the face of it and in the supporting affidavit of Naipanoi Supati sworn on December 3, 2021 the intended interested parties have explained the circumstances giving rise to this application.
6. It is deposed to in the supporting affidavit that the deceased was involved in a fatal traffic accident on or about July 5, 2019 when his motor cycle registration number KMEF 992W was hit by Respondents motor vehicle registration No KCF 871Q. This gave rise to the CMCC No E036 in which judgment was entered in favour of the intended interested party.
7. The respondent has opposed the application through the replying affidavit of Lydia Wairimu, the Legal Claims Manager, whose contents I have read and considered.
8. Directions were given by this court that this application be canvassed by way of written submissions.

Submissions

9. In their submissions dated June 2, 2022 and filed on June 6, 2022, the intended interested parties stated that were they to be locked out of these proceedings, they would be condemned unheard and their judgment would be rendered an academic exercise. They state that they filed a declaratory suit in Milimani Commercial E11066 of 2021 against the applicant herein which suit is defended by the applicant and which matter has a hearing date; that these declaratory proceedings would be rendered a nullity if the Intended interested parties are denied audience by this court.
10. They have submitted that the applicant will not suffer prejudice given that they will be heard. They have argued that they have a good case against the applicant in that they are the holders of a judgment in Kajiado CMCC No E036 of 2021 hence the reason to seek to be enjoined in these proceedings.
11. The respondent has raised four issues for determination, namely:
 - i. Who can come on record as an interested party?
 - ii. What is the intended interested parties' stake in the *ex-parte* originating summons?
 - iii. That prejudice do the intended interested parties stand to suffer if they are not allowed to come on record in the *ex-parte* application?
 - iv. Are the issues raised by the intended interested parties helping these proceedings?
12. I will handle these issues together.
13. The respondent has argued that the intended interested parties have no stake in the *ex-parte* originating summons. The respondent cited Supreme Court decision of *Francis Karioko Muruatetu & another v Republic* [2016] eKLR to support that submission. It is submitted that the outcome of the *ex-parte*



originating summons and the declaratory suit if the OS is successful will not have any effect on the intended interested parties.

14. The respondent further cited *Justin Kithinji Nderi & 2 others v DPP & another; Njiiru Micheni Nthiga (Interested Party)* [2020] eKLR where the court, while relying on *SKOV Estate Limited & 5 others v Agricultural Development Corporation & another*, stated that:

“ 18. In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such a person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation.”

15. It was submitted that the intended interested parties have not identified their stake in the *ex-parte* OS or the declaratory suit and therefore they have no standing to bring this application. Further that the intended interested parties will not suffer any prejudice. The respondent cited *John Harun Mwau v Simone Haysom & 2 others; Attorney General & 2 others (Interested Parties)* [2021] eKLR where the Supreme Court outlined the requisite elements to being enjoined as an interested party, inter alia, as follows:

“Enjoinment is not as of right, but is at the discretion of the court, hence, sufficient grounds must be laid before the court.....”

“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....”

16. It was submitted that the issues raised by the intended interested parties do not add value to the *ex-parte* OS and therefore the application to be enjoined ought to be dismissed with costs.

Determination

17. I have considered the notice of motion and the grounds in support of the same contained on the face of it and in the supporting affidavit and the respondent’s replying affidavit. I have considered the rival submissions and the cited authorities.
18. It is true that an intended interested party must demonstrate the stake in the suit he/she wishes to be enjoined. I have read the *ex-parte* OS. It seeks leave of this court to file a declaratory suit against Margaret Ambogo Njihai and Daniel Njihia Mbugua after limitation of period. It also seeks to have the annexed plaint deemed as duly filed upon payment of applicable fees. There is also a third prayer to stay proceedings in Kajiado CMCC No E036 of 2020 and any other suit arising from the road accident of July 5, 2019 involving motor vehicle No KCF 871Q pending the hearing and determination of the intended suit.
19. I agree with the respondent that the intended interested has not specified to which suit they seek to be enjoined. However, since the suit under reference is the *ex parte* OS, it is my view that the intended interested parties seek to be enjoined in that matter.
20. Had the *ex-parte* OS sought prayer 1 and 2 only, there would have been no issue. However, there is prayer 3 seeking to stay proceedings in Kajiado CMCC No E036 of 2020 and any other suit arising from the road accident of July 5, 2019 involving motor vehicle No KCF 871Q pending the hearing and determination of the intended suit.



21. Kajiado CMCC No E036 of 2020 was filed by the intended interested parties. They have a judgment against the respondents in the *ex-parte* OS. To avoid prejudicing the *ex-parte* OS, I hesitate to say more about prayer save that Kajiado CMCC No E036 of 2020 involves the intended interested parties. It would be in the interest of justice not to lock them out of a case that seeks to stay the proceedings in a matter where they are the judgment holders without hearing them out. To me this amounts to a stake in the *ex parte* OS.
22. Without belabouring the point, as long as prayer 3 is one of the prayers sought in the *ex parte* OS, this court will intervene and protect the interests of the intended interested parties in the *ex parte* OS. I therefore find that the intended interested parties have established a stake in the OS.
23. For the above reasons, and having considered the issues raised by the parties herein, I hereby allow the notice of motion dated December 3, 2021 in terms of prayer (1) one. In respect to costs, I order that each party bear own costs of this notice of motion.

DATED, SIGNED AND SIGNED THIS 28TH JUNE 2022.

S. N. MUTUKU

JUDGE

