



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUSIA
PETITION CASE NO. 2 OF 2016
(FORMER KISUMU NO. 16 OF 2016)

MOHAMMED OMAR BAJABER.....1ST PETITIONER

BUSIA SUGAR INDUSTRY LTD.....2ND PETITIONER

VERSUS

AGRICULTURE, FISHERIES & FOOD AUTHORITY.....1ST RESPONDENT

WEST KENYA SUGAR CO. LTD.....2ND RESPONDENT

AND

STEPHEN A. ODIMA & 4 OTHERS.....PROPOSED INTERESTED PARTIES

RULING NO. 1

1. Through the Notice of Motion application dated 16th May, 2016, Stephen A. Odima, Stephen Oltele Kiptela, George Olakitar Ikwara and Alex Emojong Nakalado seek leave to join these proceedings. They also pray for the setting aside of ex-parte orders issued on 10th May, 2016 in favour of the petitioners. The application is supported by the grounds on its face and a supporting affidavit sworn by Stephen A. Odima on 16th May, 2016.

2. In brief, the applicants' case is that they are representatives of sugar cane farmers in the western part of Kenya and drawn from Tangakona, Chakol, Amukura, Atinge, Mungatsi, Nambale, Matayos and Mundika. They say that they have signed contracts to supply sugar cane to the 2nd Respondent, West Kenya Sugar Company Limited.

3. According to the applicants, they solely depend on the operations of the 2nd Respondent's sugar mill and these proceedings have a substantive bearing on their livelihoods and that of over 50,000 sugar cane growers.

4. It is the applicants' case that if the prayers of the petitioners are allowed, the operations of the 2nd Respondent will stop thus jeopardizing the livelihoods of sugar cane farmers.

5. The applicants therefore urge this Court to allow them to participate in these proceedings in order to

protect their right to access to justice as guaranteed by Article 48 of the Constitution.

6. The 1st Respondent, Agriculture, Fisheries and Food Authority has so far not filed any papers in these proceedings. The 2nd Respondent through counsel on record indicated on 8th June, 2016 that it is not opposed to the application.

7. The petitioners Mohammed Omar Bajaber and Busia Sugar Industry Limited have however vehemently objected to the enjoinder of the proposed interested parties. Mr. Madowo for the petitioners hinged his opposition on misrepresentation, fraud and non-contribution.

8. On fraud and misrepresentation, Mr. Madowo submitted that the 1st proposed Interested Party is not a farmer but an employee of the 2nd Respondent whose aim is merely to propel the interests of his employer. It is the petitioners' case that the contracts attached to the affidavit in support of the application are for supply of sugar cane to the 2nd Respondent's factory in Kakamega and not the factory which is the subject of these proceedings. The petitioners therefore contend that there is no evidence that the applicants are indeed sugar cane farmers.

9. It is the petitioners' position that the applicants will not make any contribution to these proceedings as the issue before the Court concerns the legality of the construction of the 2nd Respondent's factory. The petitioners therefore assert that the applicants have no useful contribution to make in this matter and they should not be allowed to join these proceedings.

10. According to the petitioners, allowing the applicants to participate in these proceedings will only end up in delaying the matter. The petitioners assert that pure mischief can be read in the applicants' application and the Court should not allow the same.

11. In conclusion, the petitioners contend that the consent recorded at Bungoma on 2nd June, 2016 had taken care of the interests of the farmers as the 2nd Respondent was allowed to continue collecting cane at Olepito.

12. In a brief response, counsel for the applicants pointed out that the fact that the interest of the farmers was acknowledged through the consent of 2nd June, 2016 confirms that the applicants will be affected by the outcome of these proceedings and are thus entitled to be made parties.

13. The sole issue for the determination of this Court is whether the applicants have met the threshold for allowing an interested party to join a matter before a court. The Supreme Court in a ruling delivered on 27th February, 2014, in the case of **Trusted Society of Human Rights Alliance v Mumo Matemo & 5 Others [2014] eKLR** defined an interested party or intervener as follows:

“[18] 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.”

With that definition in mind, I will now proceed to determine whether the applicants have met the conditions for them to be allowed to join these proceedings.

14. The applicants have stated that they are sugar cane farmers. The petitioners asserted that the 1st proposed Interested Party is not a farmer but an employee of the 2nd Respondent. Be that as it may, there is no evidence that the applicants are not sugar cane farmers. It is therefore reasonable to proceed on the presumption that they are indeed sugar cane farmers.

15. However, the fact that the applicants are sugar cane farmers is not of itself sufficient ground to admit

them to these proceedings. The nature of the matter before Court must be looked at. Reading the petitioners' pleadings and the 2nd Respondent's reply, it is clear that this is a commercial dispute which can be equated to sibling rivalry. The parties are fighting over the Busia sugar cane territory. It is about which party between the 2nd Petitioner and the 2nd Respondent should dominate Busia County in terms of processing of sugar. In that respect, they have engaged powerful teams of lawyers and their cases will be put across by these lawyers. They do not need any assistance and neither do their cases need propping by external players.

16. Allowing the applicants to join these proceedings will not change the course of the arguments of the main parties. Indeed as correctly pointed out by the petitioners, enjoining the applicants will only lead to delay of these proceedings. Infact I foresee a situation where farmers in support of the petitioners' project will soon be knocking on door of the Court asking to be allowed join these proceedings. Then we will have the businessmen of Olepito and any other person who is likely to benefit from the establishment of the factory also asking to be allowed to join the proceedings as interested parties. That will turn the proceedings into a circus

17. It goes without saying that a sugar mill brings business to its location. The Court will end up spending time on application upon application for injunction. The economic effect of the proposed factory is enormous and not every person who is likely to reap from the investment should be allowed into these proceedings. The interests of those who will benefit from the investment will be taken care of by the 2nd Respondent. The Court's focus should now shift to the hearing and determination of the Petition so that the parties can have an answer once and for all on the issues before Court.

18. In view of what I have stated above, I exercise my discretion against the applicants and reject their application to join these proceedings. All the other prayers in the application dated 16th May, 2016 will therefore automatically collapse.

19. Considering the nature of the Petition before this Court, I direct the parties herein to meet their own costs in regard to the application the subject of this ruling.

Dated, signed and delivered at Busia this 16th day of June, 2016.

W. KORIR,

JUDGE OF THE HIGH COURT