



**Geepak Limited & 2 others v Housing Finance Company Limited; Kigio Group Company Limited (Intended Defendant) (Commercial Case E140 of 2023) [2024] KEHC 1156 (KLR) (Commercial and Tax) (12 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1156 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E140 OF 2023  
JWW MONG'ARE, J  
FEBRUARY 12, 2024**

**BETWEEN**

**GEEPAK LIMITED ..... 1<sup>ST</sup> PLAINTIFF  
PACKAGING EAST AFRICA LIMITED ..... 2<sup>ND</sup> PLAINTIFF  
DEQMART COMMERCIAL AGENCIES LIMITED ..... 3<sup>RD</sup> PLAINTIFF  
  
AND  
  
HOUSING FINANCE COMPANY LIMITED ..... DEFENDANT  
  
AND  
  
KIGIO GROUP COMPANY LIMITED ..... INTENDED DEFENDANT**

**RULING**

1. The intended Defendant/Applicant filed a Notice of Motion application dated 9<sup>th</sup> November 2023 under the provisions of Sections 1, 1A, 1B, 3A of the [Civil Procedure Act](#), Order 51 Rule 1 of the [Civil Procedure Rules](#), Articles 40, 50(1), 159(2) (a), (b), (d), & (e) of the [Constitution](#) of Kenya 2010 seeking the following orders –
  - i. Spent;
  - ii. That the Honourable Lady Justice Josephine W.W Mong'are do disqualify and recuse herself from presiding and/or conducting the proceedings, hearing and determination of the application by the intended Defendant dated 12<sup>th</sup> September 2023 and all aspects of the suit herein;



- iii. That the application dated the 12<sup>th</sup> September 2023 brought by the intended Defendant be heard by any other judge on priority basis; and
  - iv. That the costs of this application be in the cause.
2. The application is brought on the grounds set out on the face of the motion and is supported by an affidavit sworn on the same day by Stanley Njenga Ndegwa, a founding Director and the current chairman of the intended Defendant/Applicant. In opposition thereto, the Respondents filed a replying affidavit sworn by Grace Wamuyu Mathenge the director of the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs / Respondent's herein on 29<sup>th</sup> December 2023 and a Notice of Preliminary Objection dated 29<sup>th</sup> December 2023 raising the following grounds of objection: -
  - i. That the Applicant is not a party to the suit and therefore does not have the requisite *locus standi* to lodge and prosecute the application herein, rendering the application incompetent, bad in law and therefore an abuse of Court process; and
  - ii. That the application as instituted is fatally incompetent and incurably defective in law and as such cannot stand or be ventilated before this Honourable Court and should therefore be struck out with costs.
3. The Applicant's case is that on 7<sup>th</sup> September 2023, they became aware of orders issued by this Court on 4<sup>th</sup> September 2023 against them. Thereafter, a board meeting was convened on whose resolution the lawfirm of M/S Karuru Mwaura & Company Advocates was instructed to inter alia challenge the said order by first getting the Applicant to be joined to these proceedings. Subsequently, the said Advocates on behalf of the Applicant filed a Notice of Motion application dated 12<sup>th</sup> September 2023 under Certificate of Urgency seeking inter alia to be joined to these proceedings and stay of the orders issued on 4<sup>th</sup> September 2023.
4. The Applicant averred that on 14<sup>th</sup> September 2023 this Court directed that the said application be served upon the Respondents, responses be filed within 7 days, and the matter be mentioned on 21<sup>st</sup> September 2023. Upon service, the 3<sup>rd</sup> Plaintiff vide a letter dated 20<sup>th</sup> September 2023 wrote to the Applicant's Advocates on record stating that the 1<sup>st</sup> & 2<sup>nd</sup> Plaintiffs swindled it proceeds of sale of a land in the amount of Kshs 65,000,000/= by pretending that they would charge it to the Defendant herein so as to settle the purchase price. In a bid to demonstrate to this Court that the orders of 4<sup>th</sup> September 2023 were obtained fraudulently, the Applicant forwarded the aforementioned letter to the Presiding Judge of the Commercial and Tax Division requesting that it be placed in the Court file.
5. The Applicant contended that on 14<sup>th</sup> September 2023, he wrote a complaint letter against this Court to the Chief Justice which letter was copied to the Ethics and Anti-Corruption Commission and supposedly delivered to the Judge in her chambers. This letter was followed by another complaint to the Judicial Service Commission dated 20<sup>th</sup> September 2023 which was supposedly also delivered to the Judge. The Applicant averred that when the application dated 12<sup>th</sup> September 2023 came up for mention for directions before this Court on 21<sup>st</sup> September 2023, the Court declined to hear any presentations by Counsel for the Applicant on grounds that he had no audience as the Applicant had not yet been joined as a party to this suit.
6. It was further stated by the Applicant that the 3<sup>rd</sup> Plaintiff through the law firm of M/S Omwoyo, Momanyi, Gichuki & Company Advocates also filed an application challenging the orders issued by this Court on 4<sup>th</sup> September 2023 but this Court denied Mr. Nyaberi audience on 22<sup>nd</sup> September 2023. The Applicant asserted that from the foregoing, it is clear that this Court has blocked parties who are adversely affected by her orders of 4<sup>th</sup> September 2023 from pointing out the 1<sup>st</sup> & 2<sup>nd</sup> Plaintiff's



