



**Republic v Director of Public Prosecution; Ingasia & another (Exparte Applicants);  
Njuguna (Interested Party) (Miscellaneous Civil Application E019 of 2023)  
[2023] KEHC 22612 (KLR) (Judicial Review) (19 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22612 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
MISCELLANEOUS CIVIL APPLICATION E019 OF 2023  
JM CHIGITI, J  
SEPTEMBER 19, 2023**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTION ..... RESPONDENT**

**AND**

**SHAZALA JOHNSTONE INGASIA ..... EXPARTE APPLICANT**

**WYCLIFFE NAMUSEYI MEMBA ..... EXPARTE APPLICANT**

**AND**

**MILKAH NYAMBURA NJUGUNA ..... INTERESTED PARTY**

**RULING**

**Brief background:**

1. Before this Honourable Court is the intended interested party's notice of motion application dated March 21, 2023 seeking to be enjoined as an interested party in these proceedings.
2. The intended interested party entered into an agreement with the Ex - Parte applicants to supply AMREF Health Africa Kenya with Biohazard bin liners on behalf of the Ex-Parte Applicants.
3. The Ex-Parte applicants were to ensure payment to the Intended Interested Party after the delivery of the items.



4. The Ex-Parte applicants failed to pay the intended interested party the agreed sum in breach of the contract.
5. The intended interested party lodged a complaint against the Ex - Parte applicants leading to their arrest and arraignment to plead to a charge of obtaining credit by false pretense in Milimani Magistrate Court Criminal Case No. E694 of 2022: Republic v Shazala Johnstone Ingasia and Wycliffe Namuseyi Mamba.
6. The intended interested party as the complainant in the criminal trial before the Chief Magistrate's Court thus seeks to be allowed into this suit in the capacity of an Interested Party.

**The intended interested party's case:**

7. In the case of *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others* [2014] eKLR, the Court defined an interested party as:

“One who has a stake in the proceedings, though he or she was not 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.

8. Being the complainant in the criminal case she believes that she has a clearly identifiable stake that is proximate enough and she stands to suffer prejudice if the Judicial Review Application is allowed without affording her a hearing as the Complainant.
9. In opposition, the Ex-Parte applicants filed the replying affidavit sworn by Shazala Johnstone Ingasia.
10. He relies on the case of *Attorney General v David Ndii & 73 others* (Petition 12 (E016) of 2020)120211 KESC 17 (KLR), where the Judges of the Supreme Court expressed in page 3 paragraph 4 as below:

“Considering the above context and all arguments set therein, we find as follows:

- i. An applicant to be joined as an Interested Party has to satisfy this court that it has met the legal requirements for joinder. The relevant law in that regard is rule 24(1) of the *Supreme Court Rules, 2020*. The said Rule provides as follows:
  - 1) An application under sub-rule (1) shall include —
    - a) A description of the interested party;
    - b) A depiction of such prejudice as the interested party would suffer if the intervention was denied; and;
    - c) The grounds or submissions to be advanced by the interested party, their relevance to the proceedings, and their departures from the standpoint of the parties.”

11. In the case of *Skov Estate Limited & 5 others v Agricultural Development Corporation & another*, ELC No. 251 of 2012, Justice Munyao Sila expressed in page 4 and 5 at paragraph 18 that:

“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 join a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case."

12. Order 1 rule 10 (2) of the Civil Procedure Rules, 2010e states as follows:

"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."

13. The intended interested party has not demonstrated exactly what prejudice she will suffer if not enjoined but merely stated that she has a stake in the suit which stake has been and will be sufficiently represented by the respondent who is on record.
14. The intended interested party's submissions will not be a departure of the standpoint of the Respondent but similar if not a replication of the same.
15. The allegation by the intended interested party that an injustice will be meted out on her as the complainant is not demonstration enough that justice will not be accorded to her since there is a representative on record who is already handling the matter.
16. This will, therefore, be a joint effort between the respondent and intended interested party to be present collectively and argue the matter as one since the decision of the court upon the respondent will be in tandem with the intended interested party.
17. Non-joinder of the intended interested party will not affect the case because as the matter stands there is a complete settlement of all the questions involved in the proceedings.

