

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISII

ELCEPCC NO. E004 OF 2025

DISMUS OMBONGI & OTHERS (Suing for themselves and on behalf of 346 members of Vissioners Empowerment Community Based Organisation residents of Bonyakera/Bomokora Village) PLAINTIFFS

VERSUS

CHINA HANAN INTERNATIONAL COOPERATION CONSTRUCTION LIMITED 1ST DEFENDANT

AZTECH TECHNOLOGIES LIMITED 2ND DEFENDANT

AND

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY
..... INTERESTED PARTY

RULING

(Plaintiff suing defendants alleging that their operation of a quarry is a danger to the environment; plaintiffs joining NEMA as interested party yet also asserting that NEMA was wrong and seeking reliefs against NEMA ; application filed that there is misjoinder of NEMA as interested party and seeking for NEMA to be struck out or suit be struck out; joinder of person as interested party; whether a person may be joined as interested party in ordinary civil proceedings; held that where it is alleged that such party has committed a wrong and reliefs are sought against that person that person needs to be joined as defendant and not interested party; plaintiffs directed to amend the plaint or have NEMA struck out for being misjoined)

1. The application before me is that dated 7 October 2025 filed by the interested party. The applicant seeks that the plaint herein, dated 24 May 2025, be struck out for being an abuse of the court process. The applicant also seeks to be struck out from the suit for being improperly joined.
2. To put matters into context, this suit was commenced through a plaint dated 24 May 2025. That plaint has two defendants, i.e China Hanan International Cooperation Construction Limited, and Mahadi Energy Limited. The applicant, the National Environment Management Authority (NEMA), is named as interested party. The interested party/applicant is created by the Environmental Management and Coordination Act, with the purpose of exercising general supervision and coordination on matters relating to the environment. The issues raised by the plaintiffs relate to the operations of the mining activities of the defendants, which they contend, are negatively affecting the environment. They say that they wrote a complaint to the applicant who issued an environmental restoration order on 13 January 2023. They also wrote to the applicant on 18 November 2024 demanding enforcement of the restoration order and compensation in the sum of Kshs. 35,000,000/=. They again wrote another demand letter to the applicant on 24 January 2025.
3. In the plaint, they have pleaded that there have been acts of negligence on the part of the defendants which they particularized. They also pleaded breach and negligence by the applicant which they particularised as neglecting to give the plaintiffs fair administrative action; failing to monitor and assess the activities of lead agencies that significantly impact the environment; and failing to ensure that the standards of air and sound emissions are within the acceptable standard. In the plaint, they ask for the following orders :
 - (1) That this court finds and declared that the defendant (sic) and interested party have jointly and severally been responsible for the continued

denial/violation/infringement of the plaintiffs' rights and fundamental rights in the bill of rights under particularly right to clean and healthy environment in Article 42 of the Constitution.

- (2) That this court do issue an order directed to the interested party to issue Environmental Restoration Order and implement permanent rehabilitation and restoration of Bonyakera/Bomokora Village.
- (3) That this court be pleased to award the plaintiffs compensation for violation of their fundamental rights in the bill of rights.
- (4) That this court be pleased to award the plaintiffs general damages for pain and suffering.
- (5) Any other order that this court may deem just and fit in the circumstances.
- (6) Costs.

4. In this application, the interested party complains of being improperly joined as interested party yet the Civil Procedure Rules do not envisage such a party. In his submissions, Mr. Ganya, learned counsel for the applicant, submitted that the interested party has been denied its right to respond to the suit as she cannot file a defence given that she is not a defendant. He asks that the applicant therefore be struck out of the suit.
5. The defendants did not file anything towards the application but the plaintiffs filed a replying affidavit sworn by Dismas Ombongi, the 1st plaintiff. It is refuted that the joinder of NEMA as interested party is improper. He urges that the suit deals with environmental degradation and therefore NEMA is a necessary party. He has referred to Order 1 Rule 10 as allowing joinder of a person deemed necessary in the suit.
6. I have considered all the above alongside the submissions of counsel.
7. I agree that the Civil Procedure Rules have no provision for joinder of a party in a suit as 'interested party.' What the Civil Procedure Rules envisage is a case between a plaintiff i.e the aggrieved party, and the defendant, i.e the

party said to have committed the wrong and against whom reliefs are sought. The Constitutional of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (the Mutunga Rules) however envisage a party as interested party and this is defined as follows :

“interested party” means a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation.

8. Although there is no specific provision for an interested party in ordinary civil proceedings under the Civil Procedure Act, at times courts have been faced with situations where it is necessary to add a party who is neither plaintiff nor defendant as an interested party because of such party’s legal interest in the suit. Courts have proceeded to use the wide wording of Order 1 Rule 10 (2) to include such person as interested party. Order 1 Rule 10 (2) is drawn as follows :

2) 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.

9. From the foregoing, it will be seen that the court is at liberty to add any person “whose presence before the court may be necessary” in order to effectively and completely adjudicate the dispute. I would think that despite there being no explicit provision on addition of a person as interested party, the above can accommodate a party deemed necessary to be included in the suit despite that person not being plaintiff or defendant.

10. However, it is my humble opinion that a party ought not to be joined as interested party if there is a complaint against that person, and it alleged that the said person has committed a wrong, and reliefs are being sought against him/her. If there are prayers in the plaint which touch on a person, then it is improper to join that person to the suit as an interested party. That party must be included as defendant so that he/she can respond to the allegations of wrong against him/her and also be allowed a chance to contest the reliefs sought. You cannot supplant an interested party for a defendant and vice versa. A person may be joined as interested party if he/she has an identifiable stake in the proceedings, and whose presence in the suit is necessary because of that identifiable stake, but not where it is claimed that the person has committed a wrong and reliefs are claimed against such person. To give an example, a person who is a tenant in a property that is contested by two persons may be joined as interested party, because it is in his interest to know who to pay rent to and who will ultimately be deemed as the owner of the premises. He has a stake in the case but he is not directly involved in the ownership dispute.

11. In our case, the plaint particularizes some wrongs which are alleged to have been committed by the applicant. The plaint also has reliefs against the applicant. Yet, the plaint does not include the applicant as defendant but as interested party. As I have explained above, it is improper and irregular to have a party joined only as interested party when there are allegations of wrong against that person and also reliefs sought against that person.

12. There is therefore substance in this application.

13. What I will order is for the plaintiffs to amend their pleadings. If they still wish to urge that NEMA committed wrongs and still wish to seek reliefs against NEMA, then they must amend their plaint accordingly and have NEMA as defendant. I give them 7 days to do so. If they do not, then I may

either have to strike out NEMA from the proceedings herein, or even proceed to strike out the entire suit.

14. The interested party had a valid point in this application and she will have the costs thereof as against the plaintiffs. There are no orders as to costs made for or against the defendants.

15. Orders accordingly.

DATED AND DELIVERED THIS 25 DAY OF NOVEMBER 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Mr. Ganya for the interested party/applicant

Ms. Nyambeki for the plaintiff

Ms. Omondi for the 1st & 2nd defendants

Court Assistant – Michael Oyuko.