



**Mahadi Investments Limited v Kenya Railways Corporation & another;  
Miano & 2 others (Interested Parties) (Suing as the Officials and on Behalf of  
the Association of Kenya Railways Retirees - AKERARE) (Environment &  
Land Case E502 of 2024) [2025] KEELC 4570 (KLR) (18 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4570 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E502 OF 2024**

**CG MBOGO, J  
JUNE 18, 2025**

**BETWEEN**

**MAHADI INVESTMENTS LIMITED ..... PLAINTIFF**

**AND**

**KENYA RAILWAYS CORPORATION ..... 1<sup>ST</sup> DEFENDANT**

**THE KENYA RAILWAYS STAFF BENEFITS RETIREMENT  
SCHEME ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**JOHNSON MIANO ..... INTERESTED PARTY**

**JOHN LUCHETU ..... INTERESTED PARTY**

**JOSEPH NEHONDO ..... INTERESTED PARTY**

**SUING AS THE OFFICIALS AND ON BEHALF OF THE ASSOCIATION OF  
KENYA RAILWAYS RETIREES - AKERARE**

**RULING**

1. Before me is the notice of motion dated 14<sup>th</sup> March, 2025 filed by the intended interested party/ applicant. The applicant is brought pursuant to Articles 40(1), 47(1), 50(1) and 159 (2)(d) of *the Constitution* of Kenya, Sections 3 and 4 of the *Fair Administrative Action Act*, Sections 1A,1B and 3A of the *Civil Procedure Act* and Order 1 Rule 10 (2) and Order 51 Rule 1 of the Civil Procedure Rules, seeking the following orders: -

1. Spent.



2. That the honourable court be pleased to give an order admitting and/or joining The Association of Kenya Railways Retirees (AKERARE) as an interested party to the proceedings herein.
  3. That pursuant to the order of admission and/or joinder of The Association of Kenya Railways Retirees (AKERARE) as an interested party to these proceedings, the honourable court be pleased to give an order granting leave to the admitted and/or joined interested party to file its pleadings and/or documents in relation to the suit herein.
  4. That the costs of this application be provided for.
2. The application is premised on the grounds on its face. It is also supported by the affidavit of Johnson Miano, the chairperson of the intended interested party/ applicant sworn on even date. The intended interested party/ applicant deposed that on 10<sup>th</sup> July 2007, it was registered as a society under the *Societies Act*, and among its objective is to ensure the security of the retirees fund with the Board of Trustees and have a close working relationship with the said Board and the Kenya Railways Corporation. It was deposed that the suit properties were part of the assets provided to the 2<sup>nd</sup> defendant/ respondent and vested in it for the purpose of offsetting the accrued pension liabilities.
  3. The intended interested party/ applicant further deposed that whether the suit premises are held to belong to the 1<sup>st</sup> or 2<sup>nd</sup> defendants/respondents, the proceeds from its sale equally belong to its members by virtue of a constructive trust, and depending on the outcome of the suit, their rights and interest will be affected more so their livelihoods which is dependent on the pension. Further, it was deposed that in the unlikely event that the suit property is declared the property of the 1<sup>st</sup> defendant/respondent, then its members will be required to expend money held in their trust for refund of the purchase price.
  4. The intended interested party/ applicant further deposed that its members have no other source of income save for the monthly pension, and none of the issues raised in this application affecting the said members have been raised by the parties or can be ventilated by them. That as the intended interested party/ applicant, it will be seeking the dismissal of the counterclaim by the 1<sup>st</sup> defendant/respondent.
  5. The application was opposed by the replying affidavit of Philip J Mainga, the Managing Director of the 1<sup>st</sup> defendant/respondent sworn on 17<sup>th</sup> March, 2025. The 1<sup>st</sup> defendant/respondent deposed that it has never dealt with the intended interested party/ applicant, and that its sole intention is to abuse the court process intended to exploit the court system to achieve their ulterior objects. Further, that the intended interested party/ applicant has not identified its stake in the suit, and that neither has it shown the value which it would bring. It was deposed that its object which is to offer security for their interests as retirees does not permit them to intermeddle in the private contract of parties. Further, that the only cause open for the intended/ interested party/ applicant is to sue the 2<sup>nd</sup> defendant/ respondent separately, and in a separate suit for failing to take care of their interests.
  6. In conclusion, the 1<sup>st</sup> defendant/respondent deposed that the intended interested party/ applicant is not suited and it lacks locus standi to apply for joinder as they were not parties to the contract or the beneficiaries of the contract.
  7. The application was supported by the replying affidavit of Asha Hersi Moghe, the director of the plaintiff/respondent sworn on 28<sup>th</sup> March, 2025. The plaintiff/respondent deposed that the transaction between the 2<sup>nd</sup> defendant/respondent and itself was for the benefit of the pensioners as described in the tender documents, and it is only fair and just that the intended interested party/ applicant participates in these proceedings.



