



Borbor & 14 others v National Environment Management Authority; Neema Livestock & Slaughtering Investments Limited & 12 others (Intended Interested Party) (Environment and Land Judicial Review Case 2 of 2022) [2022] KEELC 3948 (KLR) (16 June 2022) (Ruling)

Neutral citation: [2022] KEELC 3948 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 2 OF 2022
OA ANGOTE, J
JUNE 16, 2022
IN THE MATTER OF AN APPLICATION BY WARIO AGAL
REPUBLIC: BORBOR AND 14 OTHERS FOR LEAVE
TO APPLY FOR AN ORDER OF
CERTIORARI AND PROBATION
-EX-PARTE APPLICANTS
AND
IN THE MATTER OF: COURT ORDER TO CEASE OPERATION
AND
IN THE MATTER OF: ENVIRONMENTAL MANAGEMENT
AND CO ORDINATION ACT (CAP 387
LAWS OF KENYA)

BETWEEN

WARIO AGAL BORBOR 1ST EXPARTE APPLICANT
KOSE ISATU HIRBO 2ND EXPARTE APPLICANT
BAFKADO NAGASA & 12 OTHERS 3RD EXPARTE APPLICANT

AND

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY .. RESPONDENT

AND

NEEMA LIVESTOCK & SLAUGHTERING INVESTMENTS LIMITED & 12
OTHERS INTENDED INTERESTED PARTY



RULING

Introduction

1. In the Notice of Motion dated 17th March, 2022, the intended Interested Party has sought for the following prayers;
 - a) That the Applicant herein, Neema Livestock & Slaughtering Investment Limited be granted leave to forthwith enjoined as an interested Party in these proceedings upon such terms as this Honourable court may determine.
 - b) Upon grant of order No. 2. herein, leave be granted to the said Neema Livestock & Slaughtering Investments Limited, the deposition tendered in support of the motion be deemed as duly filed and treated as the Interested Party's response in opposition to the *ex-parte* judicial review proceedings.
 - c) Directions on the instant Motion be given at the earliest instance.
2. The Motion is supported by the affidavit of the intended Interested Party's (the Applicant) Director who deponed that the Applicant is a public Limited liability company and that the Applicant's core business is the slaughter of livestock and the sale of the meat products derived therefrom.
3. The Applicant's Director deponed that the Applicant is authorized and licensed to operate slaughter houses and abattoirs in Kenya involving 3000 shareholders and that due to publicity and wild rumours and allegations, they have had to clarify to their livestock suppliers that its slaughter house known as Neema Livestock and Slaughtering Investment Limited is hygienic and not part of Kiamaiko slaughter house which was directed to close down.
4. It is the Applicant's case that in the year 2018, a Multi-Agency Report was generated as a result of the concerns raised which declared that Kiamaiko slaughter house should be closed down and that on 2nd May, 2018, the *ex-parte* Applicants entered into an agreement to be given time to relocate from their unsanitary site.
5. It is the deposition of the Applicant's Director that the Government started in 1996 to direct the slaughter houses in Kiamaiko to relocate due to the very same reasons enumerated by the Respondent and that in the year 2003, the *Ex parte* Applicants went to Juja to construct their own slaughter house in compliance with the directives to relocate from Kiamaiko but the Respondent stopped its Juja construction due to violations of the riparian rules.
6. According to the Applicant's Director, there is nothing abrupt about the decision to close Kiamaiko slaughter house complained of by the *Ex-parte* Applicants through material non-disclosure of information which implicates these proceedings.
7. The Applicant's Director deponed that the decision that was made in 2021 by the Respondent was formal and not by way of Television and Radio as alleged by the *Ex-parte* Applicants; that as affected parties, they were furnished with a copy of the said Report and that they are aggrieved by the misrepresentations made by the *Ex-parte* Applicants.
8. It is the Applicant's case that the Respondent has the mandate of overseeing observance of all environmental laws in Kenya and that it would be acting unlawfully in permitting the *Ex-parte* Applicants to operate the Kiamaiko slaughter houses in some ultra vires, confused, contradictory and in an altogether unlawful manner.



