



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

PETITION NUMBER 3 OF 2014

**MICHAEL KARIUKI (Suing on his own behalf and on behalf of MACADAMIA
NUT DEALERS within the EMBU AND MERU COUNTY REGION and any other
MACADAMIA NUT growing area in the Country.....PETITIONER**

VERSUS

THE HORTICULTURAL CROPS DEVELOPMENT AUTHORITY...1ST RESPONDENT

THE CABINET SECRETARY,

IN CHARGE MINISTRY OF AGRICULTURE.....2nd RESPONDENT

THE OFFICER IN CHARGE, MERU POLICE STATION.....3RD RESPONDENT

THE DCIO, MERU POLICE STATION.....4TH RESPONDENT

COPRAL, MAKAU (CID) attached to

MERU POLICE STATION.....RESPONDENT

ATTORNEY GENERAL.....6TH RESPONDENT

AND

NUT PROCESSORS ASSOCIATION OF

KENYA (NUTPAK).....INTERESTED PARTY/APPLICANT

R U L I N G

1. The Applicant/Interested party through a Notice of Motion pursuant to section 3A of Civil Procedure Act and Article 159 and 169 of the Constitution of Kenya 2010 seeks the following orders:-

1. This application be certified urgent and the same be heard ex parte in the first instance.

2. The applicant/interested party herein be made a party hereto for purposes of this application and the petition generally.

3. There be a stay of execution of the Orders herein dated 11/02/2014 and 20/02/2014 pending the hearing and determination of this application.

4. The stay order above be served upon the County Commanders of the National Police Service in Meru and Tharaka-Nithi Counties for information and as a go-ahead for enforcement of the Horticultural Crop Development Order, 2011.

5. The orders herein dated 11/02/2013 and 20/02/2013 be set aside.

6. The entire petition herein be struck out.

2. The Applicant's/Interested Party application is premised on the following ground; that the applicant is the umbrella representative body of all the Nut Businesses Industry players in Kenya; that other industry players are suffering unfair competition from the Petitioner herein who is using the orders herein dated 11/02/2014 and 20/02/2014 to deal with macadamia nuts during the prohibited period while the other players are unable to deal due to legal industry regulation; that the Agriculture, Fisheries and Food Authority Act, 2013 relied on by the Petitioner to file this petition and obtain the orders of 11/02/2014 and 20/02/2014 has not yet come into operation for want of a Gazette Notice from the Cabinet Secretary to bring it into operation; the application is further supported by Affidavit of Charles Muigai dated 24th February, 2014 and annexures thereto being certificate of Registration "CMI(a)" and "CM I (b)" being Tax Payers Regulation.

3. The Petitioner opposed the application through his Replying Affidavit dated 14th March, 2014 stating inter alia, that the application is a muddle of issues, it is a confusion of pleadings whose effect is to render the same fatally defective; that the applicant seeks leave to be enjoined as Interested Party; that the threshold for such a joinder has not been met by the applicant and that in a matter of public interest the law allowing joinder is not so rigid approach and in the circumstances the applicant must nevertheless demonstrate the following:-

a. Nexus with the subject matter of litigation.

b. Locus Standi as a necessary party

c. Likelihood of being affected by the outcome of the trial.

d. Possibly of meaningful contribution to the litigation process.

e. Zero frivolous and wasting of judicial economy in their participation in the litigation

4. On the above basis, the petitioner contended that the applicant has not cited sufficient grounds why they want to be enjoined in this petition.

5. It was in this application submitted for the Applicant that Macadamia Farming and Trading are economic activities that are undertaken in various parts of Kenya and involve numerous players, that the Applicant is an umbrella body representing the process of the nuts and who is a vital link between the farmer and the final market (consumer) in terms of value addition.

6. On the other hand it was submitted for the Petitioner that the Applicant seeks seven ambitious prayers many of which have no basis or justifiable reasons to grant of concern for determination save probably prayer No. 2 on enjoiner. That section 3A cited has no relevancy in Constitutional petitions. That the Applicant has not demonstrated it has a definite interest in the subject matter hence the Petitioner urged this court to dismiss the Applicant's application.

7. I have very carefully considered the pleadings, the counsel respective written submissions in support of the Applicant's application and in opposition of the same. The issue for consideration is whether the Applicant has met the threshold for an application for joinder as an Interested Party.

8. In determining whether the applicant should be admitted to this petition as an Interested Party, I am guided by several decisions of the courts.

In the case of; **Communications Commission of Kenya & 30 others versus Royal Media Services Ltd & 7 others** Supreme Court of Kenya at Nairobi in petition No. 14 of 2014, stated under paragraphs 22 and 23 of their ruling as follows:-

“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....”

Similarly, in the case of; **Meme versus Republic (2004) I EA 124**, The High Court observed that a party could be enjoined in a matter for the reason that:

“Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;

Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;

Joinder to prevent a likely course of proliferated litigation.”

9. Similarly in the case of; **Trusted Society of Human Rights Alliance versus Mumo Matemo Supreme Court of Kenya at Nairobi Petition No. 12 of 2013** Court stated under paragraph 14 and 18

“Black's Law Dictionary, 9th Edition, defines “intervener” (at page 897) thus:

“One who voluntarily enters a pending lawsuit because of a personal stake in it” (emphasis provided):

and defines “Interested Party” (at p. 1232)thus:

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

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 the case of; **Judicial Service Commission Versus Speaker of the National Assembly and Attorney General High Court Constitutional and Human Rights Division Petition No. 518 of 2013** Justice G. V. Odunga under paragraph 4 of his ruling stated:-

“The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2012, defines an interested party as “a person or entity that has an identifiable stake or legal interest in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation”. From the foregoing it is clear that an Interested party as opposed to an amicus curiae or a friend of the court may not be wholly indifferent to the outcome of the proceedings in question. He is a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly non-partisan as he is likely to

urge the court to make a determination favourable to his stake in the proceedings.”

