



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC CASE NO. E211 OF 2021

KENYA HARLEQUIN FOOTBAL CLUB.....APPLICANT

=VERSUS=

QUACO TWO HUNDRED AND THIRTY-TWO LTD.....RESPONDENT

&

ENCORE LOUNGE & GRILL.....INTENDED INTERESTED PARTY

RULING

Introduction.

1. The intended interested party seeks three main orders, namely: -

a) That this Honourable Court be pleased to grant leave to Encore Lounge & Grill Limited to be admitted in these proceedings as an interested party.

b) That the intended interested party be granted opportunity to submit written and oral pleadings in the intended appeal.

c) That the intended interested party be allowed to submit with leave of the court any other information it may deem important and relevant to aid in the just disposal of this matter and the intended appeal.

2. The Application is premised on the six grounds on the face on it. In a nutshell, the intended interested party avers that it is a tenant in the premises the subject matter of these proceedings (herein after referred to as '**the Premises**') as well as the case before the Business Premises and Rent Tribunal (hereinafter referred to as '**the Tribunal**'), between the Applicant and the Respondent herein. Therefore, the intended interested party reiterates that it will be affected by whatever decision may be made in these proceedings. The intended interested party wonders why it was not joined in the proceedings in the first place yet it is directly affected by the orders issued by the Tribunal and this Court. The intended interested party alleges that it is not only in occupation of the premises but has also expended huge financial resources reconstructing/renovating the premises.

3. The intended interested party urges the court to allow it join in the proceedings here to safeguard its interests.

4. The supporting affidavit in support of the Application is sworn by Shadrack Oriah, a director of the intended interested party. The deponent in the affidavit explains that the intended Appellant herein advertised for a tender to run the 'Harlequins bar' by way of a public tender, which is attached as an annexure. The intended interested party expressed interest and submitted a proposal which was successful. It was awarded the tender and consequently signed a sub-lease with the intended Appellant. It has since paid rent, taken possession and commenced construction/renovation of the Premises.

5. The intended interested party asserts that it became aware of these proceedings and the Tribunal case only after it was served with an order of the Tribunal by the Respondent. It therefore argues that it is a necessary party to these proceedings; that the service of the order upon it by the Respondent is an acknowledgement of that fact. The intended interested party argues that no prejudice will be suffered by the other parties if it is allowed to join into the proceedings in the capacity of an interested party. Its admission in to the proceedings will also help in the administration of justice by preventing duplicity of suits in respect of the subject matter herein.

6. The Respondent opposed the Application by the intended interested party, through a replying affidavit sworn by Lemi Mwendar on 3rd December 2021.

7. The Respondent contends that the intended interested party ought to have applied to be joined in the case before the Tribunal first before coming to this Court. There is a pending application before the Tribunal filed by the intended Appellant in this case that is scheduled for mention on 17/1/2022 to confirm filing of submissions by the parties (i.e. the intended Appellant and the Respondent in these proceedings). The Respondent wonders why the intended Appellant did not disclose the purported lease with the intended interested party in the Application before the Tribunal.

8. The Respondent is of the view that the intended interested party intends to produce before this court documents and fresh evidence that ought to have been placed before the Tribunal which is the Court clothed with original jurisdiction on matters of controlled tenancies. The Respondent terms the move by the intended interested party and the intended Appellant as a backdoor attempt to appeal out of time from the Tribunal's orders of 4th December 2020 and 19th October 2021.

9. The Respondent avers that the Application by the intended Appellant before this court is only in respect of the orders issued on 23/11/2021. The only issue then before this court is whether the Tribunal has the jurisdiction to issue the Respondent with breaking in orders. That is all that the order of 23/11/2021 dealt with. The Respondent is of the view that it is not an issue that warrants the participation of another purported tenant.

Court's Direction.

10. The Application by the intended interested party was heard on 6th December 2021. Advocates for the parties submitted orally.

Analysis and Determination

11. The only issue for determination is whether the intended interested party should be admitted into the proceedings before the Court as an interested party.

12. I am conscious of the pending application before this Court as well as the one before the Business Premises and Rent Tribunal. I will therefore be frugal with my words. I will strictly limit myself to the issue before this court at this point in time only. I will be careful not to express any opinion that may prejudice the hearing and the objective determination of the pending applications.

13. I have carefully considered the submissions by the Advocates on behalf of the parties. I have perused the case law presented by the intended interested party;

a) Supreme Court Petition No. 14 consolidated with Petitions No. 14(a), (b) and (c) – Communication Commission of Kenya Others vs Royal Media Services and Others (2014) eKLR

b) Nairobi ELC Appeal No. 52 of 2017 – Margaret Withira vs John Njari and Others (2021) eKLR

c) Nairobi Petition No. 214 of 2018 – Cyprian Andama vs DPP & Ano. (2018) eKLR

14. Additionally, I have read the Supreme Court decision in petition No. 15 of 2015 consolidated with petition No. 16 of 2015 - **Francis Kariuki Muratetu & Ano. Vs Republic & 4 Others (2016) eKLR.**

15. The law, I may say, is well settled on the issue of admission of interested parties at every stage of the proceedings before a Court of law.

16. A party who intends to be joined in proceedings as an interested party must move the Court formally. Joinder, in the capacity of an interested party is not as of right, but at the discretion of the Court, hence sufficient grounds must be laid before the Court. The party who intends to be joined must establish before the Court;

I. The personal interest or stake that the intended interested party has in the matter;

II. The prejudice to be suffered by the intended interested party in case of non-joinder; and,

III. Lastly, the intended interested party must in his application set out his case and or submissions he intends to make before the Court and demonstrate the relevance of those submissions, which must not be merely a replication of what the other parties in the case will be making before the Court.

17. The intended interested party in the proceedings before me has made a case for his inclusion as an interested party. Accordingly, I allow the application in terms of prayer number 1. The upshot is that, Encore Lounge & Grill Limited, is admitted into these proceedings as an interested party.

18. The costs of the application shall be in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 10TH DAY OF DECEMBER 2021.

M.D. MWANGI

JUDGE

In the Virtual Presence of:-

Sunday Memba for the Applicant

Kethi Kilonzo for the Respondent

Sunday Memba holding brief for Okeyo for the intended Interested Party

Court Assistant: Hilda

M.D. MWANGI

JUDGE