



**Mutitu Water and Sanitation Company Limited (MWASCO) v Kagiri & 5 others; Diocese of Nyeri Registered Trustees (Intended Interested Party) (Civil Case E009 of 2023) [2024] KEHC 3954 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3954 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
CIVIL CASE E009 OF 2023  
M MUYA, J  
APRIL 18, 2024**

**BETWEEN**

**MUTITU WATER AND SANITATION COMPANY LIMITED  
(MWASCO) ..... PLAINTIFF**

**AND**

**JOSEPH KAGIRI ..... 1<sup>ST</sup> DEFENDANT  
SAMUEL KARIUKI ..... 2<sup>ND</sup> DEFENDANT  
ROSE WANGAI ..... 3<sup>RD</sup> DEFENDANT  
PIUS GITHINJI ..... 4<sup>TH</sup> DEFENDANT  
JOSEPH NDERITU BEING SUED AS HOLDING THEMSELVES TO BE THE  
OFFICIALS MUTITU WATER PROJECT SELF HELP GROUP 5<sup>TH</sup> DEFENDANT  
MINISTRY OF LABOUR AND SOCIAL PROTECTION ..... 6<sup>TH</sup> DEFENDANT**

**AND**

**DIOCESE OF NYERI REGISTERED TRUSTEES .... INTENDED INTERESTED  
PARTY**

**RULING**

1. The Notice of Motion application dated 26th July, 2023 seeks the following orders:-
  1. Spent
  2. That the applicant herein Diocese of Nyeri Registered Trustees be enjoined in this suit as interested party.



2. The grounds are:-
  - a. That the applicants are the Arch Diocese of Nyeri Registered Trustees in conjunction with the local community within Kieni West Sub Count developed the Mutitu Water Project to serve the interests of the community in the area.
  - b. That the applicants provided funding for the water project, facilitated by father Romano in consultation with the Italian Government through father Gabriel Pipanito President of European Union professionals where he had obtained funding, the community contributed their land for the passage of the water project installations and labour for construction of the water project. Each community member was required to dig 1000 strands before being registered as a member.
  - c. That the orders that shall be granted in this suit shall greatly affect the applicants hence the need to have them granted an opportunity to be heard.
3. The applicant has sufficient interest in the suit proceedings and his joinder in the suit will assist the honourable court in reaching at a more conducive and fair determination of this matter.
4. This application is not opposed by the Defendants. The Plaintiff/respondent however has raised its objection.
5. It is the contention by the Plaintiff that the application for Joinder of parties is one marred with falsehoods, hearsay and confusion and that the deponent of the affidavit to the application has not shown in what capacity and or authority to act or file any documents on behalf of the intended interested party.
6. That the applicants have not shown what stakes or interest they have in the suit or what prejudice they would suffer in the events of non-joinder. That they have failed to meet the threshold required for a party to be joined in a suit as an interested party.
7. The Plaintiff relies on rule 2 of *the Constitution* of Kenya (Protection of rights and fundamental freedoms) Practice and Procedure rules 2013 which provides:-
 

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”
8. Reliance is also placed in the Supreme Court Case of *Communications Commission of Kenya and 4 others Vs Royal Media Services Limited and 3 others* Petition NO. 15 of (2024) eKLR relying on its earlier decision in the Mumo Matemu case which defined interested party in the following manner:-
 

An interested party is one who has a stake in the proceedings though he or she was not a party to the cause ab initio. He or she is one who will be affected by the decision of the court when it is made either way. Such a person feels that his or her interests will not be well articulated unless himself or she herself appears in the proceedings and champions his or her cause.
9. Similarly, in the case of *Meme Vs R* (2004) EA 124 it was held that a party could be enjoined in a matter for the reasons that:-
  - i. Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings.



- ii. Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law.
- iii. Joinder to prevent a likely course of proliferation of litigation.

### **Applicants Submissions**

10. The applicant places reliance in the Mumo Matemu case which defined an interested party. The case of *Meme-V-R* (2004) EA 124 where the High Court grappled with the definition of an interested party.
11. The application has identified three main elements for the courts consideration:-
  - i. The personal interest or stake that the party has in the matter.
  - ii. The prejudice to be suffered in the event of non-joinder.
  - iii. Demonstrable relevance of submission same not to be mere replication of what other parties are making before the court.
11. On the issue of personal interest it is submitted that the applicants are the pioneers of the Water Project in conjunction with the community. They provided funding for the water project in consultation with the Italian government, the European Union Professionals. The community contributed land for the water project and personal labour for the members.
12. That the offices of the Plaintiff are located within the applicants land parcel no. Mugunda/Nairutia/Block 1/203.
13. The applicant has given a list of motor vehicles registered in the applicants names and used for the benefit and running of the Water Project.
14. That through gazette Notice No. 11257 of 17<sup>th</sup> August, 2023 which is annexed. The plaintiffs license to offer water services were revoked with immediate effect and among the stakeholders appointed to oversee the management of the water project was the applicant.
15. Prejudice to be suffered in the event of non-joinder. It is submitted that it has been demonstrated that the applicants are major stake holders in the water project management and running hence their vision to offer the community clean and accessible water.
16. Thirdly, that there are two factions fighting over control of the Water Project and as pioneers of the project it's only right and proper for the applicants to shed light and insight as to who is the rightful owner of the Water Project.
17. That no prejudice would be occasioned to the Plaintiffs and Defendants if the application for joinder of parties is granted.
18. It is the Plaintiffs contention that the applicant has not demonstrated what personal interest it has in the Water Project. That the applicant acquiesced to transfer of ownership of all assets of the water project to Mutitu Water Project Community Self-help Group.
19. On 21<sup>st</sup> June, 2002, the applicant therefore extinguished all their rights in the water project. The Mutitu Water Project Self Help Group ceased to exist vide an agreement dated 1<sup>st</sup> March, 2010 paving the way for the incorporation of the plaintiff company. It is further submitted that the allegations by the applicant that they provided funding to the Water Project is not true as the water project was funded through donations from the European Union NGO Cevitism, Local Community, County