It is however a requirement that a person who intends to be joined to existing legal proceedings ought to show that he has “an identifiable stake or legal interest in the proceedings before the court”

11. In view of the above mentioned authorities it is my view that an Interested Party is a party who has a “stake/interest” directly in the matter before the court, though he or she is not a party to the case. He must be a party who is likely or who will be affected by the decision of the court and he or she is of the view that unless he or she is enjoined in the matter his/her interest will not be well articulated or protected unless she or he is made a party to ventilate his or her cause.

12. The Applicant/Intended Interested Party interest is based on the ground that it is the umbrella representing body of all the Nut Business Industry Players in Kenya and that the other majority players are suffering unfair competition from the Petitioner and that the Agriculture, Fisheries and Food Authority Act, 2013 relied on by the Petitioner to file this Petition and obtain orders of 11/02/2014 and 20/02/2014 has not yet come into operation.

13. The Applicant/Intended Interested Party has not demonstrated to the satisfaction of this court that it has a stake in the proceedings nor has it satisfied that the court it will be affected by the decision of the court once made in anyway.

14. In the instant petition the Petitioner is seeking a declaration that his fundamental rights and freedoms under Articles of the Constitution has been and were contravened by the police officers from Meru Police Station and that the 1st Respondent has no basis or powers to promote, develop and/or manage the affairs of Agriculture industry in law and that the function is now devolved and any interference is unconstitutional, that a declaration by 2nd Respondent in classification of Macadamia Nuts as a horticultural crop is illegal and any purported regulation of harvesting, dealing, possession is unconstitutional amongst other prayers. Amongst the Petitioners prayers the Applicant has not stated with specificity what it is that it has at stake in the proceedings and how it will be affected by the decision of this court once made. I have from the Applicant's pleadings not been able to find the Applicant has a legitimate stake or interest in the matter before this court as pleaded as the Petitioner is seeking Constitutional relief against specific parties who do not include the Applicant in any way. The Applicant if is aggrieved by the Petitioner's competition in the business and feel that he is in breach of any provision of the law is at liberty to file a proper suit in a court of law for redress rather than seeking to be enjoined in a claim based on violation or breach or infringement of ones alleged Bill of Rights. The Applicant intention is to file a fresh suit from what I can discern from the Applicant's affidavit. That being so the application to be enjoined is not well footed.

15. In every suit there are parties to the suit and laws and procedures laid down on how one can be a party to a suit and when certain prayers can be sought and granted. A stranger to proceedings cannot be heard to seek prayers in a suit in which he is not a party. The Applicant herein though not a party to the suit seeks orders of stay of execution of the orders made by consent of parties in this petition, that the said consent order be set aside and that the petition be struck out with costs.

16. The Supreme Court in **Communications Commission of Kenya and 3 others versus Royal Media Services Ltd and 7 others Petition No. 14 of 2014 (Supra)** quoting the principle which they had pronounced in **Mumo Matemo case (at paragraph 24)** stated as follows:-

“A suit in Court is a 'solemn' process, 'owned' solely by the parties. This is the reason why there are laws and Rules, under the Civil Procedure Code, regarding Parties to suits, and on who can be a party to a suit. A suit can be struck out if a wrong party is enjoined in it. Consequently, where a person not initially a party to a suit is enjoined as an interested party, this new party cannot be heard to seek to strike out the suit, on the grounds of defective pleadings.”

17. In view of the above mentioned case and having found that the Applicant is not yet a party in this

petition; I find and hold that all prayers other than seeking to be joined as a party to be premature and I find that the Applicant herein being a new party, cannot be heard to seek to have stay of execution or setting aside the consent order or to have the petition struck out. This cannot be entertained as it would be an abuse of the court process and against the rules of natural justice for a party to seek orders made when he was not a party to the suit and when he is not a party to have the same stayed or set aside or have a suit struck out.

18. Having come to that conclusion I have, it is my view that the Applicant has not satisfied the required standard to be enjoined as an interested party.

19. The Applicant averred that it is umbrella representative body for all the Nut Business Industry Players in Kenya. One his to ask this:- Is the purpose to enter into these proceedings purely for taking a partisan position or to articulate its interest if any? Is the enjoining of the Applicant for the purpose of striking out the petition. The Applicant has not come out cleanly in this matter. It has not stated what provisions it is relying on to be enjoined as a party. I am satisfied that the Applicant has no business to interfere with the matter in this petition. The issue as to whether the Agricultural Fisheries and Food Authority Act 2013 has yet to come into operation is not legitimate stake for Applicant to come on record. That issue shall be canvassed by parties on record and the court will consider the same through the laid down process.

20. In view of the foregoing I am satisfied that the Applicant's application is without merits. I therefore dismiss the application dated 24th February, 2014 with costs to the Petitioner to be borne by the Applicant/Interested Party.

DATED, SIGNED AND DELIVERED AT MERU THIS 14TH DAY OF MAY 2015

J. A. MAKAU

JUDGE

Delivered in open court in presence of:-

1. Mwarania Mwenda for Applicant/Interested Party

2. Mr. Kivuti for Petitioner

3. Kiongo for Respondent

4. CC Penina/Mwenda

J. A. MAKAU

JUDGE