



**Godana v Trident Insurance Company Limited; Mbithe (Intended Interested Party)  
(Suing in her capacity as administratrix of the estate of Alphonse Okumu Ojwang)  
(Civil Suit E022 of 2021) [2022] KEHC 17089 (KLR) (21 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 17089 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL SUIT E022 OF 2021  
MN MWANGI, J  
OCTOBER 21, 2022**

**BETWEEN**

**MOHAMED KHALIF GODANA ..... PLAINTIFF**

**AND**

**TRIDENT INSURANCE COMPANY LIMITED ..... DEFENDANT**

**AND**

**JUDITH MBITHE ..... INTENDED INTERESTED PARTY  
SUING IN HER CAPACITY AS ADMINISTRATRIX OF THE ESTATE OF  
ALPHONCE OKUMU OJWANG**

**RULING**

1. The application before this court is a notice of motion dated April 25, 2022 brought under the provisions of sections 1A, 1B, 3 & 63(e) of the *Civil Procedure Act*, order 51 rules 1, 3, & 4 of the *Civil Procedure Rules, 2010* and all other enabling and applicable provisions of the law. The intended interested party/applicant seeks the following orders-
  - i. Spent;
  - ii. That this honourable court do grant orders to the intended interested party to be enjoined (sic) to the suit;
  - iii. Spent; and
  - iv. That costs of the application be in the cause.



2. The application is supported by an affidavit sworn on April 25, 2022 by Judith Mbithe, the intended interested party herein. In opposition thereto, the plaintiff filed a replying affidavit sworn by Mohamed Khalif Godana, the plaintiff/respondent herein on May 6, 2022.
3. The application herein was canvassed by way of written submissions. The applicant's submissions were filed by the law firm of Jane Kagu & Co Advocates on May 23, 2022, whereas the respondent's submissions were filed by the law firm of Mogaka Omwenga & Mabeya Advocates on June 21, 2022.
4. Mrs Mathenge, learned counsel for the applicant submitted that the applicant's deceased husband was travelling from Malindi to Mombasa on March 15, 2020 as a fare paying passenger aboard motor vehicle registration No KAV 036P Nissan matatu, when the said motor vehicle was hit by motor vehicle registration No KBG 772M Mitsubishi FH lorry and as a result of the said accident, the deceased succumbed to the injuries sustained therein.
5. The applicant's counsel further submitted that thereafter, the applicant took out a limited grant of letters of administration ad litem in Kilifi CMCC No 90 of 2020 and filed Kilifi SPMCC No E71 of 2022 against Omar Khalif Noor who was the insured of the motor vehicle that was blamed for causing the accident. She stated that the suit was heard, determined and judgment delivered on March 7, 2022 in favour of the applicant herein for Kshs 889,436.80.
6. Mrs Mathenge submitted that upon service of the requisite notice of entry of judgment on the respondent's advocates, the applicant's advocates were informed of the order of this court dated May 19, 2021 (sic). Mrs Mathenge relied on the case of *Julian Adoyo Ongunga & another v Francis Kiberenge Bondeva (suing as the administrator of the Estate of Fanuel Evans Amudavi, (deceased))* [2016] eKLR and submitted that since the applicant had established the validity of the limited grant of letters of administration ad litem issued to her, she qualifies to be joined to the suit herein as an interested party.
7. The applicant's counsel cited the *Black's Law Dictionary*, 9<sup>th</sup> Edition which defines an interested party at page 1232 as a party who has a recognizable stake (and therefore standing) in a matter. She also cited the Supreme Court decision in *Francis Kariuki Muruatetu & another v Republic & 5 others* [2016] eKLR, where the Supreme Court defined an interested party as one who has a stake in the proceedings, though he or she was not party to the cause *ab initio*. Mrs Mathenge relied on the case of *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others* [2014] eKLR and submitted that whereas the orders of this court of May 19, 2021 (sic) directly affect the applicant who has a judgment in her favour for the benefit of the estate of the deceased, the respondent had not demonstrated the prejudice he would suffer in the event the application herein is allowed.
8. Mr Omwenga, learned counsel for the respondent relied on the Court of Appeal decision in *Alfred Njau v City Council of Nairobi* [1983] KLR 625 and the case of *Julian Adoyo Ongunga v Francis Kiberenge Abano* [2016] eKLR and submitted that the applicant herein lacks the requisite locus standi to prosecute the application herein. He further submitted that when a party instituting a suit lacks locus standi, then automatically the court will be limited in so far as jurisdiction to hear and determine the matter is concerned. To buttress his argument, he indicated that on August 20, 2020, the applicant herein was granted limited grant of letters of administration ad litem only for purposes of filing the suit arising out of a road traffic accident which occurred on March 15, 2020 until further representation, which did not include prosecuting the application herein.
9. He relied on the case of *Lydia Ntembi Kairanya & another v Attorney General* [2009] eKLR and the case of *Skov Estate Limited & 5 others v Agricultural Development Corporation & another* [2015] eKLR and submitted that the bottom line of the suit herein is not aimed at adversely affecting the interested party's right in any manner but is meant to ensure that the defendant herein honours its