8. The application was further supported by the affidavit of James Kariuki Kanyeki and Maurice Ombogo Awuor, the trustees of the 2<sup>nd</sup> defendant/respondent sworn on 3<sup>rd</sup> April, 2025. In their response, the 2<sup>nd</sup> defendant/respondent deposed that the sale of the suit property which was in the knowledge of the 1<sup>st</sup> defendant/respondent was for the sole benefit of the pensioners. Further, that they are aware that the pensioners of the 1<sup>st</sup> defendant/respondent have an association which is represented by Johnson Miano, John Luchetu and Joseph Nehondo. Further, that it is in the interest of justice and that of the multitude of retirees that the intended interested party/ applicant be enjoined so that they are in the know of what transpired, and to enable them protect their interests as any adverse order in the suit will directly impact all the retirees.
9. The intended interested party/applicant filed a further affidavit in response to the replying affidavit by the 1<sup>st</sup> defendant/ respondent sworn on 14<sup>th</sup> March, 2025 (sic). The intended interested party/ applicant deposed that the allegations by the 1<sup>st</sup> defendant/respondent are false and malicious, and that the photographs taken have no evidential value and hence cannot be relied upon. Further, that the 1<sup>st</sup> defendant/respondent's pleadings i.e. witness statement dated 6<sup>th</sup> January, 2025 and the replying affidavit sworn on 7<sup>th</sup> December, 2024 indicate that the matter is of public interest affecting the lives of pensioners of the 1<sup>st</sup> defendant/respondent. It was deposed that this association of retirees has been recognized in the forensic report by Ernst & Young, as well as other stakeholders.
10. The application was canvassed by way of written submissions. The intended interested party/applicant filed their written submissions dated 28<sup>th</sup> March, 2025. The intended interested party/applicant submitted that there is a discernible feeling that its interest will not be well articulated unless it appears in the proceedings. While relying on the cases of Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others [2014] eKLR, and Francis Karioko Muruatetu & Another v Republic & 5 Others [2016] eKLR, the intended interested party/applicant submitted that by virtue of being a representative group for the pensioners whom relate and have a continued relationship with the defendants/respondents, they have an identifiable interest in the proceedings and a stake in the outcome. Further, that the 1<sup>st</sup> defendant/respondent would not have vested the suit property in the 2<sup>nd</sup> defendant/respondent if it was not for their sake. Further, that the interest by the members in this suit is not only identifiable but equally proximate.
11. The intended interested party/applicant submitted that the history of the suit properties and the issues vesting the same in the 2<sup>nd</sup> defendant/ respondent have not been raised, and that they intend to submit on the same, and enable this court contextualize the dispute and make a just determination. They submitted that the dispute has a bearing on the members of the intended interested party/applicant, and that their position cannot be articulated well by any other parties to the suit other than themselves.
12. The 1<sup>st</sup> defendant/respondent filed its written submissions dated 9<sup>th</sup> April, 2025 where it and raised two issues for determination: -
  - a. Whether the applicant has met the requirements for joinder as an interested party.
  - b. Who bears the costs of this application.
13. On the first issue, the 1<sup>st</sup> defendant/respondent submitted that the applicant has not delineated any identifiable stake in these proceedings or how it will be affected by the grant or denial of an order of specific performance or injunction. Further, that a running theme which is the issue of pension is a preserve of the Retirement Benefits Authority, and that this court lacks the jurisdiction to determine issues concerning pensions. While relying on the case of Mumba & 7 others(Sued on their own behalf and on behalf of predecessors and or successors in title in their capacities as the Registered



