



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL CASE NO. 8 OF 2018

JOSEPH MUTHURI.....APPLICANT

(Suing on behalf of United Sacco formerly Ntiminyakiru Rural Sacco Ltd)

Versus

COOPERATIVE BANK & 14 OTHERS.....DEFENDANTS

V.M.NGUNJIRI..... INTERESTED PARTY

R U L I N G

1. By a Motion on Notice dated 12/9/2019, the applicant in his capacity as a supervisory committee member of United Star Sacco formerly Ntiminyakiri Sacco, sought orders of inhibition restraining the interested party his assigns and employees from making any new alteration on **plot No. Meru Municipal Block II/268 (“the suit property”)** pending the hearing and determination of this suit.
2. The Motion was expressed to be brought under **Orders 53 and XL of the Civil Procedure Rules, Section 1 (a) and 1 of the Civil Procedure Act and Article 159 of the Constitution**. In the application, the applicant alleged that the Interested party intended to make alterations to the suit property secretly.
3. In response to the application, the interested party raised a Preliminary Objection dated 27/9/2019 on the grounds that: -
 - a) the applicant has no locus standi to file the application since there is no resolution authorizing the institution of the proceedings on behalf of United Sacco (formerly Ntiminyakiru Rural Sacco Ltd) herein;
 - b) the alleged interested party is a stranger to this suit and has been wrongly, unlawfully and procedurally enjoined in the said application;
 - c) the entire suit is brought in bad faith, is frivolous vexatious and an abuse of the court process and the entire suit should be struck out with costs.
4. Further, the interested party filed a replying affidavit wherein he averred that he is the Managing Director of Mathai Supermarkets Ltd. That he does not have any interest in the suit property and does not have any intention of renovating and altering the same. That to the best of his knowledge, the suit property is owned by Eveready Concrete Company Limited.
5. The applicant opposed the preliminary objection vide a reply dated 9/10/2019. He stated that he was acting on behalf of **United Star Sacco** pursuant to ‘**chapter 22 of the bill of right constitution 2010**’. That the interested party had been enjoined as a business owner of the suit’s commercial premises in the suit property and a director of Eveready and Concrete limited.
6. On 24/10/2019, the Court directed that the matter be canvassed by way of written submissions. The parties filed their respective submissions which the Court has duly considered. I note however that the 1st and 2nd defendant submitted on their preliminary objection dated 10/7/2019 which was not included in the order of 24/10/2019.
7. The first ground of the objection is similar to the objection by the 1st and 2nd defendant which is not up for consideration at this stage. I therefore propose to deal only with the second ground, that the interested party has been wrongly enjoined in the subject application.
8. I have looked at the plaint as originally filed. The suit was between 33 plaintiffs against 15 defendants. The suit relates to a charge issued by the 1st Defendant to the 3rd Defendant whereby the plaintiffs sought a permanent injunction to restrain the defendants from alienating the suit property. The interested party was not a party to these proceedings.

9. The interested party has denied having any interest in the suit property. There is nothing to show that the interested party has any interest with the same. His directorship in Eveready and Concrete Limited does not make him to be an interested party in the suit. Eveready Concrete Limited being an incorporated company which has the capacity to sue and be sued.

10. **Order 1 rule 10 (2) of The Civil Procedure Rules** provides: -

“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.”

11. In **Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others [2017] eKLR**, Mativo. J. explained when an interested party ought to be enjoined in a proceeding. He stated:-

“A person is legally interested in the proceedings only if he can say that it may lead to a result that will affect him legally that is by curtailing his legal rights. In determining whether or not an applicant has a legal interest in the subject matter of an action sufficient to entitle him to be joined as an interested party the true test lies not so much in an analysis of what are the constituents of the applicant's rights, but rather in what would be the result on the subject-matter of the action if those rights could be established. It is apparent that a party claiming to be enjoined in proceedings must have an interest in the pending litigation, but the interest must be legal, identifiable or demonstrate a duty”.

12. In the present case, there was no application to join the interested party to these proceedings. The applicant only woke up and joined the interested party to the proceedings ***suo motto***. That won't do. A party who commences a proceeding is not at liberty thereafter to add or remove such a party therefrom without leave of Court. A legal proceeding is a sacrosanct process that need be undertaken within the set rules. This is so because there are consequences, of a legal proceeding.

13. In the present case, even if there was an application to join the interested party to these proceedings, the same could not succeed as there seem to be no nexus between him and the subject matter of the suit.

14. In view of the foregoing, I find the preliminary objection dated 27/9/2019 to be meritorious. Accordingly, the application dated 12/9/2019 is hereby dismissed with costs to the interested party.

DATED and DELIVERED at Meru this 11th day of December, 2019.

A. MABEYA

JUDGE