statutory mandate of paying the decretal sum arising out of an accident that occurred on March 15, 2020 involving motor vehicle registration Nos KBG 772M and KVA 036P.

10. Mr Omwenga cited the *Black's Law Dictionary* definition of an interested party and the Supreme Court decision in *Francis Karioko Muruatetu and another v Republic & 5 others* [2016] eKLR, where the court laid down the elements for consideration when dealing with an application for joinder of an interested party. He submitted that the suit herein is only intended to have the defendant pay the entire decretal sum in Kilifi SPMC E71 of 2020 by enforcing the contractual relationship between him and the defendant herein whose terms are not privy to the interested party. He referred to the case of *Savings & Loan (K) Limited v Kanyenje Karangaita Gakombe & another* [2015] eKLR, where the Court of Appeal deliberated on the doctrine of privity of contract at length.

### Analysis And Determination

11. I have considered the application filed herein, the affidavit filed in support thereof, the replying affidavit by the respondent as well as the written submissions by counsel for the parties. The issues that arise for determination are-
  - i. Whether the applicant has the requisite locus standi to file the application herein; and
  - ii. If the applicant should be joined as a party to this suit.
12. In the affidavit filed by the applicant, she deposed that through a letter dated March 29, 2022, his advocates on record were informed of the orders of this court staying all judgments emanating from the accident which occurred on March 15, 2022 involving motor vehicle registration number KBG 772M and KAV 036P. The applicant averred that the outcome of the suit herein shall affect her since she has a judgment in her favour against the respondent herein, which judgment she is unable to execute. She further averred that it is in the interest of justice that this court grants the orders sought since in the event the application is disallowed, the outcome of this case may adversely affect her, causing irreparable loss.
13. The respondent in his replying affidavit deposed that the applicant had not provided any substantive evidence to show that she has authority to act on behalf of the estate of the deceased Alphonse Okumu Ojwang. He averred that this suit is not opposed to having the interested party paid, and that the suit goes a long way to facilitate the payment of the decretal sum. He further averred that the suit herein purely relates to a contractual relationship between the plaintiff and the defendant, which the interested party is not privy to.

Whether the applicant herein has the requisite *locus standi* to file the application herein.

14. This court has at first to determine the meaning of *locus standi*. *Locus standi* is defined in *Black's Law Dictionary*, 10<sup>th</sup> Edition at page 1084 as “the right to bring an action or to be heard in a given forum”. In *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2014] eKLR, the Supreme Court of Kenya held that the issue of locus standi raises a point of law that touches on the jurisdiction of the court, and it should be resolved at the earliest opportunity.
15. It is not disputed that the applicant took out a limited grant of letters of administration *ad litem* in Kilifi CMCC No 90 of 2020 and filed Kilifi SPMCC No E71 of 2022 against Omar Khalif Noor who was the insured for the motor vehicle that was blamed for having caused the accident, which suit was heard, determined and judgment delivered on March 7, 2022, in favour of the applicant herein for Kshs 889,436.80. The respondent contends that the said letters of grant of administration *ad litem* were only limited to the filing of Kilifi SPMCC No E71 of 2022 and nothing more and therefore, the applicant has no capacity to file the application herein.