fraud and deceit. It further stated that this Court has deliberately ignored crucial information brought to its attention by way of a Replying Affidavit sworn on 11<sup>th</sup> April 2023 by Anna Masinde, the Defendant's head of micro and small businesses and given mandatory injunctions which demonstrates a zeal that could only arise from personal interest in the matter.

7. The Applicant asserted that they believe this Court colluded with the Plaintiffs and the Defendant in entertaining this suit and giving adverse orders whereas the 1<sup>st</sup> & 2<sup>nd</sup> Plaintiff are parties to Civil Appeal No E193 of 2021 and HCCOMM No E634 of 2021 where orders of injunction have been issued. They further asserted that this Court has issued final orders at an interlocutory stage. In light the above, the Applicants are seeking this Court to recuse itself from handling this matter on grounds of open bias exhibited by openly declining audience to Counsel for the Applicant and the 3<sup>rd</sup> Plaintiff. In addition, the Applicant contended that they expect no fairness or justice from this Court thus this matter should be allocated to another Judge.
8. The 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs filed a response to this application while the 3<sup>rd</sup> Plaintiff did not. The Defendant, Housing Finance, did not wish to participate in the present application, having preferred an appeal to overturn the orders of this court.
9. In response to the application for recusal, the 1<sup>st</sup> & 2<sup>nd</sup> Plaintiff's thereto averred that as long as the Applicant's application for joinder remained undetermined, the Applicant has no audience in this Court and lacks the requisite *locus standi* to bring the present application. They further averred that it would be a gross absurdity in the event the instant application is allowed only for the application for joinder to be dismissed for want of merit. The above notwithstanding, the 1<sup>st</sup> & 2<sup>nd</sup> Plaintiffs asserted that the application herein is premised on conjecture and unfounded misapprehension of bias on the part of the Honourable Judge who is yet to hear the Applicant's application for joinder.
10. The 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs further stated that recusal of Judges from handling a matter should only be done in proper cases where valid reasons have been given by the Applicant. In this case, the instant application discloses no reasonable ground of bias to warrant this Court to disqualify itself from handling this matter.
11. The instant application was canvassed by way of written submissions. The 1<sup>st</sup> & 2<sup>nd</sup> Plaintiff's submissions were filed on 2<sup>nd</sup> January 2024 but no submissions were filed on behalf of the Applicant. I shall not regurgitate the contents of the said submissions but I have considered them and will refer to them in my determination.

### **Analysis and Determination.**

12. Upon filing of its application for joinder as a party to these proceedings, this court considered the said application ex-parte and gave directions that the same be served upon all the parties in the pleadings and be responded to. The Court fixed for hearing inter-partes of the said application on 21<sup>st</sup> September 2023. When the matter came up for the inter-partes hearing of the application, the applicant orally applied to have court recuse itself from this matter and refer the file for reallocation to the Division's Presiding Judge to a different Judge.
13. Taken aback by the application, the Court directed the applicant to formally move the court and serve all the other parties. Subsequently, the present application was filed by the Applicants on 9<sup>th</sup> November 2023 and served on all the parties. The 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff's filed their responses while the 3<sup>rd</sup> plaintiff and the Defendant did not file any responses.