- Trustees of Kenya Ports Authority Pensions Scheme) v Munyao & 148 others (Suing on their own behalf and on behalf of the Plaintiffs and other Members/Beneficiaries of the Kenya Ports Authority Pensions Scheme) (Petition 3 of 2016)[2019] KESC 83 (KLR)(8 November 2019)(Judgment), the 1<sup>st</sup> defendant/respondent submitted that the dispute herein is a land matter, and the applicant should not be allowed to muddle the waters by bringing in peripheral issues of pension.
14. The 1<sup>st</sup> defendant/respondent further submitted that there is no real dispute, and instead the application is based on conjectures and speculations. Further that their addition to this suit will add no value but confuse and convolute issues. While relying on the case of Skov Estate Limited & 5 others v Agricultural Development Corporation & another [2015] eKLR, the 1<sup>st</sup> defendant/respondent submitted that the intended interested party/applicant did not participate in the sale and does not have capacity to run the affairs of any of the defendants. Further, that there is no value they will bring to this suit that the existing parties will not avail.
  15. I have carefully analysed and considered the application, the replies thereof and the written submissions filed by the intended interested party/applicant and the 1<sup>st</sup> defendant/respondent. I am of the view that the issue for determination is whether the interested party/applicant ought to be joined in these proceedings.
  16. Order 1 Rule 10(2) of the Civil Procedure Rules provides that:-

“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.”
  17. The relevant tests for determination whether or not to join a party in proceedings were restated by Nambuye, J (as she then was) in the case of Kingori v Chege & 3 Others [2002] 2 KLR 243 where the learned Judge stated that the guiding principles when an intending party is to be joined are as follows:-
    1. He must be a necessary party.
    2. He must be a proper party.
    3. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff.
    4. The ultimate order or decree cannot be enforced without his presence in the matter.
    5. His presence is necessary to enable the court effectively and completely adjudicate upon and settle all questions involved in the suit.
  18. In, Civicon Limited v Kivuwatt Limited and 2 Others [2015] eKLR the court observed as follows:

“Again the power given under the rules is discretionary which discretion must be exercised judicially. The objective of these rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined...from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order I rule 10 (2) bearing in mind the unique



circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”

19. Let me also add that, joinder of parties is permitted by law and it can be done at any stage of the proceedings. But, joinder of a party 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 words, 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.
20. The intended interested party/applicant introduced itself as a registered body comprising of retirees of the 1<sup>st</sup> defendant/respondent duly registered as such on 10<sup>th</sup> July, 2007. They argued that they have an interest in the suit for the reason that certain issues have not been raised which they believe they will be in a position to articulate to enable this court arrive at a just determination. In support thereof, the intended interested party/applicant argued that their interests in the suit have been recognized by the 1<sup>st</sup> defendant/respondent in its witness statement and replying affidavit sworn on 7<sup>th</sup> December, 2024 and whatever the outcome of the suit, they stand to be impacted as pensioners. The intended interested party/applicant’s arguments were supported by the plaintiff/respondent and the 2<sup>nd</sup> defendant/respondent. Both of these parties took the view that it would be best to join the intended interested party/applicant since the transaction that is the subject of matter of the suit was taken for the sole benefit of the pensioners. I have taken time to peruse the documents relied on by the parties and the plaint as well. In the plaint, I note that the claim by the plaintiff/respondent as against the defendants/respondents revolves on the performance of the terms of the agreement entered into between the plaintiff/respondent and the 2<sup>nd</sup> defendant/respondent as well as a claim of ownership.
21. The 1<sup>st</sup> defendant/respondent on the other hand was of the view that there is no stake or interest by the intended interested party/applicant in this suit, since they were not parties in the agreement, and further that there is no value that they will bring that the existing parties will not avail. While this court retains the discretion to determine whether a party ought to be joined in any proceedings, and as carefully pointed out in paragraph 19 above, the interest of the intended interested party/applicant is identifiable to the extent that the 2<sup>nd</sup> defendant/ respondent has deponed to its objective of the sale agreement which it stated was for the sole benefit of its retirees. However much or less of an interest, I do agree with the 1<sup>st</sup> defendant/respondent that that there is no value that the intended interested party will bring to this suit that the existing parties cannot avail. The interest of the intended interested party are adequately taken care of by the 2<sup>nd</sup> defendant/respondent. In the circumstances therefore, it is my finding that the notice of motion dated 14<sup>th</sup> March, 2025 lacks merit and same is hereby dismissed. Each party to bear their own costs.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY THIS 18<sup>TH</sup> DAY OF JUNE, 2025.**

**HON. MBOGO C.G.**

**JUDGE**



**18/06/2025.**

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Mwangi K.M. for the 1<sup>st</sup> Defendant

Mr. Mugo for the 2<sup>nd</sup> Defendant - present

Mr. Olieti for the Intended interested Party

Mr. Wafula for the Plaintiff - present