9. The Applicant's Director finally deponed that the Nairobi Metropolitan Services Directorate of Environmental, Water and Sanitation issued a cessation order against the Kiamaiko slaughter house by an enforcement Notice dated 29th October 2021 and that unless this court intervenes, their constitutional and statutory rights and the lawful and bone fide livestock slaughter house operator within the rule of law will be interfered with.
10. The Respondent did not oppose the application. The *Ex-parte* Applicants opposed the application. The 1st *Ex-parte* Applicant deponed that the application by the intended Interested Party is generic, vague and ambiguous filed with conjectures, suppositions and speculations and solely contorted at engaging this court in a wild goose chase for academic purposes and a waste of this court's oxygen time.
11. The 1st *Ex-parte* Applicant deponed that the *Ex-parte* Applicants are before this court to challenge the verbal notice which was issued on 1st February, 2022 through the social media by the Respondent directing the *Ex-parte* Applicant's slaughter houses be closed on or before 1st March, 2022 and that the intended Interested Party has exhibited the highest order of irrelevancy and is a busy-body whose intention and purpose is to place this court in a "kettle of fish".
12. According to the 1st *Ex-parte* Applicant, the intended Interested Party has no identifiable stake or legal interest and its intended joinder in this suit will not only be increasing the number of litigants, but joining a busy body whose main aim is to wage a war against the *Ex-parte* Applicant for purpose of settling either political, social or business scores.
13. It was deponed that the *Ex-parte* Applicants are seeking for time within which to complete their new abattoirs and relocate; that the intended Interested Party has not shown the kind of prejudice it will suffer in the event of non-joinder and that the suffering that the intended Interested Party will suffer if not joined in the suit has to be outlined and should not be too remote as in this case.
14. According to the 1st *Ex-parte* Applicant, the verbal pronouncement made by the Respondent on 1st February, 2022 did not make any reference to the intended Interested Party or mention its area of operations and cannot therefore raise any independent litigation by the intended Interested Party against the Respondent.
15. The 1st *Ex-parte* Applicant finally deponed that in a meeting of the intended Interested Party held on 2nd March, 2022, the main agenda was to encourage members to collect huge sums of money with a view to bribing so that the *Ex-parte* Applicants' abattoirs are closed down, not because of any allegations labelled against them, but because of business rivalry.

Submissions

16. In his submissions, the intended Interested Party's advocate submitted that order 53 Rule 3(2) and (4) of the [Civil Procedure Rules](#) provides the statutory jurisdictional basis for this court to grant the plea for the joinder of the Applicant as an Interested Party and that sub-rule (4) of the Rules confers on this court wide discretion to order that the Judicial Review application be served on any other person notwithstanding that the person ought to have been served under sub-rule (2).
17. It was submitted that the intended Interested Party's members are aggrieved by the misrepresentations made by the *Ex-parte* Applicants and that the joinder sought of the Interested Party to the proceedings as a directly affected party is necessary, and is intended to enhance the expeditious disposal of the proceedings by tabling all relevant material that will aid and assist the court make a fair and just determination of the issues raised herein.



18. The *Ex-parte* Applicants' advocate submitted that the *Ex parte* Applicants are before the court to challenge the unprocedural verbal restoration order notice given on the social media by Mr. Memo B. Mamo on 11th February, 2022 directing that by 1st March, 2022, all slaughter houses owned by the *Ex-parte* Applicants be closed on or before 1st March, 2022.
19. Counsel relied on the case of *Kenya Medical Laboratory Technicians and Technologists Board & 6 Others v Attorney General & 4 Others* [2017] eKLR where it was held as follows;
- “The test is not whether the joinder of the person proposed to be added as an interested party would be according to or against the wishes of the Petitioner or whether the joinder would involve an investigation into a question not arising on the cause of action averred by the Petitioner. It is whether the intended Interested Party has an identifiable stake, or a legal interest or duty in the proceedings.”
20. Counsel submitted that following the irrelevant and misplaced annexures by the intended Interested Party, the said party has not shown the kind of identifiable stake or legal interest or duty it has in the matter and that the intended Interested Party is a limited liability company which operates its slaughter houses from Lucky Summer area while the *Ex-parte* Applicants consists of a group of people who operate from Kiamaiko area which is about 20 kilometers away from Lucky Summer slaughter houses.
21. It was submitted that the intended Interested Party is not mandated by any statute to act as an overseer or supervisor of all other slaughter houses; that the matter before the court is between the *Ex-parte* Applicants and the Respondent and that the intended Interested Party being a business rival is capable of fronting any image in form of photographs with a view to tarnish the good repute and business name that the *Ex-parte* Applicants have earned.
22. The *Ex-parte* Applicants' counsel also relied on the Supreme Court case of *Francis Kariuki Muriatetu & Another v R & 5 Others* [2016] eKLR, where it was held as follows;
- “(37) 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 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 before the court, and demonstrate the relevance of those submissions. It should also demonstrate that



those submissions are not merely a replication of what the other parties will be making before the court.”

23. It was submitted by counsel for the *Ex-parte* Applicants that the annexures on the intended Interested Party’s Supporting Affidavit do not lay any grounds which can be considered sufficient at all and that the certificate of incorporation, the board meetings, the minutes held and/or the memorandum and Articles of Association do not consist a ground of any nature warranting this court to consider the application for joinder.
24. In conclusion, it was submitted on behalf of the *Ex-parte* Applicants that the intended Interested Party has no role in these proceedings if the documents which it intends to rely on are the same documents annexed on its supporting affidavit and that the said documents have no relevance whatsoever to the facts in issue which is the issuance of an illegal unprocedural social media notices to close the *Ex-parte* Applicants’ abattoirs.

