



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 465 OF 2011 (OS)

IN THE MATTER OF BLUE SHIELD INSURANCE COMPANY LIMITED (under Statutory Management)

AND

IN THE MATTER OF THE COMPANIES ACT (CAP 486 LAWS OF KENYA

AND

IN THE MATTER OF THE INSURANCE ACT (CAP 487 LAWS OF KENYA

BETWEEN

BENSON THEURI.....1ST INTERESTED PARTY

VERSUS

RICHARD KOISOK CHERUTICH...2ND PROPOSED 2ND INTERESTED PARTY

R U L I N G

1. The Proposed 2nd Interested Party, **Richard Koisok Cherutich**, raised a Preliminary Objection on 17th December, 2015 during interparties hearing before **Ombija J.** On that day, the parties counsel's recorded a consent before the judge to the effect that the 1st Interested Party be enjoined as an Interested Party as prayed in the Notice of motion application dated 10th July, 2014. Secondly, the proposed 2nd Interested Party **Richard Koisok Cherutich** opposed the joinder to the suit as an Interested Party which opposition was reduced into a Preliminary Objection to be heard and determined before the disposal of the application dated 10th July 2014. Thirdly, the proposed 2nd Interested Party having filed his submissions, the 1st Interested Party is required to file his replying written submissions within 30 days from the 17th December, 2015. Fourthly, the matter to be mentioned on 9th February, 2016 for confirmation of compliance and highlighting of submissions.

2. The 1st and proposed 2nd interested parties filed their respective submissions. The proposed 2nd Interested Party referred the court to his submission dated 9th July, 2015 and the one dated 16th February, 2016 which I have considered. He argued that for an Interested Party to be enjoined in a matter, one has to have the locus standi or rather an interest in the matter as per the Constitution of Kenya. He argued that the applicant seeks to enjoin him in this suit yet he has no identifiable stake in the matter of Blue Shield Insurance Company Limited. He claims that he is not a policy holder or creditor of Blue Shield Insurance Company Limited and that the case is yet to be heard. He therefore stated that he is not in a position to be

joined in the proceedings in the instant suit where Blue shield Insurance Company Limited is under statutory Management. He referred the court to the case or in the matter of **Concord Insurance Company (2014) eKLR** where the court ruled that the interested parties could not be enjoined since they were not holders of any judgment, original or declaratory which would make them in the least, judgment creditors, especially given that their cases were yet to be heard. He contended, that neither he nor the 1st Interested Party have an interest in the matter of Blue Shield Insurance Company Limited. He advised that if the 1st Interested Party wishes to be enjoined in the suit, then he should proceed but should do so without dragging the proposed 2nd Interested Party. He further, asserted that he is not shying away from being enjoined in the suit so as to continue prolonging the 1st Interested Party's quest for justice as alleged by the 1st Interested party, but rather, that court orders granted by a High Court judge which granted Blue Shield Insurance Company Limited a moratorium quite in accordance with section 67 C of the Insurance Act Cap 487 Laws of Kenya are legitimate orders. He argued that the 1st and proposed 2nd interested parties will have to contend in the lower court matter since the 2nd Interested Party has a defence on record in the matter. He concluded that the 1st interested party request to enjoin him has no legitimacy, has no merit as it lacks substance to sustain it.

3. In his response, the 1st Interested Party argued that one of the grounds for enjoining the proposed second Interested Party to the suit is because he is the Defendant in **CMCC 1984 of 2009** where the 1st Interested Party is the Plaintiff. He claimed that he is neither a policy holder nor a creditor of Blue Shield Insurance Company whose fate is tied to the moratorium by the fact that the proposed 2nd Interested Party was a policy holder of Blue Shield therefore, his suit should not be barred from proceeding to it's logical conclusion as was held in the case of **Blue Shield Limited (under Statutory Management) civil suit number 465 of 2011 (05)**. He asserted that the proposed 2nd Interested Party has a stake in Blue Shield matter and if not enjoined, the 1st Interested Party will not have a judgment delivered as the moratorium by the Statutory Manager in as far as it is extended to the 1st Interested Party's suit against the proposed 2nd Interested Party would still be in play. Especially given that the suit was held to be ultra vires under subsection (10) of Section 67 (c) of CAP 487, meaning that there would still be a moratorium staying the prosecution by the 1st Interested Party. He contended that the importance of enjoining the 2nd Interested Party in this suit is that in the event there is a judgment in the subordinate court it shall have to be satisfied by the 2nd Interested Party and not the Insurer.

