



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL SUIT NO. 63 OF 2020

HARPAL SINGH SEMHI.....1ST PLAINTIFF
KENNEDY OBUYA.....2ND PLAINTIFF
KALPSESH SOLANSKI.....3RD PLAINTIFF
PEARLYNE OMAMO.....4TH PLAINTIFF
OMOLE ASIKO.....5TH PLAINTIFF

-VERSUS-

ZEHRABANU JANMOHAMMED.....1ST DEFENDANT
TOM TIKOLO.....2ND DEFENDANT
MUKHTAR ASSARIA.....3RD DEFENDANT
CHARLES NYABERI.....4TH DEFENDANT

AND

SPORTS REGISTRAR.....1ST INTERESTED PARTY
MURTAZA TAJBHAI.....2ND INTERESTED PARTY
BRENDA MOGUSU.....3RD INTENDED INTERESTED PARTY
SHEM NGOCHE.....4TH INTENDED INTERESTED PARTY
EMMANUEL BUNDI RINGERA.....5TH INTENDED INTERESTED PARTY
ELIJAH OTIENO.....6TH INTENDED INTERESTED PARTY
NEHEMIAH ODHIAMBO.....7TH INTENDED INTERESTED PARTY
EUGENE OCHIENG.....8TH INTENDED INTERESTED PARTY
NELSON ODHIAMBO.....9TH INTENDED INTERESTED PARTY
COLLINS OMONDI.....10TH INTENDED INTERESTED PARTY

RULING

1. Before me for determination are the notice of preliminary objection dated 22nd June, 2020 filed by the 1st defendant and the Notice of Motion dated 16th June, 2020 brought by the 3rd – 10th intended interested parties herein, supported by the grounds set out therein and the facts stated in the affidavit of the 3rd intended interested party.

2. In the preliminary objection on the one part, the 1st defendant sought to challenge the 4th plaintiff's attempt to act in person on the ground that there cannot be multiple independent representation of joint plaintiffs without first seeking and obtaining leave of the court.

3. On the other part, the intended interested parties sought for the following orders in their aforesaid Motion:

(i) Spent.

(ii) THAT the intended interested parties be hereby enjoined as the 3rd – 10th interested parties in the matter.

(iii) THAT pursuant to the above, the 3rd – 10th interested parties be hereby granted leave to file any pleadings in the matter and to give oral submissions.

(iv) THAT costs be in the cause.

4. In her affidavit, the 3rd intended interested party stated that the intended interested parties herein are employees of Cricket Kenya but that since 10th May, 2020 they have not received their salaries and their interests have been adversely affected by the paralysis in the operations of Cricket Kenya and that their employment status remains unknown since.

5. The deponent further stated that in the absence of an Interim Executive Board to manage Cricket Kenya, they are left in a state of limbo.

6. It was the averment of the deponent that from the foregoing, it is clear that the intended interested parties have a stake in the suit since the same not only relates to matters cricket but any orders made by this court in the suit will have an impact on the intended interested parties and the wider cricket community.

7. To oppose the Motion, the defendants put in separate Grounds of Opposition. In the Grounds of Opposition filed on 6th July, 2020 the 1st defendant put forward the following grounds:

1) THAT the application is frivolous, fatally defective, vexatious and ought to be struck out with costs.

2) THAT there does not exist under Order 1, Rule 10 of the Civil Procedure Rules a provision allowing a party in civil proceedings to be enjoined as an interested party.

3) THAT under the Civil Procedure Rules it is apparent that a party ought to be enjoined in proceedings either as a plaintiff or a defendant.

4) THAT the grounds relied upon by the 3rd – 10th intended interested parties in their application for joinder of parties falls exclusively under the Employment and Labour Relations Court realm as evidenced by Section 12 of the Employment and Labour Relations Act, 2011.

5) THAT the reliefs sought by the intended interested parties falls within the exclusive jurisdiction of the Employment and Labour Relations Court.

