



**Simpson Senda Kwayera t/a Tele News Africa and Atlantic Region v Maosa
Thomas Gichana Nyakambi t/a Maosa & Company Advocates; Clerk of
National Assembly & 6 others (Proposed Interested Parties) (Civil Case
E063 of 2024) [2024] KEHC 8985 (KLR) (Civ) (22 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8985 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL CASE E063 OF 2024

AM MUTETI, J

JULY 22, 2024

**IN THE MATTER OF ILLEGAL AND UNLAWFUL DIVERSION OF
CLIENT MONEY INTO PERSONAL ACCOUNT JOINTLY OWNED BY
ADVOCATE THOMAS GICHANA NYAKAMBI AND BETTY JANE MWAISEJE**

AND

**IN THE MATTER OF GROSS PROFESSIONAL MISCONDUCT BY ADVOCATE
THOMAS GICHANA MAOSA NYAKAMBI T/A MAOSA & COMPANY ADVOCATES**

BETWEEN

**SIMPSON SENDA KWAYERA T/A TELE NEWS AFRICA AND ATLANTIC
REGION APPLICANT**

AND

**MAOSA THOMAS GICHANA NYAKAMBI T/A MAOSA & COMPANY
ADVOCATES RESPONDENT**

AND

CLERK OF NATIONAL ASSEMBLY PROPOSED INTERESTED PARTY

SOLICITOR GENERAL PROPOSED INTERESTED PARTY

**PRINCIPAL SECRETARY MINISTRY OF TOURISM AND
WILDLIFE PROPOSED INTERESTED PARTY**

THE AUDITOR GENERAL PROPOSED INTERESTED PARTY

**PARLIAMENTARY ACCOUNTS COMMITTEE PROPOSED INTERESTED
PARTY**



RULING

Introduction

1. The applicant by a way of Notice of Motion dated 28th May 2024 and amended on the 11th June 2024 brought under Certificate of Urgency sought leave of this court to enjoin the proposed interested parties to the originating summons filed by Mr Simpson Senda Kwayera T/A Tele News Africa And Atlantic Region dated the 21st day of March 2024
2. The amended Notice of Motion is supported by an affidavit sworn by Thomas N. Maosa on 11th June 2024.

The parties have each filed their respective submissions. The respondent is strongly opposed to the application for leave to enjoin the intended third parties. In response thereto, he has filed a replying affidavit dated the 11th June 2024.

Analysis

3. Upon Perusal of the application and the response thereto, I am satisfied that the materials presented by both parties are sufficient to assist this court in determining whether there is any reason for this court to grant leave to the applicant to enjoin the proposed interested parties to this suit.
4. The Applicant Mr Maosa Advocate basically argues that it is necessary for the proposed interested parties to be enjoined in the matter in order to assist this court reach a just determination of the originating summons.
5. The originating summons is basically a claim by the Respondent of monies allegedly received and held by the Applicant pursuant to a decree in Civil suit Number 148 of 2022 in which Mr Maosa acted as his duly appointed advocate.
6. It is apparent from the Affidavit in support of the instant application that Mr Thomas N. Maosa does acknowledge the receipt of the funds in issue.
7. The applicant depones at paragraph 3 thus :-

“The payments in question are as follows: Ksh 65,000,000, Ksh 15,000,000, Ksh 60,000,000 and Ksh 85,735,950 respectively”
8. The applicant further admits in his Affidavit that the sums in question were approved payments made to Tele News Africa and Atlantic Region.
9. It is Maosa’s position that the proposed interested parties should be brought into these proceedings to explain why the payments were made to Tele News Africa and Atlantic Region.
10. The applicant at the paragraph 13 of his supporting affidavit deponed:

“That it is incumbent upon the said Government Agencies to be incorporated as interested parties and subsequently be served with the court papers in order to ventilate to the



Honourable court the prevailing circumstances under which the following payments were made to the Tele News and Atlantic Region to with:”

1. Ksh 65,000,000
2. Ksh 60,000,000
3. Ksh 150,000,000
4. Ksh 85,735,950

11. The position taken by Mr Maosa Advocate is that the Government agencies need to appear and explain why payments were made to him in the first place.

11. The Respondent Mr. Simpson Sisenda Kwayera in his originating summons seeks to recover the sum of Ksh 62,915,950 which amount he maintains was received by the Advocate and he has declined to release the said amount to him. The parties have at least agreed on one fact ,that is , money was received by the Advocate and that the same was intended for the Respondent.

