



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Misc Appli 240 of 2004**

**LEONARD NAMUTOKO KIPROP MOSS ..... PLAINTIFF**

**V E R S U S**

**THE KENYA AIRPORTS AUTHORITY..... DEFENDANT**

**MWANGI STEPHEN MURIITHI..... INTENDED INTERESTED PARTY**

**R U L I N G**

On 28-03-2006, I dismissed with costs the application of one Mwangi Stephen Muriithi, dated and filed on 2.03.2006 for leave to be joined as an interested party in these proceedings brought by the ex-parte applicant, one Leonard Namutoko Kiprop Moss, and stated that I would give my reasons in detail later. I now set out my reasons for the dismissal of the application.

Firstly, the application was based upon the provisions of Order LIII rule 1 (2), 3 (4), 4 (2) of the Civil Procedure Rules and Section 3 A of the Civil Procedure Act, (*Cap 21 Laws of Kenya*).

The application was also based upon the Affidavit of the intended Interested Party the said Mwangi Stephen Muriithi, sworn and filed with the application on 2-03-2006, and the grounds that -

***“one George Kamau Muhoho unlawfully assumed the position of the Managing Director of Kenya Airports Authority and therefore unlawfully sacked the Applicant in these proceedings.”***

In the Affidavit, the Intended Interested Party says on oath that he is still the lawful Managing Director of the Respondent because the Gazette Notice (No. 1056 of 23-09-1999) had not been revoked, and that the said George Kamau Muhoho had unlawfully assumed office as Managing Director of the Respondent, and has in that capacity sacked the Applicant, in these proceedings. If granted leave to be joined as an interested party, he would seek declaratory orders that the said George Kamau Muhoho had unlawfully assumed office as aforesaid, and thus causing a lot of distress and damage to the Intended Interested Party, and should therefore be restrained from so holding such office.

Mr. Morara learned Counsel for the Intended Interested Party, and Mr. Wakariuki learned Counsel for the Applicant held these positions in their submissions and concluded that no prejudice would be occasioned upon the Respondent if the orders sought were granted.

The application was opposed by the Respondent whose Counsel Mr. Kakwa filed Grounds of Opposition to the application raising pertinent legal obstacles why the application ought not to be granted. Mr. Kakwa adopted these grounds of opposition in his submissions to the court and I now express my reasons

for dismissing the intended interested party's application.

Order LIII rule 1 (2) is a provision enabling an applicant to seek leave of court to file a judicial review application for any of the prescribed prerogative orders of mandamus, prohibition or certiorari. The Intended Interested Party's application is not for any such order, and even if it were for such leave, the intended interested party did not comply with the requirements of that provision as to notice to the Registrar nor seek the Court's dispensation of such requirement of notice aforesaid. On these grounds alone, the intended interested party's application is incompetent and ought to be dismissed.

Secondly, under Order LIII rule 3 (4), the onus is upon the court to order service of the application upon any person who ought to have been served, but was not served. The Intended Interested Party cannot found his application on that provision. To that extent again, the application is equally incompetent.

Thirdly, the intended interested party's application is also purportedly based upon the provisions of Order LIII rule 4 (2) of the Civil Procedure Rules. This rule however only confers upon the court the discretion to grant leave for amendment of an applicant's notice of motion. The Intended Interested party has no motion to amend in these proceedings. Once again the Intended Interested Party's application is incompetent.

Fourthly the Intended Interested Party is not a person who may be said to be "**affected**" in terms of rule 3 (2) of Order LIII by any adverse order which may be made by the Court. The orders which may be made by the court in this matter will not in any way affect the Intended Interested party. If the applicant feels aggrieved by his replacement by another Chief Executive Officer at the Kenya Airports Authority, the proper course for the intended interested party is to file his own application and challenge the legality of the "**new appointment**" and show the unlawfulness of his own removal. He cannot do so through these proceedings.

In summary, the intended interested party's application is irregular, improper and contrary to the law and procedure laid down in judicial review applications. He has no **locus standi** in these proceedings, and his application to be joined in this matter is an unnecessary clog and delay in the determination of this cause, and is an abuse of this court's process.

For these reasons, I dismissed the intended interested party's application on 28-03-2006 and the said application stands dismissed with costs.

Dated and Delivered at Nairobi this 5<sup>th</sup> day of March, 2006.

ANYARA EMUKULE

JUDGE