6) THAT the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 defines an interested party as;

“A person or an entity that has an identifiable stake or a legal interest or duty in the proceedings and may not be directly involved in the litigation.”

7) THAT the mere mention of the interested party does not entitle the parties to be enjoined to the proceedings as a party must be seeking a relief in the respective matter in which they are seeking joinder as one of the pre-conditions for joinder.

8) THAT the intended interested parties have not shown sufficient stake in the proceedings at hand and that their presence will help determine the issues in dispute.

9) THAT the intended interested parties have not shown that their presence in the suit is necessary to enable the court effectually and completely adjudicate and settle the issues in the suit.

10) THAT the intended interested parties have not demonstrated that they have sufficient interest in the subject matter of the suit and/or that they are going to be adversely affected by any orders that may be made in the suit regarding the subject matter.

11) THAT the application filed herein is an abuse of the court process and in that regard, the 1st defendant opposes the same and

prays that this court declines to enjoin the 3rd – 10th intended interested parties.

8. The 2nd and 4th defendants raised the following grounds in their Grounds of Opposition dated 26th June, 2020:

- 1) *The intended interested parties' claim lies within the jurisdiction of the Employment and Labour Relations Court, and which this court does not have jurisdiction over.*
- 2) *The intended interested parties do not have any stake, legal or otherwise, in relation to the issues raised in the suit by the parties.*
- 3) *The intended interested parties do not stand to suffer any prejudice by virtue of the orders sought by the plaintiffs since they are not in the management of Cricket Kenya.*
- 4) *The intended interested parties' reliance on the consent recorded in Nairobi HCCC 222 of 2019 (Ground 4(d) of the application) is vexatious.*
- 5) *The application in its entirety is an abuse of the court process.*

9. On his part, the 3rd defendant through his Grounds of Opposition dated 24th June, 2020 put forward the seven (7) grounds hereunder:

- 1) *The suit herein relates to the Interim Executive Board of Cricket Kenya: -*
 - a) *Passing of a new Constitution for Cricket Kenya compliant with the Constitution of Kenya 2010 and the Sports Act No. 25 of 2013 to replace the non-compliant Cricket Kenya Constitution dated 23rd January, 2006, and*
 - b) *Holding of elections under the adopted Constitution.*
- 2) *The applicants claim to be employees of Cricket Kenya; they have not shown or demonstrated that they have any contracts with Cricket Kenya.*
- 3) *The applicants are not involved in the management and/or affairs of the Interim Executive Board of Cricket Kenya hence they have no interest in the adjudication of the suit.*
- 4) *The applicants have not demonstrated any factual or legal basis to be joined in the suit as intended interested parties.*
- 5) *The applicants have not shown and/or demonstrated any tangible stake or interest in the matter as alleged employees of Cricket Kenya.*
- 6) *The applicants' dispute, if any, is hinged on payment of salaries, which is a matter within the jurisdiction of the Employment and Labour Relations Court and not this court.*
- 7) *The Notice of Motion is frivolous and an abuse of the court process and should be dismissed with costs.*

10. Parties thereafter filed written submissions on both the preliminary objection and the Motion.

11. In respect to the preliminary objection, the 1st defendant submitted that the 4th plaintiff ought to have first sought and obtained leave of the court before filing her notice of intention to act in person. The 1st defendant argued that the courts in exercising inherent jurisdiction have held that save in exceptional circumstances, it is only upon seeking and obtaining leave that plaintiffs can have separate representation where they have a common claim and interest in the suit. The 1st defendant urged this court to consider the reasoning adopted by the High Court in the case of **Christopher Kipkorir Lebo & 331 Others v Kenya Power & Lighting Company Limited [2008] eKLR** when it held that co-plaintiffs may only be represented by separate advocates in exceptional cases and always with leave of the court save for cases of consolidation of suits for purposes of addressing the issue of damages.