16. A perusal of the respondent's plaint dated March 1, 2021 reveals that the suit herein is anchored on the accident that occurred on March 15, 2020. In addition, the respondent's prayer in the said plaint is for this court to order the defendant herein to take up the defence of the matters to be filed and settle the third party claims that may arise out of the said accident. It is evident from the limited grant of letters of administration *ad litem* issued to the applicant on August 20, 2020 that the same were limited to the filing of a suit arising out of a road traffic accident which occurred on March 15, 2020.
17. Based on the preceding paragraph of this ruling, it is this court's finding that since the applicant herein has a valid judgment that was delivered by the Principal Magistrate in Kilifi on March 7, 2022, which is subject to final orders that may be granted in the suit herein, she has the requisite *locus standi* to file the application before this court by virtue of the said judgment and the limited grant of letters of administration *ad litem* issued to the applicant on August 20, 2020.

### **If The Applicant Should Be Joined As A Party To This Suit.**

18. The *Black's Law Dictionary*, 10<sup>th</sup> Edition at page 1298 defines an interested party as "a party who has a recognizable stake (and therefore standing) in a matter". The Supreme Court in the case of *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others* (supra) in dismissing a similar application also defined an interested party as hereunder-

"Consequently, 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"

19. The guiding principles encompassing the joinder of an interested party to a suit were articulated by the Supreme Court in *Attorney General v David Ndi & 73 others* (Petition 12 (E016) of 2020) [2021] KESC 17 (KLR) (9 November 2021) (Ruling) as hereunder-

2. The guiding principles applicable in determining an application to be enjoined (sic) as an interested party in were;
  - i. one had to move the court by way of a formal application. Enjoinment was not as of right, but was at the discretion of the court; hence, sufficient grounds had to be laid before the court, on the basis of the following elements:
  - ii. the personal interest or stake that the party had in the matter had to be set out in the application. The interest had to be clearly identifiable and had to be proximate enough, to stand apart from anything that was merely peripheral.
  - iii. The prejudice to be suffered by the intended interested party in case of non-joinder, had to also be demonstrated to the satisfaction of the court. It had to also be clearly outlined and not something remote.
  - iv. A party's application had to set out the case and/or submissions it intended to make before the court, and demonstrate the relevance of those submissions. It should also demonstrate that those submissions were not merely a replication of what the other parties would be making before the court."

20. The respondent's prayer in the suit herein is for this court to order the defendant to take up the defence of the matters to be filed, and settle third party claims that may arise out of the said accident that



occurred on March 15, 2020. It is not disputed that one of the said third party claims to be settled is the applicant's judgment for Kshs 889,436.80 delivered in Kilifi SPMCC No E71 of 2022 on March 7, 2022. It then follows that the outcome of the suit herein shall have an effect on the said judgment in one way or the other. I am of the considered view that the intended interested party has brought credible evidence to demonstrate an identifiable legal stake in the proceedings herein.

21. It is also important to note that the applicant herein has a valid judgment delivered in Kilifi SPMCC No E71 of 2022 on March 7, 2022 that has not been set aside and/or varied. In addition, there is no evidence of an appeal having been lodged against the said decision therefore, pursuant to the orders of this court issued on March 15, 2021, the applicant herein cannot execute the said judgment as the decision in Kilifi SPMCC No E71 of 2022 of March 7, 2022 has not been concluded as it is pending execution. As correctly submitted by the applicant, the orders for stay of execution made by this court directly affect the applicant who has a judgment in her favour. This court's finding is that the applicant herein has demonstrated to the satisfaction of this court the prejudice she stands to suffer in the event the application herein is not allowed.
22. On the final principle, the applicant is required to present an overview of her case and the submissions she intends to make before this court and to show her relevance to the suit. The applicant has clearly presented her case as a successful litigant in Kilifi SPMCC No E71 of 2022 who seeks to enforce her judgment. I therefore find that the applicant has clearly indicated the case she intends to establish.
23. Having considered all the foregoing factors, it is my finding that the application dated April 25, 2022 is merited. The same is allowed in the following terms-
  - i. That this court hereby grants an order for joinder of the intended interested party to this suit; and
  - ii. That the costs of this application shall abide the outcome of the main suit.

It is ordered.

**DATED, SIGNED and DELIVERED at MOMBASA on this 21<sup>st</sup> day of October, 2022. Ruling delivered through Microsoft Teams Online Platform.**

**NJOKI MWANGI**

**JUDGE**

Mr. Mathenge for the intended interested party/applicant

Mr. Mayeka h/b for Mr. Omwenga for the plaintiff/respondent

Mr. Oliver Musundi – Court Assistant.

