



**Logistics Link Limited v Yalelo (U) Limited & another (Civil Suit E067 of 2021) [2023] KEHC 20144 (KLR) (3 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20144 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL SUIT E067 OF 2021  
DKN MAGARE, J  
JULY 3, 2023**

**BETWEEN**

**LOGISTICS LINK LIMITED ..... PLAINTIFF**

**AND**

**YALELO (U) LIMITED ..... DEFENDANT**

**AND**

**SEGTEX LOGISTICS LIMITED ..... PROPOSED DEFENDANT**

**RULING**

1. The applicant filed an application dated 26/4/2023 for joining Segtex Logistics Limited as a third party.
2. The application is expressed to be brought under Rule 10(2), rule 15(1) (c), rule 22 of the *Civil Procedure Rules* 2010 and Sections 1A, 1B, 3A of the *Civil Procedure Act* and all other enabling provisions of the law. I don't know what the last expression means or the value it adds to an application.
3. The orders sought were: -
  - a. This Honourable Court be pleased to grant leave to the Applicant/Defendant to issue a Third Party Notice to Segtex Logistics Limited, the proposed Second Defendant.
  - b. That due to the nature and contents of this Application this Court orders that this application be heard and determined prior to hearing of the main suit.
  - c. That upon grant of prayer (1) above, the court to fix the time within which to serve such Third Party Notice
  - d. The Honourable Court be pleased to grant such other or further orders as it may deem just and expedient.



- e. The Costs of this application be provided
4. In the supporting affidavit of Lucy Atubo, it is indicated that it is necessary therefore necessary to have Segtex Logistics Limited, the intended Third Party herein joined as Third Party to this suit to enable this Honourable Court adjudicate effectively as to whether the Plaintiff is entitled to any monies and as to who should pay the same to the Plaintiff.
5. The order under which the application is expressed to be made is as follows:-

Order 1, rule - 10. Substitution and addition of parties

- “(1) Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit.
- (2) 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 effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.
- (3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent in writing thereto.
- (4) Where a defendant is added or substituted, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendants.

6. Third party proceedings are however made under order 1 rule 15. The said rule provides as follows: -

“Order 1, rule 15 Notice to third and subsequent parties

- (1) Where a defendant claims as against any other person not already a party to the suit (hereinafter called the third party)—
- (a) that he is entitled to contribution or indemnity; or
- (b) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff; or
- (c) that any question or issue relating to or connected with the said subjectmatter is substantially the same question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and defendant and the third party or between any or either of them, he shall apply to the Court



within fourteen days after the close of pleadings for leave of the Court to issue a notice (hereinafter called a third party notice) to that effect, and such leave shall be applied for by summons in chambers ex parte supported by affidavit.

- (2) A copy of such notice shall be filed and shall be served on the third party according to the rules relating to the service of a summons.
- (3) The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the court, be filed within fourteen days of service, and shall be in or to the effect of Form No. 1 of Appendix A with such variations as circumstances require and a copy of the plaint shall be served therewith.
- (4) Where a third party makes as against any person not already a party to the action such a claim as is mentioned in subrule (1), the provisions of this Order regulating the rights and procedure as between the defendant and the third party shall apply mutatis mutandis as between the third party and such person, and the court may give leave to such third party to issue a third party notice, and the preceding rules of this Order shall apply mutatis mutandis, and the expressions “third party notice” and “third party” shall respectively apply to and include every notice so issued and every person served with such notice.
- (5) Where a person served with a notice by a third party under subrule (4) makes such a claim as is mentioned in subrule (1) against another person not already a party to the action, such other person and any subsequent person made a party to the action shall comply mutatis mutandis with the provisions of this rule.

7. The defendant ought to have filed this claim the Application within 15 days of close of pleadings. I have read the documents filed in this matter and do not wish to express any definite finding. I am equally aware that a consent is in situ and parties are fighting over the same.

8. In the case of *Gladys Nduku Nthuki v Letshego Kenya Limited; Mueni Charles Maingi (Intended Plaintiff)* [2022] eKLR, Justice G V Odunga, as then he was, stated as doth: -

“55. Although the parties herein could not resist the temptation to wade into the merits of the main application, the mater before me is simply whether to allow the application for the joinder of the interested party to these proceedings and whether the consequential order of amendment of the pleadings ought to be granted. The relevant tests for determination whether or not to join a party in proceedings were restated by Nambuye, J (as she then was) in the case of *Kingori v Chege & 3 Others* [2002] 2 KLR 243 where the learned Judge stated that the guiding principles when an intending party is to be joined are as follows:

- a. He must be a necessary party.
- b. He must be a proper party.
- c. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff.
- d. The ultimate order or decree cannot be enforced without his presence in the matter.