Analysis and findings

25. In these proceedings, the *Ex parte* Applicants have stated that they are before this court to challenge the verbal notice which was issued on 1st February, 2022 through the social media by the Respondent directing the *Ex-parte* Applicants’ slaughter houses be closed on or before 1st March, 2022. According to the *Ex parte* Applicants, the Respondent should grant them time within which to complete their new abattoirs and relocate.
26. The intended Interested Party is seeking to be joined in this proceedings. According to the intended Interested Party, it is authorized and licensed to operate slaughter houses and abattoirs in Kenya involving 3000 shareholders.
27. According to the Intended Interested Party, due to the order by the Respondent directing the *Ex parte* Applicants to close their slaughter houses in Kiamaiko, and that due to publicity and wild rumours and allegations, they have had to clarify to their livestock suppliers that its slaughter house known as Neema Livestock and Slaughtering Investment Limited is hygienic and not part of Kiamaiko slaughter house which was directed to close down.
28. It is the intended Interested Party’s case that in the year 2018, a Multi-Agency Report was generated as a result of the concerns raised which declared that Kiamaiko slaughter house should be closed down and that on 2nd May, 2018, the *Ex-parte* Applicants entered into an agreement to be given time to relocate from their unsanitary site.
29. According to the intended Interested Party, there is nothing abrupt about the decision to close Kiamaiko slaughter house complained of by the *Ex-parte* Applicants through material non-disclosure of information which implicates these proceedings; that the decision that was made in 2021 by the Respondent was formal and not by way of Television and Radio as alleged by the *Ex-parte* Applicants; that as affected parties, they were furnished with a copy of the said Report and that they are aggrieved by the misrepresentations made by the *Ex-parte* Applicants.
30. In the case of *Francis Kariuki Muriatetu & Another v R & 5 Others* [2016] eKLR, the Supreme Court held as follows:

“(37) 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 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;

- iv. 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.
- v. 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.
- vi. Lastly, a party must, in its application, set out the case and/or submissions it intends to before the court, and demonstrate the relevance of those submissions. It should also demonstrate that those submissions are not merely a replication of what the other parties will be making before the court.”

31. The verbal pronouncement allegedly made by the Respondent on 1st February, 2022 did not make any reference to the intended Interested Party or mention its area of operations. Indeed, the intended Interested Party has acknowledged that whereas the slaughter houses that are supposed to be closed down by the Respondent are in Kiamaiko area, its abattoir is in the Lucky Summer area.
32. The reading of the depositions of the interested Party’s Director’s Affidavit shows that it supports the decision of the Respondent to have the *Ex parte* Applicants’ slaughterhouses closed. In fact, the intended Interested Party has not shown by way of evidence how the decision of the Respondent to close or not to close the *Ex parte* Applicants’ slaughterhouses affects its members interests.
33. From the deposition of the interested Party’s Director’s, the decision to apply to be joined in these Judicial Review proceedings was informed by “publicity and wild rumours” which they have had to clarify to their livestock suppliers, that its slaughter house known as Neema Livestock and Slaughtering Investment Limited is hygienic and not part of Kiamaiko slaughter houses which were directed to close down.
34. Having conceded that the decision of the Respondent, whether verbal or in writing, does not affect them, and having not filed any document to show that the existence of the *Ex parte* Applicants’ slaughterhouses in Kiamaiko, which is far apart from their slaughterhouse, has affected them in any way, it is the finding of this court that the intended Interested Party’s personal interest or stake in the proceedings is lacking.
35. The documents annexed on the intended Interested Party’s Director’s Affidavit are all related to the incorporation of the intended Interested Party, the meetings that it held and the recommendation by the Respondent to close down Kiamaiko slaughterhouses.
36. That being the case, it is the finding of this court that the intended Interested Party’s interest in this suit has not been clearly identified, neither is it proximate enough to stand apart from anything that is merely peripheral. The prejudice to be suffered by the intended Interested Party in case of non-joinder has neither been demonstrated nor shown to the satisfaction of the court.
37. The contention by the intended Interested Party that due to publicity, wild rumours and allegations arising from the threat to close down the *Ex parte* Applicants’ slaughter houses, they have had to clarify



to their livestock suppliers that its slaughterhouse is hygienic and not part of Kiamaiko slaughter house is remote to the *Ex parte* Applicants' claim and cannot form a basis for joining it in these proceedings.

38. For those reasons, the intended Interested Party's application dated 17th March, 2022 is dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 16TH DAY OF JUNE, 2022

O. A. ANGOTE

JUDGE

In the presence of;

Mr. Sausi for Ex parte Applicants

Mr. Gitonga for Respondent

Mr. Kinyanjui for proposed Interested Party/Applicant

Court Applicant – June/Tracy