14. Upon careful consideration and analysis of the pleadings filed by the parties herein in support and in opposition to the instant application together with the written submissions by Counsel for the 1<sup>st</sup> & 2<sup>nd</sup> Plaintiffs, the issues that arise for determination are: -
- i. Whether the Applicant has the requisite *locus standi* to file the instant application; and if so, whether the application herein is merited.

**Whether the Applicant has the requisite *locus standi* to file the instant application.**

15. Mr. Kiplangat, learned Counsel for the 1<sup>st</sup> & 2<sup>nd</sup> Plaintiffs cited the Court of Appeal decision in the case of *Gichuki v Nangurai* [1985] eKLR where the court found that a party who had not been joined to the Suit could not bring an application to strike out a notice of appeal and submitted that that a person who is yet to be joined as a party in the suit has no requisite *locus standi* to bring an application in the suit.
16. The Court of Appeal in the case of *Alfred Njau v City Council of Nairobi* [1983] KLR 625 defined *locus standi* as hereunder: -
- “...*locus standi* literally means a place of standing and refers to the right to appear or heard in court or proceedings and to say that a person has no *locus standi* means that he/she has no right to appear or be heard in such and such proceedings”
17. It is not disputed that the Applicant filed an application dated 12<sup>th</sup> September 2023, under certificate of urgency, seeking inter alia to be enjoined to these proceedings and that the said application is yet to be heard and determined. Cases belong to the parties that move the court either through a substantive suit or motions seeking some form of relief or the other. If a party wishes to participate in a case where he anticipates that orders adverse to his or her interest, the Civil Procedure allows the said party to formally apply and be enjoined to the suit, upon giving reasons therein as to what prejudice the party stands to suffer if he/she is not made a party to the suit. In the instant suit, the Applicant despite moving the court on 12<sup>th</sup> September to be enjoined in the suit failed to prosecute the said application. As it stands now, the said application is yet to be decided one way or the other. Therefore, in the absence of an order joining the Applicant to this suit and/or proceedings, the Applicant is not a party to this suit or these proceedings
18. In my view, it would have been prudent for the Applicant to prosecute its application for joinder filed on 12<sup>th</sup> September 2023 seeking to be enjoined as a defendant to this suit. Once the application for joinder is considered and, in the event, it is successful, the Applicant would then be a party and would, with good reason, file the instant application having been joined to the suit. As the matters stand now the applicant lacks the capacity to bring any motions or applications in the present suit. This leads to the logical conclusion that the Applicant has no *locus standi* to file the instant application.
19. This position is buttressed by the Courts holding in the case of *Erastus Ndubiu T/A Emac Enterprise v Mugomoni Farmers Company Limited; Inshwil Builders Engineer Ltd (Interested Party); Benjamin Kamande Gitbuka (Proposed Interested Party/ Applicant)* [2020] eKLR where the Court in upholding a preliminary objection on *locus standi* held that without being enjoined in the suit, it follows that the Applicant would have no *locus standi* to bring the application.
20. In conclusion, I find that the application as filed herein is a non-starter having been filed by a stranger to these proceedings. I will therefore not consider the merits of the same. Consequently, the instant application is struck out in its entirety. The Applicant is directed to prosecute its application filed on 12<sup>th</sup> September 2023 for Joinder to the present suit as a Defendant.



21. Costs follow the event. Seeing that the Applicant is not yet a party to these proceedings, to condemn it to costs will bring operational challenges in enforcement of the said orders. I therefore direct that each party bear its own costs.

22. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 12<sup>TH</sup> DAY OF FEBRUARY, 2024.**

**J.W.W. MONG'ARE**

**JUDGE**

In the Presence of;

1. Mr. Mwaura for the Applicant/Intended Defendant.
2. Mr. Kiptoo for holding brief Mr. Kiplangat for the 1<sup>st</sup> & 2<sup>nd</sup> Plaintiffs.
3. N/A for the 3<sup>rd</sup> Plaintiff.
4. Mr. Kiche for the Defendant.
5. Amos - Court Assistant