**Analysis and determination:**

18. The issue for determination is whether the intended interested party should be added as a party to the suit.



19. In *Habiba W. Ramadhan & 7 others v Mary Njeri Gitiba* (2017) eKLR; Nairobi High Court ELC Case No. 119 of 2014 the Court stated as follows;

“As already observed by the court, under order 1 rule 10(2) the court has discretion to order joinder of any party to a suit at any stage of the proceedings so long as the presence of that party before the Court is necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions in dispute....”

20. In the case of *Lucy Nungari Ngigi & 128 others v National Bank of Kenya Limited & another* [2015] eKLR, the court held as follows:

“A large number of 128 people have applied for the leave of the court to be joined as plaintiffs in this suit. Their application is a Motion dated January 19, 2015 which is expressed to be made under order 9 rule 8(3), order 8 rule 3 and order 51 rule of the Civil Procedure Rules, section 1A, 1B and 3A of the Civil Procedure Act, articles 48 and 159 of *the Constitution* of Kenya, 2010. The application also seeks for leave to amend the Plaint as is necessary after the joinder.

Joinder of parties is governed by Order 1 of the Civil Procedure Rules. In law, joinder should be permitted of all parties in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally; or in the alternative, where if such persons brought separate suits, any common question of law of fact would arise. See also Order 7 Rule 9 of the Civil Procedure Rule. The court may even in its own motion add a party to the suit if such party is necessary for the determination of the real matter in dispute or whose presence is necessary in order to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit. Therefore, joinder of parties is permitted by law and it can be done at any stage of the proceedings. But, joinder of parties may be refused where such joinder: will lead into practical problems of handling the existing cause of action together with the one of the party being joined; is unnecessary; or will just occasion unnecessary delay or costs on the parties in the suit. In other word, joinder of parties will be declined where the cause of action being proposed or the relief sought is incompatible to or totally different from existing cause of action or the relief. The determining factor in joinder of parties is that a common question of fact or law would arise between the existing and the intended parties. This is the test I shall apply in this case.”

21. The Supreme Court of Kenya outlined the requisite elements to being joined as an interested party to a suit in *Francis Kariuki Muruatetu & another v Republic & 5 others* [2016] eKLR. The Court stated the following:

“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."
22. From the circumstances of this case, the Intended Interested Party is clearly a necessary and proper party in this matter as it touches on the criminal case where she is a complainant. She therefore has a clearly identifiable stake that is proximate enough.
  23. Section 193A of the Criminal Procedure Code on this issue provides that, "notwithstanding the provisions of any other written law, the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition or delay of the criminal proceedings."
  24. This court is cognizant of the fact that there is need to uphold victims' rights and this court is under a duty to promote access to justice which includes the rights of victims as highlighted under the [Victim Protection Act](#).
  25. Section 9(2) (a) of the Victims Protection Act provides that victims assist the courts to obtain a clear picture of what happened (to them) and how they suffered as a result of the offenders conduct or omission.
  26. The victims of an offense lodged a complaint with the police who initiated investigations. By filing a replying affidavit and submissions in opposition of the application before this court, I am satisfied that the victims have an interest in the outcome of the investigations.
  27. I am satisfied that the intended interested party will be affected by the outcome of the judicial proceedings being the complainant and the victim of the crime that forms the substance of the criminal case. She has an identifiable stake in the proceedings and she is not a busy body.
  28. Victim participation should meaningfully contribute to the justice process. Article 50 of [the constitution](#) provides for the right to fair hearing. Victims of crime are entitled to the right to fair hearing and they do precipitate in proceedings.

**Disposition:**

29. In the interest of fairness and justice it is my finding that adding the intended interested party into the suit will promote and fulfil the victims right to fair hearing as guaranteed under article 50 of [the Constitution](#).

**Order:**

1. The application is allowed.
2. The applicant shall serve the interested party with all the proceedings within 7 days.
3. The interested party shall file its response and submissions within 14 days thereafter.
4. The matter shall be mentioned on November 21, 2023 for further directions.
5. Costs shall be in the cause.

**DATED, SIGNED AND DELIVERED THIS 19<sup>TH</sup> DAY OF SEPTEMBER 2023**

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**J. CHIGITI (SC)**

**JUDGE**

**In presence of:**

Court Assistants - Lekaram/Nyabuto

Applicant(s) – Ms. Tabut

Respondent(s) – N/A

Interested Party - Ms. Mwaniki h/b for Mr. Gatimu