12. Further to the foregoing, the 1st defendant referred this court to the case of **Grace Samba and 27 others v Christine Nyamalwa [2015] eKLR** where the court rendered itself thus:

“While there is no rule against different counsel appearing for different plaintiffs in a case where the plaintiffs may in accordance with the rules of court be properly joined as plaintiffs, litigation is more efficiently conducted with the plaintiffs being represented by the same counsel or group of counsel with one leader to avoid different positions being taken and litigated in the matter where the plaintiffs have the same case and interest in the matter and necessitating different applications.”

13. It is therefore the submission of the 1st defendant that upon considering the nature of the case at hand, should the 4th plaintiff wish to act in person, she should approach this court in the proper manner by first seeking leave of the court.

14. On her part, the 4th plaintiff submitted that the 1st defendant's preliminary objection is not sustainable as it does not raise pure points of law in line with the principles encompassing preliminary objections, as appreciated by the court in the case of **Performance Products Ltd &**

another v Hassan Wario Arero & 7 others [2018] eKLR when it held thus:

“As stated in the celebrated case of Mukisa Biscuits Manufacturing Co Ltd v West End Distributors (1969) EA 696:

“...a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

15. The 4th plaintiff further submitted that there is no legal provision that bars a party from seeking separate legal representation or acting in person in a matter involving multiple co-parties and that a court can revoke a plaintiff's right to represent himself or herself where such right undermines the rights of his or her co-plaintiffs or undermines the ability of the court to properly adjudicate over the matter before it as a consequence of conflicting positions taken by the plaintiffs.

16. According to the 4th plaintiff, she has a constitutional right to represent herself and it is not mandatory for her to seek leave of the court to do so, further arguing that the 1st defendant has not shown that any of the parties to the suit stand to suffer prejudice following the change in representation of the 4th plaintiff. The 4th plaintiff termed the 1st defendant's preliminary objection as purely speculative in nature and associated this point with that made by the court in the judicial authority of **Wanjiru Gikonyo & 2 others v National Assembly of Kenya & 4 others [2016] eKLR** as follows:

“The court is not expected to engage in abstract arguments. The court is prevented from determining an issue when it is too early or simply out of apprehension, hence the principle of ripeness. An issue before the court must be ripe, through a factual matrix, for determination.”

17. The 4th plaintiff also mentioned that the case of **Christopher Kipkorir Lebo & 331 Others v Kenya Power & Lighting Company Limited [2008] eKLR** which was cited by the 1st defendant was decided before promulgation of the Constitution of Kenya, 2010 and involved different circumstances of representation from those presently before this court.

18. For the foregoing reasons, the 4th plaintiff submitted that the preliminary objection ought to be dismissed with costs to herself.

19. Concerning the Motion dated 16th June, 2020 the intended interested parties who filed their joint submissions on 20th July, 2020 argued that the law on joinder of interested parties is well settled, as articulated *inter alia*, by the Supreme Court in the case of **Francis Kariuki Muruatetu & another v Republic & 5 others [2016] eKLR**.

20. The intended interested parties restated their averment that they have been and continue to be affected by the failure of the Interim Executive Board to comply with terms of the consent recorded in HCCC 221 of 2019 whereby the Board would pass a new Constitution for Cricket Kenya which is compliant with the provisions of the Constitution of Kenya, 2010 and the Sports Act No. 25 of 2013, and to further hold elections under the New Constitution, hence the issues to be articulated before this court will have an unequivocal impact on them.

21. The intended interested parties are of the view that it would be imperative for their views to be taken into consideration before determination by this court of the issues arising in the suit.

22. Further to the foregoing, the intended interested parties expressed their concerns that their interests do not lie with the ELRC; rather, they are apprehensive that they stand to be affected by the result of the proceedings hence the need for their enjoinder in the suit.

