



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

PETITION NO. 9 OF 2019

WANJA KARUKU.....PETITIONER

VERSUS

THE TRAFFIC COMMANDANT DEPARTMENT.....1ST RESPONDENT

THE NATIONAL TRANSPORT AND SAFETY AUTHORITY....2ND RESPONDENT

MINISTRY OF INTERIOR.....3RD RESPONDENT

PAYMATIC LIMITED.....4TH RESPONDENT

POWER OF GOVERNORS.....5TH RESPONDENT

JENDIE GOVERNORS.....6TH RESPONDENT

SIMBA GOVERNORS.....7TH RESPONDENT

BATTON CONTRACTORS LIMITED.....8TH RESPONDENT

CABLE CARE COOPERATION.....9TH RESPONDENT

OSG48 BY ORIENT SCIENTIFIC LIMITED.....10TH RESPONDENT

SMART FAST TRACKERS.....11TH RESPONDENT

ROAD SAFETY AUTHORITY OF KENYA.....12TH RESPONDENT

DALCOM KENYA LIMITED.....13TH RESPONDENT

PINNACLE SYSTMES LIMITED.....14TH RESPONDENT

SAFERIDER LIMITED.....15TH RESPONDENT

ATTORNEY GENERAL.....16TH RESPONDENT

RULING

1. Before me is a Notice of Motion dated 28th October 2018 brought under **Rules 4(2) and 7(1)** of the **Constitution of Kenya** (Protection of Rights and Fundamental Freedoms) Practice and procedure Rules 2013, by Speed Governors and Road Safety Association through its officials Edward Gitonga, Wambugu Nyamu and Yacoob Awan asking this court for the following reliefs namely:-

i. Edward Gitonga, Wambugu Nyamu, and Yacoob Awan the Chairman, Secretary and Treasurer respectively of Speed Governors and Road Safety Association on their behalf and on behalf of the other members of the Association be enjoined in this petition as an Interested Party.

ii. That if prayer 1 is granted, the Supporting Affidavit herein be deemed as a reply to the Notice of Motion for conservatory orders dated 17th October, 2019 as well as the petition dated 17th October 2019.

2. The grounds upon which the above reliefs are sought are:

a) The Interested Party is an association of 20 approved licensed manufacturers and suppliers of speed Governors like the 4th to 15th Respondents.

b) That the Interested Party is an organization duly registered under the societies Act, Cap 108 Laws of Kenya.

c) That other than manufacturer and supply of Speed Governors , the Interested Party Association also deals with promotion of road safety as its core mandate/objective and for this reason it was involved in the technical committee that developed standards of speed governor/limiter which is subject matter of the application and petition

d) That due to the above matters, the Interested Party herein has an immense interest in this matter and will definitely be affected by the outcome of this petition and the application for conservatory order.

e) That it is in the interest of justice that the said Interested Party be enjoined in this petition so that it can be heard on the matters raised by both the petition and the application.

3. This application is supported by the affidavit of Edward Gitonga sworn on 28th October 2019 where he has deposed that his association like 4th to 15th Respondents in this petition are also approved and licensed manufacturers and suppliers of Speed Governors also known as speed limiters by National Transport and Safety Authority. He has annexed a list of what he calls the licensed speed limiters (Governors) (Exhibit "E 91" and "EG5").

4. He has also deposed that part of the objectives of their association is road safety and in particular counterfeiting and tampering with Speed Governors.

5. The deponent further deposes that his company is known as **Central Vehicles Services Ltd** and other members trade through their own companies. He further deposes that for one to be licensed he has to go through a strenuous process and vetting by all relevant Government Agencies.

6. This application is unopposed but because this is an application to be enjoined as a party in a petition already lodged, this court is inclined to determine this application on its merit for the interest of judicial time and justice. This application has invoked **Rule 4(2) and 7(1)** of the **Constitution** of Kenya (Protection of Rights and Fundamental Freedom) Practice and Procedure Rules, 2013 commonly referred to as **Mutunga Rules**. Under **Rule 4 (2)** the rules provides that;

a) A petition may be instituted by a person acting in their own interest and by a person acting on behalf of another person who cannot act in their own name.

b) A person acting as a member of, or in the interest of a group or class of persons.

c) A person acting in the public interest.

d) An association acting in the interest of one or more of its members.

