



UAP Old Mutual v Chev Energies Limited; Ijaka (Interested Party) (Civil Suit E001 of 2022) [2023] KEHC 17775 (KLR) (22 May 2023) (Ruling)

Neutral citation: [2023] KEHC 17775 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL SUIT E001 OF 2022**

DK KEMEL, J

MAY 22, 2023

BETWEEN

UAP OLD MUTUAL PLAINTIFF

AND

CHEV ENERGIES LIMITED DEFENDANT

AND

HASSAN SALIM IJAKA INTERESTED PARTY

RULING

1. The intended interested party filed an application dated September 3, 2022 seeking orders that: the Honourable Court be pleased to enjoin Hassan Salim Ijaka as the Interested Party in the suit and that the costs of the application be provided for.
2. The grounds for seeking the above orders are that: the applicant (intended interested party) is the Plaintiff in Bungoma Chief Magistrate's Court Civil Suit No. E. 123 of 2022 where orders sought in this suit shall affect him immensely; the intended interested party was involved in a road traffic accident on December 27, 2021 involving motor vehicle registration No. KDB 874J owned by the defendant herein and insured by the plaintiff herein; the interested party will be condemned unheard as he is not a party to the suit; it is fair and in the interest of justice that the interested party be heard before the Court makes its final orders in these proceedings and more specifically on the application dated July 25, 2022 for stay of proceedings in the Chief Magistrates Court; the intended interested party is not a party to the instant suit but the orders for stay of proceedings sought directly affects him; and the enjoinder of the interested party in this suit shall not prejudice the plaintiff herein.
3. The plaintiff filed their grounds of opposition stating that; the plaintiff/respondent is yet to be served with the application in contravention of the directions of the Court issued on November 21, 2022; the proposed interested party has not met the criteria and/or requirements for being impleaded in the



instant suit; the course of action herein is premised on a contract concluded between the plaintiff and the defendant herein; the intended interested party was not privy to the said contract and has no rights or obligations deriving from the said contract; that the said claim herein is based on the premise that the defendant/respondent breached the terms of the contract executed between the plaintiff and the defendant; in particular, that it misrepresented facts in the reporting of the accident to the plaintiff/respondent; the intended interested party is not privy to how the accident was reported and any evidence to be adduced shall be hearsay or otherwise inadmissible; the issues raised in the instant suit, being whether or not the defendant breached the contract or insurance policy, can be completely settled and adjudicated on without the participation of the intended interested party; the intended interested party has not demonstrated the evidence or submissions it intends to make before this court and the relevance of such evidence or submissions to warrant joinder in the instant suit; and the instant suit does not prejudice the intended interested party's right or claim in Bungoma CMCC No. 123 of 2022 as he shall still be entitled to recover damages and it is neither here or there whether the compensation to be awarded therein is settled by the plaintiff or the defendant herein.

4. The defendant indicated that it did not oppose the application dated September 3, 2022.
5. Vide Court directions dated February 21, 2022, parties were directed to canvass the application vide written submissions. However, none of the parties filed their respective written submissions.
6. An interested party is one who has a stake in the proceedings, though he was not party to the cause ab initio. He is one who will be affected by the decision of the Court when it is made, either way. The Court should not act in vain by enjoining a party that clearly would have no interest in the subsequent proceedings.
7. In *Skov Estate Limited & 5 others v Agricultural Development Corporation & another* [2015] eKLR Justice Munyao Sila in a persuasive decision stated the following in dismissing an application for the applicants to be enjoined to the suit because they purchased the suit property from the plaintiffs' person;

“In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in a suit as interested party.

In other words, there needs to be a demonstration that the interest of the person goes further than “merely being affected” by the judgment or order. It must be shown that the presence of that person is necessary, so that the issues in the suit may be settled, and that if the person is not enjoined, the court may not be fully equipped to settle the questions in the suit or may be handicapped in one way or another. A joinder may also be allowed if the intended interested party has a claim of his own, which in the circumstances of the matter, needs to be tried, or is convenient to be tried alongside the claims of the incumbent plaintiff and defendant. The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to enjoin a person



as an interested party, must be looked at within the context and surrounding circumstances of each particular case.”

8. In *Marigat Group Ranch & 3 Others v Wesley Chepkoimet & 19 others* [2014] eKLR

The application before Court was for prayers filed by 110 persons seeking to be enjoined as interested parties and Justice Munyao Sila was of the view that;

“For purposes of one who wants to be enjoined as an interested party, I think, that such person needs to fit himself into the catch words “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...”. This is the same position I took in the case of *Joseph Leboo v Director, Kenya Forest Service & others* (Eldoret ELC No 273 of 2013).

It should be appreciated that an interested party is not strictly plaintiff or defendant. The contest in a suit is between plaintiff and defendant and if any person has a claim over the subject matter, then such party needs to apply to be enjoined and considered as plaintiff or defendant, and not as interested party. An interested party would be a person who has a close connection to the subject matter of the suit yet not claiming any rights over it.....

It follows therefore that applications seeking to join proceedings as interested parties ought to be handled with caution so that a person does not come to a suit, disguised as an interested party, while all along he/she wishes to agitate rights of his/her own over the subject matter of the suit.”

9. These are persuasive decisions as stated above and are the correct legal position with regard to joining interested parties. This suit was instituted by the plaintiff/respondent due to breach of terms of contract executed between the plaintiff and the defendant. The interested party has filed the application to be enjoined in view of the fact that he is the plaintiff in Bungoma Chief Magistrates Court Civil Suit No. E123 of 2022 as he was involved in a road traffic accident on December 27, 2021 involving motor vehicle registration No. KDA 874J which is owned by the defendant herein who is insured by the plaintiff herein.
10. It is common ground that the suit giving rise to this application is a matter between the defendant and UAP Old Mutual Insurance Company, the plaintiff herein. This suit is separate and distinct from Bungoma CMCC No. E123 of 2022 which was filed by the proposed interested party against the defendant for damages following the accident that occurred on December 27, 2021. According to the plaintiff, the suit is premised on the defendant’s breach of the terms of contract executed between it and the plaintiff.
11. The Plaintiff may be right in its argument that the intended interested party would be entitled to recover damages and if he is included in these proceedings, the intended interested party would not aid the court at all in the determination of the issues before it as he will only stand by as an onlooker as he has no say on the contract between the plaintiff and the defendant.
12. The interested party is thus not a necessary party in this suit for the Court to be able to determine all the issues in dispute relating to the breach of terms of contract executed between the plaintiff and the defendant. He is not a necessary party whose presence before Court is required to enable the court to effectively and conclusively adjudicate on all the matters in question in this suit. Even the interested party is enjoined, he will just be there as a bystander since he was not privy to the contract between the plaintiff and the defendant and he cannot contribute in any way since the issue in controversy does not concern or affect him in any way. Bringing him into the proceedings will not add any value at all as he



will play the role of a busy body. The interested part should just concentrate on his matter before the lower court and let the plaintiff and defendant square it out in this court.

13. In the result, it is my finding that the application dated March 3, 2019 filed by the proposed interested party is devoid of merit. The same is dismissed with costs to the Plaintiff.

Orders accordingly.

DATED AND DELIVERED AT BUNGOMA THIS 22ND DAY OF MAY 2023

D.K. KEMEI

JUDGE

In the presence of:

Odoyo for Plaintiff

Anwar for Defendant

Wekesa for Makokha for Intended Interested Party

Kizito Court Assistant