23. In response, the 1st defendant submitted that the claims/legal interests made by the intended interested parties fall within the jurisdiction of the Employment and Labour Relations Court (ELRC) hence this court has no jurisdiction over such claims pursuant to the provisions of Article 165 (5) (b) of the Constitution and reaffirmed *inter alia*, by the Court of Appeal in the case of **Law Society of Kenya Nairobi Branch v Malindi Law Society & 6 others [2017] eKLR** as hereunder:

“However, as already stated, Article 165 (5) is clear that the High Court has no jurisdiction in respect of matters falling within the jurisdiction of the specialized courts.”

24. The 1st defendant also submitted that given the employer-employee relationship existing between Cricket Kenya and the intended interested parties and which relationship does not relate to the present claim, there is no legal basis for their joinder in the suit. The 1st defendant made reference to the following decision by the Supreme Court in the authority of **Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others [2015] eKLR**:

“...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.”

25. Plainly, it was the contention of the 1st defendant that the intended interested parties have not laid ground to show that they have a personal or legal stake in the proceedings to warrant their enjoinder in the suit.

26. On their part, the 2nd and 4th defendants reiterated the position taken by their counterpart that the claims raised by the intended interested parties fall within the jurisdiction of the ELRC and that they have demonstrated their legal interest in the case since the same relates to the Constitution and Executive Board of Cricket Kenya and not its employees.

27. The aforementioned defendants went further on to argue that the consent relied upon by the intended interested parties in their Motion does not involve them since they were not parties thereto.

28. The 3rd defendant followed with the submission that the intended interested parties have not shown that they were at all material times employees of Cricket Kenya or that their claim has a nexus to the subject in issue in the present case, including their involvement in the management or affairs of the Board of Cricket Kenya. Reference was made to various authorities, including the case of **Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others [2017] eKLR** in which the High Court held that the test of joinder is whether an intended interested party has an identifiable stake or a legal interest or duty in the proceedings.

29. I have considered the grounds set out in the preliminary objection and the Motion respectively; the facts deponed in the supporting affidavit; the Grounds of Opposition brought by the respective defendants and the rival submissions by the parties together with the authorities cited.

30. I will first address my mind to the preliminary objection before I proceed with the Motion.

31. As earlier mentioned, the preliminary objection which was raised by the 1st defendant concerns itself with the decision by the 4th plaintiff to act in person pursuant to the notice to act in person which was filed on 5th June, 2020.

32. To begin with, the court in the renowned case of **Mukisa Biscuit Company v West End Distributors Limited (1969) EA 696** and reaffirmed by the court in the case of **Performance Products Ltd & another v Hassan Wario Arero & 7 others [2018] eKLR** cited by the 4th plaintiff, elaborated on the definition and purpose behind preliminary objections in the following manner:

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

33. In the former case I have cited hereinabove, the court went ahead to list instances in which a preliminary objection would apply, which include an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the subject contract to refer the dispute to arbitration.

34. It therefore follows from the above that a notice of preliminary objection cannot apply to issues requiring further investigation of facts and evidence by the court.

35. Upon consideration of the conflicting positions taken by the relevant parties on this issue, I note that there is no strict law or legal provision which precludes different advocates from appearing on behalf of different plaintiffs. This position was succinctly stated by the court in the case of **Grace Samba and 27 others v Christine Nyamalwa [2015] eKLR** quoted in the submissions of the 1st defendant, with the court further rendering that the importance of having the same advocate(s) lies in ensuring the efficiency in litigation and to prevent the confusion that comes with parties taking different positions in a matter, particularly where the plaintiffs share a common interest.

36. In the present instance, I note that the 4th plaintiff who described herself as an advocate of the High Court of Kenya, argued that her desire to act in person as opposed to seeking legal representation is prompted by financial constraints and that she is still willing to cooperate with the advocate representing her co-plaintiffs. In my view, I think that there is nothing to bar her from choosing to represent herself. It is apparent that the issue of multiple representations for multiple parties is an issue to be determined pursuant to the discretion of the courts and the efficiency of the litigation process.

37. In the absence of a clear/mandatory legal position on this issue, I find that the preliminary objection is incompetent and I am inclined to dismiss it with costs to the 4th plaintiff.