Rule &7(1) provides that a person can with leave apply either orally or in written application to be jointed as an Interested Party. An Interested Party is defined by Black's Law Dictionary (10th Edition Page 1298) as;

a party who has a recognizable stake (standing) in a matter."

Rule 2 of **Mutunga Rules** defines an Interested Party as a person or entity that has an identifiable stake or legal interest or duty in the proceedings pending in court.

Also see Rule 2 of Mutunga Rules.

7. The Applicant herein states that it is an association duly registered and has exhibited a copy of Registration Certificate Serial No.31989 as proof that it is a legal entity. The only issue that has not been brought out clearly by the applicant is the connection between the association and the list exhibited as "E91" and "EG5" which is what he calls a list of licensed speed limiters. Secondly, and more importantly is that the list exhibited is not signed or authenticated by any Government Agency. The Applicant has stated that for one to be licensed they must undergo a vigorous and strenuous vetting process by relevant Government Agencies. However it has failed to avail an authenticated list by any of the said relevant Government Agencies to show that the list annexed is credible or duly authorized by the National Transport and Safety Authority or any other Government Agency in the Transport Sector. A party coming to court be enjoined in proceedings is obligated to show that he has an identifiable stake in a matter before court and this is important in order to lock out busy bodies out to just ride on matters pending before court for publicity statements or other ulterior motives which end up eating up precious judicial times for no justifiable cause.

8. The Supreme Court in the case of Francis Kamotho Muratetu & Another-vs- Republic & 5 Others [2016] eKLR in part observed as follows:-

"An Interested Party is one who has a stake in the proceedings though he or she was not a party to the cause ab initio. He or she is one who will be affected by the decision of the court when court is made either way. Such a person feels that his or her interest will not be well articulated unless he himself or her herself appears in the proceedings and champions his or her cause....."

The Supreme Court then set out guiding principles applicable enjoining one as an Interested Party. They are as follows:-

(i) The order to be enjoined as an Interested Party is a discretionary matter and a party must show sufficient grounds on the following;

(a) Personal interest or stake that the party has in the matter. The interest must be identifiable and proximate enough to stand apart.

(b) The prejudice to be suffered by the Interested Party in case of non-joinder. It must be clearly spelt out and not remote.

(ii) A party must show in its application what submissions it wants to make and show that it does not want to merely replicate what other parties have put forward.

The applicant herein has stated that its interests are similar to interests of 4th to 15th named Respondents but it has not gone ahead to show that they have an important different input which the other Respondents have not covered.

9. It is also difficult in the absence of an authenticated document from the 2nd Respondent to know if the intended Interested Parties has an identifiable interest or stake in the matter pending before court. The deponent of affidavit Edward Gitonga has deposed that he is proprietor of Central Vehicles Services Ltd which though present on the impugned list he has exhibited, he has not demonstrated clearly the nexus between Central Vehicles Services Ltd and Speed Governors and Road Safety Association. I have gone through the Constitution of the said Association but it has no list of verifiable members. It is therefore difficult to tell who the members of that association are and whether those members have all been vetted and licensed to supply Speed Governors and the type of speed limiters they are to supply. This court's attention has been drawn to a correspondence from Communications Authority of Kenya dated 16th August 2019 addressed to Edward Gitonga of Central Vehicles Services Ltd which letters states that though his application had been approved;

"This letter does not serve as an authorization to provide services."

The applicant has not enclosed a copy of the application to enable court know what the said Government Agency was referring but clearly it appears on the face of the said letter that Central Vehicles Services Ltd has not cleared what he himself has termed vigorous rating process to be allowed to deal with Speed Governors. In the absence of any letter or license from the relevant agency in the ministry showing that all the members of the association named are all licensed to supply the speed limiters to P.S.V's vehicles or vehicles required to fit those gadget in Kenya, this court is not persuaded that they have legal interest or duty in this petition.

In the end this court has not found merit in the Notice of Motion dated 28th October 2019. The same is disallowed but I will make no order as to costs as none of the parties made any response to court.

Dated, signed and delivered at Chuka this 31st day of October 2019

R.K. LIMO

JUDGE

31/10/2019

Ruling signed, dated and delivered in presence of Mutani holding brief for Muthomi in the absence of Respondents and Applicant.

R.K. LIMO

JUDGE

31/10/2019