4. The issue for determination in this application is whether or not the 2nd proposed Interested Party should be enjoined in this suit as an interested party.

5. Black's Law Dictionary, 9th Edition, pg. 1232 defines 'Interested Party' thus: **"A party who has a recognizable stake (and therefore standing) in a matter"**.

6. Rule 2 of the Mutunga Rules, that is, the Protection of Rights and Fundamental Freedoms Practice and Procedure Rules, 2013 defines an interested party as 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.

7. **The enjoinder of an interested party can be inferred from Order 1 Rule 10 (2)** of the Civil Procedure Rules, which details as to when a joinder can be made. According to my interpretation of this provision, a joinder could be made at any stage of the proceedings before Court. However, a Joinder would normally be allowed where a party's presence may be necessary for purposes of allowing the Court to adjudicate on all questions involved in a suit..

8. In the Supreme Court case of **Francis Kariuki Muruatetu & another v Republic & 5 others [2016] eKLR**, the judges presiding over the matter held that:

"From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party: One must

move the Court by way of a formal application. *Enjoinment 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." (emphasis mine)

9. Further, in another Supreme Court case of **Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others [2014] eKLR**, the Supreme Court Judges defined an interested party. They stated thus:

"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."

10. In light of the above, the question therefore is whether the proposed 2nd interested party meets the threshold required of an interested party so as to be enjoined in this suit as one. The 1st interested party sought to have the proposed 2nd interested party joined as an interested party to this suit purely on the basis that he is a plaintiff in the CMCC No. 1984 of 2009 while the proposed 2nd interested party is the Defendant in the suit. The 1st interested party claims that since he is neither a policy holder nor a creditor of Blue Shield Insurance Company limited, then it is only just that the proposed 2nd interested party be enjoined in the suit to avoid defeating ends of justice. The proposed 2nd interested party has raised a Preliminary Objection, subject of this ruling on the basis that his case is yet to be considered in the trial court and be determined, he should therefore not be enjoined as interested party.

11. I have perused the file, in a nutshell, the 1st interested party filed a compensatory suit against the 2nd proposed interested party who was allegedly insured by BlueShield Insurance Company Limited. Following the Orders issued by **Mwera J.** who in exercise of his discretion issued an order dated 28th October 2011, to the effect that: there be a stay of all proceedings subsisting against BlueShield Insurance Company Limited during the currency of the Moratorium declared by the Statutory Manager on 16th September 2011, amongst other orders, several people have filed applications in this court to have the Orders set aside. The 1st interested party being aggrieved by the Orders by **Mwera J.** has also followed suit as he seeks to also have the Orders set aside for the benefit of his suit against the 2nd proposed interested party.

12. The 1st interested party is asking this court to compel the 2nd proposed interested party to be an interested party in a suit that it does not wish to be a party, since the suit is yet to be determined. The proposed 2nd interested party has not on his own motion lodged an application praying to be enjoined as an interested party. Infact, he is disinterested in the current suit and wishes not to be enjoined in the suit. The question begging an answer therefore, is whether a party can be compelled to be enjoined as a party. In my view, one cannot a compel another person to be interested in a suit that he clearly has no interest in and even if that were the case, the reasons for enjoining them must be compelling.

13. It is not enough to claim that since he is the defendant in the case pending before trial court, then he automatically should be enjoined as an interested party.

14. The issues between the 1st interested party and the proposed 2nd interested party can well be articulated in the case before the lower court and in any event the 2nd proposed interested party has denied being the registered owner of motor vehicle registration number KAP 518M. In my view, the application is premature at this point.

15. According to the **Francis Kariuki Muruatetu case supra**, the personal interest or stake that a 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. I do not find the reasons advanced by the 1st interested party good enough or key to warrant the joinder.

16. Furthermore, I am not satisfied that any prejudice will be suffered by the 1st interested party in case of non-joinder.

17. In the premises foregoing, I find that the preliminary objection has merits and it is hereby allowed with costs.

Dated, signed and delivered at Nairobi this 17th day of October, 2016.

.....

L NJUGUNA

JUDGE

In the presence

..... *for the 1st interested party*

..... *for the proposed 2nd interested party*