



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JR CASE NO. 632 OF 2008

REPUBLICAPPLICANT

VERSUS

INDUSTRIAL COURT OF KENYA.....RESPONDENT

KENYA UNION OF COMMERCIAL FOOD & ALLIED WORKS..... INTERESTED PARTY

EX-PARTE

BRITISH AMERICAN TOBACCO KENYA LIMITED

ROBERT GICHOHI MACHIRAPROPOSED 2ND INTERESTED PARTY

JAPHETH NYAGA MATIPROPOSED 3RD INTERESTED PARTY

BENSON MWANGI MACHARIAPROPOSED 4TH INTERESTED PARTY

RULING

Through the notice of motion application dated 17th September, 2012 Robert Gichohi Machira, Japheth Nyaga Mati and Benson Mwangi Macharia who are the proposed 2nd to 4th interested parties seek orders as follows:-

1. **THAT the firm of Machira and Co. Advocates be given leave to act for the Proposed Interested Parties.**
2. **THAT Robert Gichohi Machira, Japheth Nyaga Mati and Benson Mwangi Macharia be enjoined as 2nd, 3rd and 4th Interested Parties in this suit.**
3. **THAT the cost of this Application be provided for.**
4. **THAT such other and or further relief be granted as this Honourable Court may deem fit and just to grant in the circumstances of this matter.**

The application is supported by the grounds on its face, the supporting affidavit of Robert Gichohi Machira filed together with the application and the responding affidavit sworn by the said Robert Gichohi Machira on 20th October, 2012.

Briefly, the proposed interested parties were employees of British American Tobacco Kenya Limited

(BAT) the ex-parte applicant herein. In the year 2007 the proposed interested parties were among 6 workers retrenched by BAT. They took up the matter with their Union (Kenya Union of Commercial Food and Allied workers). The Union is the interested party in these proceedings. The Union filed Cause No. 143 of 2007 before the Industrial Court of Kenya, the respondent herein. An award was made in favour of the proposed interested parties. Thereafter BAT moved to this court seeking an order of certiorari to quash the award of the Industrial Court. Many things have happened since then but they are not relevant to the application before me.

Now the proposed interested parties seek to be enjoined as interested parties in these proceedings on the main ground that the firm of Lumumba, Mumma & Kalumna Advocates who are on record for the Union have not advanced their case. They now seek leave to be allowed to appoint a new counsel to agitate their case and take care of their interests.

It is the proposed interested parties' case that they have a constitutional right to be represented by an advocate of their choice and the firm of Lumumba, Mumma & Kaluma Advocates cannot insist on representing them when they no longer have any confidence in the said firm.

The Attorney General appearing for Industrial Court did not oppose this application. BAT and the Union, however, vigorously opposed the application.

The Union opposed the application through a replying affidavit sworn by Mr. Thomas K'Bahati on 8th October, 2012. Through the said replying affidavit the Union argues that the application is made in bad faith since the proposed interested parties are trying to avoid paying legal fees to the advocates on record for the Union. The Union argues that it represents the interests of the proposed interested parties in these proceedings and they cannot be made parties to these proceedings since they were not parties before the Industrial Court.

On its part, BAT submitted that the Union represents the interests of the proposed interested parties and there is no need to enjoin them in these proceedings. BAT argues that it would be prejudiced if the application is allowed since the same will result in a convolution of the matter.

The law regarding joinder of parties in judicial review proceedings was well captured by in the case of **MEME v REPUBLIC & ANOTHER [2004] 1 KLR 637** when the court stated that:-

“We have seen clear merit in this proposition that in public law matters such as those falling under judicial review or constitutional reference, the High Court ought to satisfy itself that all persons who should be served with the trial papers and any supporting evidence, have been duly served. Counsel admitted, and we agree, that in public law applications of the type exemplified herein, it is desirable that the widest possible participation should be allowed.”

I agree that in judicial review applications, any party with legitimate interest should be allowed to come on board. There is no doubt that the proposed interested parties have sufficient interest in the outcome of these proceedings. They are the beneficiaries of the award made by the Industrial court.

The question is whether in the circumstances of this case the application should be allowed. It is clear from the documents filed by the parties that although the Union is the body which took the dispute to the Industrial Court, the aggrieved persons were the proposed interested parties. The Union has already been named as an interested party in these proceedings but the proposed interested parties are paying the legal fees for the advocates for the Union. Essentially the substantive dispute herein is between the ex-parte applicant (BAT) and the respondent (the Industrial Court). The Union was only made a party because having been a party before the Industrial Court it would be affected by the outcome of those proceedings. The Union represents the interests of the proposed interested parties. It would be awkward and unreasonable to allow the proposed interested parties to also become interested parties in these proceedings. The Union would then become redundant. It would be like allowing shareholders of a company to individually litigate before the court. It would result in a total mess. This case is not about

the legal fees of the counsel for the Union. It is even not about the allegations leveled against the counsel for the Union by the proposed interested parties. The issue here is about the proper conduct of court proceedings. The proposed interested parties ought to instruct the Union to fire the advocate on record if they so desire. They are struck with the Union since the Union is the organ which took the dispute to the Industrial Court. The proposed interested parties must always remember that these proceedings are between BAT and the Industrial Court which is represented by the Attorney General. The Union though an interested party is a peripheral player in the game. However, the interests of the proposed interested parties are fully taken care of by the Union.

In my view the application before this court has no merit. The same is dismissed with no order as to costs.

Dated, signed and delivered at Nairobi this 22nd day of May, 2013

W. K. KORIR,

JUDGE