Government of Laikipia, Ministry of Water, Tana Water works Development Agency and other organizations and individuals.

20. It is further contended that while it's true that the land in which the plaintiff offices are situated belong to the applicant, that in itself does not grant them interest as there is in existence a relationship of landlord and tenant. That Mugunda Catholic Parish leases to the plaintiff and receives monthly rent hence there is no personal interest shown.

## **Analysis and Determination**

### **Issues**

- i. Whether the application meets the legal threshold for the grant of an order for joinder of interested parties.
21. In the Supreme Court Case of *Francis K. Muruatetu & another Vs Republic & 5 others* 2016 eKLR that court held:-
- a. 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.
  - b. The prejudice to be suffered by the intended interested party in case of non-joinder must be demonstrated to the satisfaction of the court, it must be clearly outlined and not something remote.
  - c. 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.

### **Personal Interest**

22. It is not denied that the applicant is the owner of the land in which the offices of the plaintiff are situated but it is the contention by the plaintiff that it has leased the said premises from the applicant and pays monthly rent to Mugunda Catholic Parish, therefore applicant cannot claim to have personal interest in the water project. Delving into the historical background of the water project reveals that the applicant and the local community were the pioneers of this water project before it was transferred to Mutitu Water Project Self Help Group.
23. The applicant denies the allegation that it leased the premises to the plaintiff through Mugunda Catholic Parish.
24. The applicant contention is that at the inception of the water project it provided funding facilitated by Fr. Romano in consultation with the Italian Government through father Gabriel Pipanito, President of the European Union Professionals, the community contributed their land and labour.
25. The plaintiff maintains that the said allegations are not true as the water project was funded by the European Union NGO Cevitism, Local Community, County Government of Laikipia, Ministry of Water, Tana Water Works Development Agency and other organizations.
26. The applicant has stated that it provided motor vehicles for use by the water project which vehicles are still in use for the stated purposes.
27. Having exhaustively evaluated the rival arguments as deponed in the affidavits, I do not find any good reason for the applicant to peddle lies as alleged or at all.



- 28. I have perused gazette notice no. 11257 dated 17<sup>th</sup> August, 2023 which revoked the license of Mutitu Water and Sanitation Company with immediate effect.
- 29. It is noted that the same notice indicated that provision of water services to revert and be undertaken by County Government of Nyeri, Laikipia, Nyandarua and in consultation with the Catholic Archdiocese of Nyeri. This in itself is sufficient recognition of the applicant as a serious stakeholder in the Mutitu Water Project.

**Prejudice to be suffered in the event of non-joinder**

- 30. It is the contention by the plaintiff that the applicant will not suffer prejudice in any way as they are not part of the running of the affairs of the company.
- 31. Clearly the legal notice adverted to reverts the provision of water to the country government of Nyeri, Nyandarua and Laikipia in consultation with the applicant. It cannot therefore be said that the applicant has no say in the running of the affairs of the water project and therefore has not personal interest. I find and am of the considered view that it has sufficiently been demonstrated that in the event of non-joinder the applicant will suffer prejudice.

**Relevance of submissions by the applicant**

- 32. In Legal Notice No. 11257 which revoked the license of Mutitu Water and Sanitation Company, it was provided that the County Governments of Nyeri, Nyandarua and Laikipia undertake to run the water services in consultation with the applicant. This is a clear indication that it was appreciated that the input of the applicant was required and was necessary in the running and provision of water services as envisaged.
- 33. The court is satisfied that the applicants have met the threshold of grant of joinder of parties.
- 34. This application has merit and it is allowed as prayed with costs payable by the Plaintiff.

**RULING READ AND DELIVERED THIS 18<sup>TH</sup> DAY OF APRIL, 2024.**

**In presence of:-**

Kinoti and Miss Muchiri for Plaintiff  
Gichuki for the intended interested party  
Miss Wairimu holding brief for Miss Mugambi

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**M. MUYA**  
**JUDGE**