38. In respect to the Motion, I first wish to address the argument raised by the 1st defendant that the provisions of **Order 1, Rule 10 (2)** of the Civil Procedure Rules cannot apply to the intended interested parties since they are neither seeking to be enjoined as plaintiffs nor defendants in the suit. The aforesaid provision expresses the following:

“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.”

39. From my understanding of the above, 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.

40. Upon my study of the two (2) provisions set out hereinabove, I do not find the position taken by the 1st defendant on this issue to be tenable and more so in view of **Rule 7 (1)** (supra) which enables a party wishing to be enjoined as an interested party to apply accordingly.

41. Having determined so, it is for me to now address the merits of the Motion to do with enjoinder of the intended interested parties.

42. Various attempts have been made at defining the term ‘interested party.’ For instance, the proviso of **Rule 2** of the **Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013** which was echoed by the court in the case of **Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others [2015] eKLR** quoted by the 1st defendant expresses the following:

“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.”

43. Similarly, the court in the case of **Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others [2017] eKLR** cited by the 3rd defendant, borrows from the Black’s Law Dictionary 9th edition definition of the term as follows:

“A party who has a recognizable stake (and therefore standing) in the matter.”

44. The guiding principles encompassing the enjoinder of an interested party to a suit were articulated by the Supreme Court in the decision of **Raila Amolo Odinga & another v Independent Electoral and Boundaries Commission & 2 others & Michael Wainaina Mwaura (as Amicus Curiae) [2017] eKLR** with reference to **Francis Kariuki Muruatetu & Another v Republic & 5 others Petition 15 as consolidated with 16 of 2013 [2016] eKLR** relied upon both by the 1st defendant and the intended interested parties, and are as follows:

“One must move the Court by way of a formal application. Enjoinder 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.”

45. It is apparent that at the crux of the suit is the issue of non-compliance of the Interim Executive Board in passing a new Constitution for Cricket Kenya in tandem with the provisions of the Constitution of Kenya, 2010 and the Sports Act No. 25 of 2013, and in further failing to hold elections under the New Constitution.

46. Under the first principle, upon considering the position by the intended interested parties hand in hand with those portrayed by the defendants, I am of the view that the intended interested parties have not brought any credible evidence to demonstrate an identifiable legal stake in the proceedings. More specifically, they have not shown the existence of any direct association or relationship with the Interim Executive Board of Cricket Kenya be it by way of employment agreement or other means. Even assuming that they are employees of Cricket Kenya their grievances relate to issues of employment which should effectively be handled by the ELRC which is mandated to deal with the same under the constitution.

47. In respect to the second principle on prejudice, the law is well settled that a party ought to demonstrate the prejudice he or she stands to suffer if adverse orders are made. I considered the averments made by the intended interested parties which I have set out hereinabove and upon weighing them against those made by the defendants, I am of the view that the intended interested parties have also not demonstrated to the satisfaction of this court the prejudice they stand to suffer in the event that they are not enjoined in the suit, whether financially or otherwise.

48. On the final principle, the intended interested parties were required to present an overview of their case and submissions they intend to make before this court and to show their relevance to the suit. Upon my perusal of the Motion, I did not come across anything to indicate the case to be established by the intended interested parties.

49. In the premises, I have no grounds on which to find that the enjoinder of the intended interested parties in the suit is a matter of necessity.

50. The outcome therefore is that the Motion dated 16th June, 2020 is hereby dismissed with costs to the 1st, 2nd, 3rd and 4th defendants. As earlier noted, the preliminary objection is hereby dismissed.

Dated, signed and delivered at NAIROBI this 30th day of July, 2020.

.....

L. NJUGUNA

JUDGE

In the presence of:

..... for the 1st, 2nd, 3rd and 5th Plaintiffs

..... for the 4th Plaintiff

..... for the 1st Defendant

..... for the 2nd and 4th Defendants

..... for the 3rd Defendant

..... for the 1st and 2nd Interested Parties

..... for the 3rd - 10th Intended Interested Parties