



Republic v National Transport and Safety Authority; Nespete Enterprises Limited (Intended Interested Party); Machua (Exparte Applicant) (Judicial Review Miscellaneous Application E880 of 2022) [2025] KEHC 5804 (KLR) (Commercial and Tax) (9 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5804 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E880 OF 2022**

**NW SIFUNA, J
MAY 9, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

NATIONAL TRANSPORT AND SAFETY AUTHORITY RESPONDENT

AND

NESPETE ENTERPRISES LIMITED INTENDED INTERESTED PARTY

AND

PETER GAITHO MACHUA EXPARTE APPLICANT

RULING

1. By an Application dated 13th February 2023, the intended Interested Party (“Peter”) seeks to be enjoined in these proceedings as an Interested Party so that he can oppose the Ex Parte Applicant’s (“the Company’s”) Applications dated 14th December 2022 and 27th January 2023. Peter’s Application is supported by the grounds on its face and his supporting affidavit sworn on 13th February 2023 and it is opposed by the Company through the replying affidavit of its director, Agnes Wangechi (“Agnes”) sworn on 17th February 2023.
2. The court directed that the Application be canvassed by way of written submissions which are on record and which together with the pleadings I have considered and I will make relevant references to them in my analysis and determination below.



Analysis and Determination

3. The issue for the court's determination is whether Peter should be enjoined in these proceedings as an Interested Party. Order 1 Rule 10(2) of the Civil Procedure Rules grants the Court discretion to order joinder of any party to a suit at any stage of the proceedings so long as the presence of that party before the Court is necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions in dispute. I am also in agreement with Peter's position that under Order 53 Rule 6 of the Rules, the court is obligated to hear "a proper person" who desires to be heard in opposition to a motion such as the present judicial review proceedings.
4. In *Pravin Bowry v. John Ward & another* [2015] KECA 215 (KLR), the Court of Appeal adopted with approval the decision in *Departed Asians Property Custodian Board v. Jaffer Brothers Ltd* [1999] 1 E.A 55 (SCU) where the Supreme Court of Uganda observed as follows:

"A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. A party may be joined in a suit because the party's presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the cause or matter...."

"For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders which the plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such person joined so that he is bound by the decision of the court in that suit. Alternatively, a person qualifies (on an Application of a defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person."
5. On the legal threshold for joinder as Interested Party or Amicus Curiae, the Supreme Court of Kenya in *Muruatetu & Another v. Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae)* [2016] KESC 12 (KLR), listed the following factors:
 - (i) Personal interest and/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 nearly 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 make before the court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replica of what the other parties will be making before the court.
6. Peter deponed and submitted that he was married to Agnes and that he was a founder member and majority shareholder of the Company. That these proceedings were instituted by the Company when Peter lodged a complaint with the Respondent (NTSA) and after he learnt that the shareholding in



the Company had been allegedly fraudulently altered by Agnes. Peter contends that there are various court cases involving himself and Agnes and that there is need for him to protect his interests in the Company including a restriction on the transfer, alienation and interference with the properties to wit, the motor vehicles that are subject of these proceedings. As such, Peter considers himself a stakeholder with substantial interest in these proceedings.

7. In response, Agnes depones that there has never been any proceedings instituted by Pater in any court since the Company was incorporated in relation to its shareholding or its affairs. That Peter is neither a director nor shareholder of the Company as per the CR 12 dated 4th October 2022 and thus lacks the locus standi to address any affairs of the Company.
8. While Agnes acknowledges that she has been involved in divorce proceedings with Peter, she states that the Company has never been the subject of the said proceedings either at the High Court or Court of Appeal as claimed by Peter. She denies the allegations of fraud levelled against her and states that Peter voluntarily signed and transferred all his shares in the Company to his daughter.
9. That no such report of fraud has ever been filed to the police or Registrar of Companies that his signature on the transfer document was forged. She submits that the present proceedings are in the nature of judicial review, which remedy is not available where the issue is on an “ordinary” dispute over matrimonial property between an ex-husband and an ex-wife with no element of “public law” in it.
10. That all the 8 grounds of the present Application revolve around the shareholding of the Company and the relationship between three former members of the same family. Agnes states that there’s absolutely no public law element in the grounds upon which Peter seeks to be enjoined in these proceedings and as such the Application ought to be disallowed.
11. Going through the pleadings and the annexures in the parties’ depositions, it is clear that Peter is neither a shareholder nor a director of the Company. This is evidenced by the CR 12 annexed by Peter and the High Court’s judgment in HCCC No. 71 of 2011 annexed by Agnes where Muigai J., held that the shares held in the Company ought to remain with Agnes and her daughter until the matter is appropriately heard before this court. However, this is not that forum considering that its is not the validity of the shareholding of the Company that is in issue herein but NTSA’s decision registering caveats on the Company’s motor vehicles. As on the face of it, it appears that Peter is neither a shareholder nor a director in the Company, I fail to find the interest he seeks to protect or the stake that he claims in the Company for him to be enjoined as an interested party.
12. Whether he is present in these proceedings or not, the court will still be able to effectually and completely adjudicate upon and settle all questions involved in these proceedings. Therefore, his presence in these proceedings will not be that important or necessary and his absence will not prejudice him in any way considering he has no legal or identifiable stake in the Company or these proceedings.
13. Apparently, Peter might be seeking to be enjoined in these proceedings so that he can present his case about his shareholding in the Company, which as I have stated is not the appropriate forum as this are public law proceedings and not civil law proceedings between private parties.

Final Disposition

14. In the end there is no justification for joinder, hence the Application is hereby dismissed with costs to both the Respondent and the Ex Parte Applicant.

DATED AND DELIVERED AT NAIROBI ON THIS 9TH DAY OF MAY 2025.

PROF (DR.) NIXON SIFUNA



JUDGE