- e. His presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.
9. The court made reference to the case of *Deported Asians Property Custodian Board vs. Jaffer Brothers Ltd* [1999] 1 EA 55 it was held as follows:
- “A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the Court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involve in the suit. A party may be joined in a suit, not because there is a cause of action against it, but because that party’s presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involve in the cause or matter...For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders, which the plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such a person joined so that he is bound by the decision of the Court in that suit. Alternatively, a person qualifies, (on an application of a Defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.”
10. The delay to join a party is not necessarily fatal to the application. In the case of *Sammy Kanyi Kareithi vs. Barclays Bank of Kenya & 2 others; Ross Xavier Whitney (Applicant)* [2021] eKLR, the court stated as doth: -
- “Firstly, the court is empowered to join a party to a suit at any stage of the proceedings with or without an application by any party. Secondly, the mere delay in filing an application for joinder is not fatal. The pending suit is yet to be heard and the Plaintiff has not demonstrated what prejudice it has suffered by the late filing of the application. In the case of *Central Kenya Limited v Trust Bank Limited and 5 Others* [2000] eKLR, the High Court had declined to grant leave to the Appellant to amend its plaint and to join additional Defendants to the suit. In allowing the appeal, the Court of Appeal held that mere delay was not sufficient ground for declining leave unless such delay was the kind which could prejudice the adverse party beyond compensation in costs.”
11. Though referring to interested party, the decision in the case of *Shiruling Supermarket Limited v Jimmy Ondicho Nyabuti & 2 others* [2018] eKLR, suffices, where the court, Justice J. M. Mutungi, stated as follows: -
- “14. In the *Muruatetu case (supra)* the Supreme Court while citing its decision in the *Mumo Matemu case (supra)* with approval laid down the principles which govern joinder of interested parties as follows:-
- (i) Personal interest and/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 nearly 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 replica of what the other parties will be making before the court.”

12. Finally, Justice Isaac Lenaola, as then he was stated the following in *Abdul Waheed Sheikih & 2 others v Commissioner of Lands & 3 others* [2013] eKLR: -

“I wholly agree and in a case where a party claims an interest in the subject matter of suit, the law as I understand it, was well set out in the case of *Agricultural Finance Corporation vs Lengelia Ltd* [1985] KLR 766 where the court stated as follows;

“Under Order 1 Rule (2) of the *Civil Procedure Rules*, where it appears to the Court that any joinder of parties may embarrass or delay the trial of the suit, the court may on its own motion or on application of any party order separate trials or make such other order as may be expedient. Order 1 of the *Civil Procedure Rules* generally applies to parties to a suit who in normal circumstances are described as plaintiffs and the defendants. However, it is the courts view that the provision would apply, mutatis mutandi, to any other party who may be joined to a suit as interested party to the matters under consideration ...The need to maintain the interested parties in this suit ... would only serve to delay speedy disposal of the suit. If anything the interested parties are at this point busy bodies merely applying “gate-crushing” tactics under the pretext of having interest in the sale agreement subject of the suit... As a general rule, a contract affects only the parties to it and cannot be enforced by or against a person who is not a party, even if the contract is made for his benefit and purports to give him the right to sue or to make him liable upon it... the affairs of the interested parties club ought not be introduced and sucked in a straightforward contractual transaction. It is only fair that the interested parties be “evicted” from this suit by setting aside the ex parte order granted in their favour.”

- 13. I am satisfied that there is some interest shown. From the plaint and supporting documents abound, with the fingerprints of the intended party. For completeness of the transaction, it is fair and just that the intended party be enjoined. To avoid a scenario where this ruling will be used to steal a match on the plaintiff, I shall not join the intended party as a third party but as a co-defendant.
- 14. I am thus prepared to allow the application to join a third party, Segtex Logistics Limited as a party to this suit. Pursuant to order 1 rule 10, the court exercises its discretion to join the said party as a co-defendant. The plaintiff will thus file a claim claiming against the current defendant and the co-defendant jointly and severally.
- 15. The current defendant shall issue a notice of claim against a co-defendant. Costs shall be in the course.



## **Determination**

16. The upshot is that the application dated 26/4/2023 is allowed in the following terms: -
- a. Segtex Logistics Limited is hereby joined as a second defendant.
  - b. The plaintiff to amend their plaint within 14 days to include the second defendant and make a claim jointly and severally.
  - c. The defendants be at liberty to issues notice of claim against each other.
  - d. The matter to be listed for trial conference forthwith for the balance of the claim.
  - e. Costs of Ksh. 10,000/= to the Plaintiff, in any case, payable 14 days after filing of the Amendment.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 3<sup>RD</sup> DAY OF JULY 2023 .**

**Judgment delivered through Microsoft Teams Online Platform.**

**KIZITO MAGARE**

**JUDGE**

In the presence of:-

Ms Githire for Defendant

Ms Wambui for the Plaintiff

