



**International Air Transport Association & another v Star Travel and Tours
Company Limited & 2 others; Chege & another (Proposed Third Parties) (Civil Case
E797 of 2021) [2025] KEHC 2400 (KLR) (Commercial and Tax) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2400 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E797 OF 2021**

MA OTIENO, J

MARCH 6, 2025

BETWEEN

INTERNATIONAL AIR TRANSPORT ASSOCIATION 1ST PLAINTIFF

MUA INSURANCE (KENYA) LIMITED 2ND PLAINTIFF

AND

STAR TRAVEL AND TOURS COMPANY LIMITED 1ST DEFENDANT

JOAN GATHONI NGUGI 2ND DEFENDANT

LOISE NJERI NGUGI 3RD DEFENDANT

AND

KENNEDY GICHUHA CHEGE PROPOSED THIRD PARTY

DEBONAIR TRAVEL LIMITED PROPOSED THIRD PARTY

RULING

1. Before the court for determination is the defendants' chamber summons application dated 7/6/2024 filed inter alia under order 1 rule 15 of the Civil Procedure Rules 2010.
2. The defendants sought leave to enjoin the proposed third parties to this suit.
3. The basis of the application was that the subject matter between the defendants and the proposed third parties was the same as the subject matter and cause of action in this suit between the plaintiff and the defendants.



4. The defendants argued that they are entitled to relief relating to the subject matter of this suit and seek indemnity from the proposed third parties herein against any orders that may be made against the defendants in this suit.
5. In opposition to the instant application, the plaintiffs filed a replying affidavit sworn on 3/7/2023 by Sarah Weru, the company secretary of the 2nd plaintiff.
6. Ms. Weru averred that the instant application is delaying tactic to defeat justice in the suit; that the application was filed inordinately late as this suit was filed in 2021 and that the transactions between the defendants and the proposed 3rd parties are not related with the subject matter of the present suit.

Analysis and determination:

7. The defendants filed submissions dated 11/11/2024 in support of their application while the plaintiffs filed submissions dated 13/11/2024. I have analysed and considered the same together with the pleadings filed by the parties in this suit.
8. From the pleadings and the submissions, the sole issue for determination is whether the court should grant leave to the defendants to issue a third-party notice to the intended third parties.
9. This suit was instituted by the plaintiffs against the defendants vide a plaint dated 13/9/2021. The plaintiffs' case was that the 1st defendant was the 1st plaintiff's appointed travel agent for the sale of air tickets in Kenya for its members and that the 1st defendant was bound to remit monies for sales. The plaintiffs stated that, in breach of the agreement between the parties, the 1st defendant failed to pay to the plaintiff's members the sum of Kshs. 20,167,852 and USD 1,419.80 as remittances that fell due in August, September, and October 2015.
10. The 1st plaintiff asserted that despite demand of the aforementioned amounts, the 1st defendant neglected to remit the same, leading to the termination of the agency agreement signed by the parties.
11. Joinder of a third party to a suit is provided for under Order 1 Rule 15(1) of the Civil Procedure Rules, which states:

- “(1) 1) Where a defendant claims as against any other person not already a party to the suit (hereinafter called the third party)—
- (a) that he is entitled to contribution or indemnity; or
 - (b) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff; or
 - (c) that any question or issue relating to or connected with the said subject-matter is substantially the same question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and defendant and the third party or between any or either of them, he shall apply to the court within fourteen days after the close of pleadings for leave of the Court to issue a notice (hereinafter called a third party notice) to that effect, and such leave shall be applied for by summons in chambers ex parte supported by affidavit.”



12. In the case of Kenya Commercial Bank vs Suntra Investment Bank Ltd (2015) eKLR, it was stated that;

“In law, a third party is enjoined in a suit at the instance of the Defendant and through the set procedure under Order 1 rule 15 – 22 of the Civil Procedure Rules. And, liability between the Defendant and the third party is determined between the Defendant and the third party, but of course, after the court is satisfied that there is a proper question to be tried as to liability of the third party and the Defendant, and has given directions under Order 1 rule 22 of the Civil Procedure Rules.
13. The defendants submitted that the subject matter between them and the proposed third parties is the same as the one between the plaintiffs and the defendants and that they are entitled to relief relating to the subject matter. They submitted that the intended third parties were appointed as agents to facilitate the sale of the 1st plaintiff’s airline tickets on behalf of the 1st defendant and that the intended third parties would be in a good position to demonstrate to the court how the amounts claimed were collected.
14. On their part the plaintiffs submitted that the defendants’ statement of defence filed in this matter did not plead any negligence against the intended third parties and that the issues between the plaintiffs and defendants are not the same as issues between the defendants and the intended third parties.
15. The instant application by the defendants was filed on 7/6/2024 while this suit was instituted vide a plaint 13/9/2021. The record indicates that the plaintiffs filed their documents by 18/2/2022 and that the matter was mentioned for pre-trial directions on 14/11/2023, during which the defendants’ advocates sought and were granted more time to file their copies of the list of documents, list of witnesses, and witness statements.
16. The foregoing events illustrate to this court that the defendants had the opportunity to seek leave to enjoin the intended third parties at an earlier time, but they neglected to do so. In fact, the defendants filed the present application months after the pretrial conference was held and almost three years after the suit was filed. Further, it is germane to note that in their statement of defence, the defendants did not mention any liability with regard to the intended third parties.
17. Under Order 1 Rule 15 of the Civil Procedure Rules, the defendants were required to file an application of this nature within fourteen days after the close of pleadings. In the circumstances, I find that the instant application was filed inordinately late and is clearly an afterthought.
18. Additionally, in order to join a third party, the court must be satisfied that there is a connection between the subject matter of the suit between the plaintiff and defendant and the subject matter between the defendant and proposed third party. The issue in relation to the subject matter in the suit ought to be substantially the same issue between the defendant and the third party.
19. In this case, the plaintiffs suit revolves around the alleged breach of agreement by the 1st defendant and the plaintiffs to claim the sum of Kshs. 20,167,852 and USD 1,419, which accrued in the months of August, September, and October 2015. On the other hand, the alleged transactions between the defendants and the intended third parties, as stated in the defendants’ supporting affidavit, occurred during the period between 2013 and 2014. The causes of action are in completely different time periods, and the defendants have not established that there is a connection and/or similarity between the subject matter in this suit and the transaction between the defendant and the intended third parties.
20. The upshot of the foregoing is that the instant application lacks merit and is therefore dismissed with costs.



21. It is so ordered.

SIGNED, DATED, AND DELIVERED IN VIRTUAL COURT THIS 6TH DAY OF MARCH 2025

ADO MOSES

JUDGE

In the presence of:

Moses – Court Assistant

