



**Okeno & Sons Building Contractors v Principal Secretary Ministry of Agriculture,
Livestock & Fisheries & another; Guumba Contractors Ltd (Intended Interested Party)
(Judicial Review E010 of 2022) [2024] KEHC 15626 (KLR) (4 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15626 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
JUDICIAL REVIEW E010 OF 2022
KW KIARIE, J
DECEMBER 4, 2024**

BETWEEN

OKENO & SONS BUILDING CONTRACTORS APPLICANT

AND

**PRINCIPAL SECRETARY MINISTRY OF AGRICULTURE, LIVESTOCK &
FISHERIES 1ST RESPONDENT**

ATTORNEY GENERAL 2ND RESPONDENT

AND

GUUMBA CONTRACTORS LTD INTENDED INTERESTED PARTY

RULING

1. The interested party moved the court through a Notice of Motion dated the 28th day of May 2024. It was brought under sections 1 and 3 of the [Civil Procedure Act](#) and Articles 49, 50 and 159 of the [Constitution](#). The applicant is seeking the following orders:
 - a. This matter be certified as urgent and a stay of proceedings/execution be issued pending its hearing.
 - b. That M/s Guumba Building Contractors Limited be joined as an interested party.
 - c. All the payments due and/or disbursements made to satisfy this suit should be channelled to a joint account between the advocate for the interested party and the advocate for the Decree holder.
 - d. That the cost of this application be provided for.
2. The application is premised on the following grounds:



- a. Okeno & Sons Building Contractors subcontracted the interested party to the matter subject of this suit.
 - b. Some payments have been made, but their money still needs to be paid.
 - c. In the interest of justice, the interested party should be enjoined to avoid multiple suits.
3. The application was opposed because:
- a. There is no legal provision for a joinder where judgment in the suit has been rendered.
 - b. The interested party is not necessary for the determination of execution proceedings herein.
4. Order 1 Rule 10 (1) of the Civil Procedure Rules provides:
- 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.
5. Though the applicant has not demonstrated that this suit was brought in the name of the wrong person as the plaintiff, they have not convinced the court that they ought to have been enjoined *ab initio*. The provisions of this order are not available to them.
6. The applicant cited the decision of the Supreme Court in Trusted Society of Human Rights Alliance v Mumo Matemo & 5 Others [2014] eKLR, where an interested party was described as follows:
- (18) Consequently, an interested party is 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. Such a person feels that their interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. On the other hand, an amicus is only interested in the Court making a decision of professional integrity. An amicus has no interest in the decision being made either way, but seeks that it be legal, well informed, and in the interest of justice and the public expectation. As a ‘friend’ of the Court, his cause is to ensure that a legal and legitimate decision is achieved.
7. The applicants have argued that the intended interested party’s joinder at this stage will convolute the issues, whereas the only issue is the execution. They have further argued that the intended interested party has no identifiable or proximate stake in this matter, which is seeking the enforcement of an arbitral award that they were not part of.
8. I agree with the applicants. If the intended interested party is enjoined in the application seeking execution, we shall reopen the case that an arbitrator has decided. The intended interested party’s right will not be extinguished by failure to be enjoined. Indeed, the court may not accurately address this at the execution stage. Failure to be enjoined will not prejudice them in any way.
9. The application by the intended interested party is declined with costs to the respondents.

DELIVERED AND SIGNED AT HOMA BAY THIS 4TH DAY OF DECEMBER 2024.

KIARIE WAWERU KIARIE

JUDGE

