

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL CASE NO. 25 OF 2014

**BEDROCK HOLDINGS LIMITED.....PLAINTIFF/
APPLICANT**

VERSUS

MASENO UNIVERSITY.....1ST DEFENDANT/RESPONDENT

**RILEY FALCON SECURITY SERVICES LTD.....2ND
DEFENDANT/RESPONDENT**

**PUBLIC PROCUREMENT OVERSIGHT AUTHORITY3RD
DEFENDANT/RESPONDENT**

**ELIZABETH ATIENO AYOO.....INTERESTED
PARTY/RESPONDENT**

RULING

On 14th December 2016 the firm of Onyoni Opini & Company Advocates who are on record for the 2nd Defendant in this case filed a Notice of Appointment of Advocates purporting to act for one Elizabeth Ayoo who they described as an Interested Party. Together with that Notice of Appointment the firm filed Grounds of Objection and a replying affidavit sworn by the said Elizabeth Atieno Ayoo in opposition to the Plaintiff's Notice of Motion dated 17th July 2014.

By a Notice of Motion dated 17th January 2017 Counsel for the Plaintiff seeks to not only expunge those documents but also to disqualify Mr. Gachuba Advocate from acting for the Interested Party in this case and also to find that the said "Interested Party" has breached the Public Ethics Act and Leadership & Integrity Act and to have her investigated by the Ethics & Anti-corruption Commission.

Having heard the arguments by the Advocates I find that indeed the so called Interested Party was not properly enjoined to this case. Whereas it may be argued that the Civil Procedure Rules do not expressly provide for a procedure in regard to Interested Parties the same way it does for Third Parties it cannot be the case that a party can enjoin itself to a case or proceedings without leave. Parties must seek leave and indeed Order 1 Rule 10(2) of the Civil Procedure Rules provides that a Court can upon application by either party or suo moto add the name of any person "**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**". The Court must therefore be satisfied that such a person is a necessary party before she is added as a party. In any event even where the Rules do not provide for the procedure, parties can invoke the inherent jurisdiction of the Court under Sections 3 and 3A of the Civil Procedure Act a fact, I believe, is well known to Counsel for the said Elizabeth Ayoo. As she was not added upon an application by either party or by the Court on its own motion it follows that she is not a party to this case and the Notice of Appointment, the Grounds of Opposition and Replying Affidavit are not properly before Court and must be expunged. As for the prayer to disqualify Mr. Gachuba Advocate from acting for her I can only say that as he can only do so if she is a party and this Court having found she is not, the prayer is overtaken by events. As for the prayer that she be found guilty of breaching the two Acts cited above there is a procedure for doing so which is outside the scope of this application and the orders cannot therefore issue. Costs be in the cause. It is so ordered.

Signed, dated and delivered at Kisumu this 16th day of February 2017

E. N. MAINA

JUDGE

In the presence of:-

N/A for the Plaintiff/Applicant

N/A for the Defendants/Respondents

Mr. Gachuba for Interested Party

C/A: Serah Sidera