



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kenya Ship Agents Association v Kenya Maritime Authority; Kenya  
Groupage Cargo Handling Association (Intended Interested Party) (Petition  
E050 of 2023) [2024] KEHC 4805 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4805 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
PETITION E050 OF 2023**

**OA SEWE, J**

**APRIL 18, 2024**

**IN THE MATTER OF ARTICLES 2(1) & (2), 19, 20, 21, 22, 23  
& 258 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS  
AND FUNDAMENTAL RIGHTS AND FREEDOMS UNDER  
ARTICLES 27 AND 47 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF ARTICLE  
10 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF THE STATUTORY INSTRUMENTS ACT,  
2013, THE COMPETITION ACT, 2010, FAIR ADMINISTRATIVE  
ACTION ACT 2015 AND THE KENYA MARITIME AUTHORITIES  
ACT, 2006**

**BETWEEN**

**KENYA SHIP AGENTS ASSOCIATION ..... PETITIONER**

**AND**

**KENYA MARITIME AUTHORITY ..... RESPONDENT**

**AND**



**RULING**

- (1) Before the Court for determination is the Notice of Motion dated 19th February 2024. It was filed on behalf of the proposed interested party, Kenya Groupage Cargo Handling Association (hereinafter, “the applicants”) under Section 1A, 1B and 3A of the *Civil Procedure Act*, Chapter 21 of the Laws of Kenya and Order 1 Rule 10 and Order 51 of the *Civil Procedure Rules* for the following orders:
  - (a) Spent
  - (b) That leave be granted for the applicant to be enjoined as an interested party in these proceedings for purposes of fully participating in these proceedings.
  - (c) If, and once enjoined, the applicant be allowed to respond to both the petitioner’s Notice of Motion dated 7th November 2023 and the Petition filed herein.
  - (d) That the costs of the application be in the cause.
- (2) The application was predicated on the grounds that, from the circumstances set out by the petitioner at paragraphs 11 and 13 of the Petition, the applicant is an entity that has an identifiable stake and legal interest in these proceedings. The applicant pointed out that it attended and participated in the meeting that gave rise to these proceedings, and clearly made its position known in that meeting. The applicant also averred that the matters raised herein relate to concerns that affect the efficiency of cargo handling logistics at the Port of Mombasa. It therefore contended that it is at the risk of being subjected to new tariffs which will have the effect of scrapping some charges; and therefore that it stands to be affected adversely by the subject decision. Therefore, as an entity involved in the business of cargo logistics and other operational matters raised in this Petition, it ought to be given an opportunity to participate in these proceedings.
- (3) The grounds aforementioned were amplified in the Supporting Affidavit annexed to the application sworn on 19th February 2024 by the applicant’s Chairman, Solomon Muema. He averred that he personally attended the stakeholders meeting held on 10th August 2023 and is privy to the proceedings of the meeting mentioned at paragraph 11 of the Petition and paragraph 6 of the Notice of Motion dated 7th November 2023. Mr. Muema annexed to his affidavit several documents including the impugned notice and the pertinent letter dated 21st August 2023. He likewise exhibited a copy of the draft Replying Affidavit it intends to file in response to the application dated 7th November 2023.
- (4) The e-filing system does not seem to show that any documents were filed by the respondent in response to the application. I have accordingly proceeded without the benefit of the documents, if any.
- (5) The application was urged orally on 20th March 2024 by Mr. Matheka, counsel for the applicant. He relied on the factual basis as set out in the Supporting Affidavit of Solomon Muema. He highlighted the fact that, in a letter written by the respondent dated 21st August 2023, the applicant is included as one of the stakeholders. He accordingly urged the Court to find that the applicant has given a justification for joinder. His application received the support of Mr. Mbaluto, counsel for the petitioner. Counsel drew the attention of the Court to page 43 of the Petition by which the applicant was listed as one of the stakeholders invited to the meeting on review and harmonization of destination charges held on 10th August 2023 at Bandari Maritime Academy, Mombasa. He relied on Rules 3 and 7 of the



Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, otherwise known as “The Mutunga Rules” in urging the Court to allow the application.

- (6) On his part, Mr. Makuto relied entirely on his Grounds of Opposition and submitted that the applicant has utterly failed to demonstrate an identifiable stake in these proceedings.
- (7) Thus, the single issue arising for determination is whether the applicant has made out a good case to warrant its joinder herein as an interested party.
- (8) The application was essentially hinged on Order 1 Rules 10 of the Civil Procedure Rules. The provision states thus in sub-rule (2) of Rule 10:

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court to effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”(Emphasis added)

- (9) It is manifest therefore that any person who wishes to be enjoined as one “whose presence before the court may be necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit” can only join the suit as either a plaintiff or defendant on the basis of a demonstrable personal stake. Thus, I would agree with the viewpoint taken by Hon. Muriithi, J. in the case of Brek Sulum Hemed v Constituency Development Fund Board & Another [2014] eKLR, when he observed that:

“To be sure there is no procedure under the *Civil Procedure Act* and Rules for the joinder of interested parties and the practice of application for [by] interested parties must have been developed by necessary implication...”

- [10] Nevertheless, the substantive matter being a constitutional petition, I have resorted to Rule 1 of the Mutunga Rules for a definition of an interested party; and it states:

“interested party” means a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation.”

- (11) In respect to the said provision the following principles were enunciated in Trusted Society of Human Rights Alliance v Mumo Matemo & 5 Others [2014] eKLR by the Supreme Court, which were later reaffirmed in Francis Kariuki Muruatetu & Another v Republic & 5 Others (supra) thus:

“(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 an 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 make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court..."

(12) In the instant case, the applicant has complied and moved the Court by way of a formal application. It is also manifest from both the Petition and the Notice of Motion dated 7th November 2023 that the applicant was among the various stakeholders in the shipping industry invited by the respondent to a consultative meeting held on 10th August 2023. Indeed, the respondent's letter dated 21st August 2023 confirms that the applicant was one of the members of the smaller team of stakeholders charged with the responsibility of giving further thought to the Presidential Directive on reduction of logistics costs along the northern corridor. Hence, they were thereby invited for a follow up meeting scheduled for 29th August 2023.

(13) I am therefore satisfied that the applicant has demonstrated sufficient interest in this suit to warrant its joinder as well as the prejudice they stand to suffer in the event of non-joinder. Moreover, as was pointed out in *Judicial Service Commission v Speaker of the National Assembly* (supra), unlike an amicus curiae, an interested party "...may not be wholly indifferent to the outcome of the proceedings in question...he may not be wholly non-partisan as he is likely to urge the court to make a determination favourable to his stake in the proceedings."

(14) In the result, the orders that commend themselves to the Court and which I hereby grant in respect of the application dated 19th February 2024 are as hereunder:

- (a) That leave be and is hereby granted for the applicant, Kenya Groupage Cargo Handling Association, to be enjoined as an interested party in these proceedings for purposes of fully participating in these proceedings.
- (b) That leave be and is hereby granted to the applicant to respond to both the petitioner's Notice of Motion dated 7th November 2023 and the Petition filed herein.
- (c) That the costs of the application be in the cause.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 18TH DAY OF APRIL, 2024**

**OLGA SEWE**  
**JUDGE**

