



Patrick Sagwa Kisia t/a Steg Consultants v Attorney General & 2 others (Civil Suit 139 of 2010) [2022] KEHC 12445 (KLR) (Commercial and Tax) (29 July 2022) (Ruling)

Neutral citation: [2022] KEHC 12445 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT 139 OF 2010**

A MSHILA, J

JULY 29, 2022

BETWEEN

PATRICK SAGWA KISIA T/A STEG CONSULTANTS APPLICANT

AND

ATTORNEY GENERAL 1ST RESPONDENT

KAY CONSTRUCTION COMPANY 2ND RESPONDENT

MINISTRY OF EDUCATION 3RD RESPONDENT

RULING

Background

1. The Notice of Motion dated 24th May 2021 was brought under Sections 1A, 3A and 63(e) of the *Civil Procedure Act*, Order 1 rule 10 (2) and Order 51 Rule 1 of the *Civil Procedure Rules* and Article 159 2 (d) of *the Constitution*. The Applicant sought the following orders;
 - a. The court to grant leave to enjoin Patrick Sagwa Kisia t/a Steg Consultants as an interested party in this suit.
 - b. The proceeds of the judgment delivered in favour of the Plaintiff herein as against the Defendant herein be preserved pending the hearing and determination of this Application.
 - c. The costs of this Application be in the cause.
2. The Application was supported by the sworn Affidavit of Patrick Sagwa Kisia who stated that the Intended Interested Party/ Applicant instituted a suit being High Court Civil Suit No. 61 of 2016 as against the Plaintiff/ Respondent herein for the recovery of a sum of Kshs. 17,539,699.92 being the



fees he was entitled to for the services rendered to the Plaintiff herein plus interest at 19.49% from the date of the Final Certificate until payment in full.

3. The suit was placed before the Hon. Lady Justice Maureen Odera who thereafter entered judgement in favor of the Intended Interested Party against the Plaintiff herein on the 12th February 2021 where the court directed that the sum of Kshs. 17,539,699.92 plus interest at 19.49% from the date of the Final Certificate until payment in full be paid to the Interested Party by the Plaintiff herein upon receipt of the payment due to it from the Defendants herein.
4. The Intended Interested Party/Applicant is apprehensive that once the proceeds of the judgement in this suit is released to the Plaintiff/Respondent herein, the amounts owing and due to him will not be remitted and it is therefore necessary to have the proceeds of the judgement preserved.
5. Justice in this case dictates that the Intended Interested Party/Applicant be enjoined to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit.
6. The Intended Interested Party/Applicant stands to suffer irreparable loss and damage if the orders sought are not granted and there will be no prejudice visited on either party if the Intended Interested Parties are enjoined to the proceedings.
7. The Application was unopposed.

Issues for determination

8. The Court has considered the Application and the Affidavit in support and the issue for determination is;
 - a. Whether the Interested Party should be enjoined to the suit;

Analysis

9. The Application was premised on the provision of Order 1 Rule 10(2) of the Civil Procedure Rules provides that;

“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 and settle all questions involved in the suit, be added.”

10. In essence the courts are empowered with the discretion to either have a party improperly before it struck out from the proceedings or have a necessary party enjoined in the proceedings. This is in turn backed by proviso of Rule 7 (1) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 that a person can seek leave of the court either orally or by way of a formal application to be enjoined as an interested party.
11. In *Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others* [2017] eKLR, the court explained when an interested party ought to be enjoined in a proceeding as follows;

“A person is legally interested in the proceedings only if he can say that it may lead to a result that will affect him legally that is by curtailing his legal rights. In determining whether or



not an applicant has a legal interest in the subject matter of an action sufficient to entitle him to be joined as an interested party the true test lies not so much in an analysis of what are the constituents of the applicant's rights, but rather in what would be the result on the subject-matter of the action if those rights could be established. It is apparent that a party claiming to be enjoined in proceedings must have an interest in the pending litigation, but the interest must be legal, identifiable or demonstrate a duty”.

12. In the case of *Communications Commission of Kenya & 4 others v Royal Media Services Limited & 7 others* [2014] eKLR the Supreme Court of Kenya held that;

“(22) In determining whether the applicant should be admitted into these proceedings as an Interested Party we are guided by this Court’s Ruling 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 questions 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.”

13. The Court has perused the Applicant’s annexures to the Application and it is evident that the Applicant was hired by the Plaintiff herein to determine the Final Accounts and the drawing of the Final Certificate of payment over a building contract between the Plaintiff and the 2nd Defendant. The Final Certificate which became the subject matter in the suit herein.

14. Given the fact that the Applicant prepared the Final Certificate which is the subject matter of the present suit; the Interested Party’s presence may assist in the determination of all the questions involved in the proceedings.

15. It is in the Court’s view that the outcome of this suit will adversely affect the Applicant herein and could potentially lead to the filing of another suit. Therefore, it is in the interest of justice that the Applicant is enjoined to the suit as an Interested Party so as to avoid multiplicity of suits as the Applicant is apprehensive that once the proceeds of the judgment in this suit are released to the Plaintiff/Respondent herein, the amounts due and owing to the Applicant will not be remitted.

16. The Application was unopposed and the Court is equally satisfied that the Interested Party has made out a good case for being enjoined in the suit herein.

Findings and determination

17. In light of the forgoing this court makes the following findings and determinations;

i. The Application is found to have merit and it is hereby allowed.



ii. The court hereby grants leave to Patrick Sagwa Kisia t/a Steg Consultants to be enjoined to these proceedings as an interested party.

iii. The applicant to bear its own costs.

iv. Matter be mentioned on 27/10/2022 for directions.

DATED SIGNED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 29TH DAY OF JULY, 2022.

HON. A. MSHILA

JUDGE

In the presence of;

Misere for the interested party

Nthigah for the Attorney General

Lucy-----Court Assistant