The applicant is thus inviting this court to veer into matters that the Respondent has not raised in the Originating summons. It is not intended in the Originating Summons to determine the circumstances under which money was paid to Mr Maosa.

12. In his reply to this application for the joinder of proposed interested parties, the Respondent has attached a judgement dated 24th May 2024 delivered by Learned Honourable Lady Justice A.N Ongeru in Misc. Application No. E338 of 2022 between Joseph Korir Biwott T/a Biwott Korir & Company Advocates v Thomas Maosa T/a Maosa & Company Advocates.

13. The afore-stated matter arose out of services rendered by Mr Joseph Korir Biwott Advocate to the respondent herein in civil suit No. 148 of 2012 which suit gave rise to the decree that culminated in Mr Maosa Advocate receiving a sum of Ksh 85,000,000 in favour of the client Simpson Senda Kwayera

14. It is therefore clear to this court that the issue that is for determination between the applicant and the respondent in this application is narrow and relates to an Advocate accounting for funds received in favour of his client and nothing more.

15. The question that arises for determination is whether in the circumstances of the present matter it would be necessary for the proposed interested parties to be enjoined.

16. The court is alive to the position taken by the supreme court in the case of Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others [2014] ekLR where in the court held:-

“ 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 his or her interest will not be well articulated unless he himself or her herself appears in the proceedings and champions his or her cause”

17. The position of the supreme court as I understand it is that the intended interested party must demonstrate the stake that he or she has in the matter that he or she wants to protect in the proceedings.

18. If the proposed interested parties had approached this court by themselves seeking joinder, the burden would have been on them to demonstrate their identifiable stake and the potential prejudice they would be exposed to if not enjoined in the proceedings.



19. It was therefore upon Mr Maosa the applicant to demonstrate to this court what stake the proposed interested parties hold in this matter and what would be the prejudice they would suffer if at all they were not brought on board.
20. It is clear from the pleadings before me that money left Government and the necessary approvals as per the affidavit of Mr Maosa Advocate were granted.
21. The funds admittedly were in favour of the respondent in the application.
22. I understand the applicant's desire to be that the proposed interested parties be brought to this court to explain under what circumstances the payments were made.
23. The applicant has completely missed the point here, the Respondent in his originating summons has no claim against government that he is advancing. According to him he rendered a service and the funds that were meant for him pursuant to the decree issues in High court Misc. (OS) No. 148 of 2012.
The Government through the Attorney General having paid the money in issue to Mr Maosa Advocate in favour of the respondent has no stake in those funds at all.
24. The applicant in my view, in seeking to enjoin the proposed interested parties has not made a case good enough to show how the participation of the proposed interested parties would further the cause of justice.
25. It is important to highlight that when counsel for the parties appeared before me on 26th June 2024 and argued the application, this court repeatedly urged MR MAOSA to demonstrate how each proposed interested party would be affected by the decision of this court in the event they are not enjoined or at least demonstrate manifest or discernible prejudice to any of them. However, the applicant was unable to do so
26. The applicant simply gave a narrative of the multiple sums of the money received on behalf of the respondent but did not demonstrate how in the event the proposed interested parties are not brought on board, any orders emanating from this court would affect them.
27. The respondent on his part through counsel urged that the sole purpose of this application is to cause delay and nothing more.
28. According to the respondent, the issue at hand is simple and straight forward. The matter is about accounting for monies received by the applicant for and on behalf of the respondent. The applicant will only be required to account for the sum that he is alleged to have refused to release to the respondent.
29. The applicant did not at any point in his submissions allude to any of the proposed interested parties having a stake in the funds he allegedly holds. The respondents position therefore, is that the applicant seeks to enjoin the proposed interested parties to convolute the matter in order to delay further the release of the respondents' funds.

Determination

30. In conclusion, this court finds that the applicant has not been able to demonstrate to this courts satisfaction the stake that each and everyone of the proposed interested parties has in the funds that he allegedly holds for and on behalf of the respondent.
31. Further the applicant has not shown the prejudice that the proposed interested parties would suffer if this application for leave is not granted and the originating summons proceeds to full hearing without their participation.



32. In the end, I find no merit in this application and I hereby dismiss the same with cost to the respondent. The originating summons are to be set down for hearing expeditiously considering the history of this matter.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF JULY 2024.

A. M. MUTETI

JUDGE

In the presence of:

Court Assistant: Kiptoo

..... for the Appellant

..... for the Respondent

.....Appellant

