



**Thiga v Ngenda Investment Rural Sacco Ltd; Parmar & another
(Respondent); Cheruiyot (Intended Interested Party) (Civil Application
78 of 2021) [2023] KECA 509 (KLR) (12 May 2023) (Ruling)**

Neutral citation: [2023] KECA 509 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION 78 OF 2021
F SICHALE, FA OCHIENG & LA ACHODE, JJA
MAY 12, 2023**

BETWEEN

PAUL NDEGWA THIGA APPELLANT

AND

NGENDA INVESTMENT RURAL SACCO LTD RESPONDENT

AND

SUJAR KUNVAR PRATAPSING PARMAR RESPONDENT

PRAVINSINGH PRATAPSINGH PARMAR RESPONDENT

AND

RAYMOND CHERUIYOT INTENDED INTERESTED PARTY

RULING

1. Raymond Cheruiyot (the applicant herein), has vide a motion dated June 17, 2022, brought pursuant to the provisions of order 1 rule 10 (1) (2) of the *Civil Procedure Rules 2010* & sections 3A, 1A and 1B of the *Civil Procedure Act* and other enabling provisions of the law sought the following orders;
 1. That this honourable court be pleased to enjoin the applicants herein as interested parties.
 2. That costs of this application be provided for.”
2. The motion is supported by the grounds on the face of it and an affidavit sworn by the applicant who deponed, *inter alia*, that he was a member of the respondent Sacco and that vide a notice to act in person dated December 20, 2021, one Samuel Chilla Saikwa and Hosea Barmao Chemweno acting as chairman and secretary of the respondent respectively had notified the Court of their intention to act in person, in place of the firm of Kamonjo Kiburi & Company advocates; that the said notice was



unlawful and illegal as the same had been done without following the laid down procedure as no general meeting of over 2000 members was called and no minutes were attached to show that the membership of the Sacco was in agreement with the said officials.

3. He further deposed that the said two officials had been implicated in illegal transaction in respect of the assets of the Sacco which matter was pending advice by the Office of the Director of Public Prosecutions (ODPP) after investigations were completed by the DCI and that the essence of the two officials to take over the conduct of this matter without involving other members was to conceal their illegal activities.
4. The motion was opposed vide a replying affidavit sworn by Paul Ndegwa Thiga (the intended interested party/appellant) on August 29, 2022, who deponed inter alia that if the applicant had a valid concern against officials of the respondent (Ngenda Investment Rural Sacco), then the proper procedure would be to call for a Sacco meeting through the cooperatives official and make a resolution to address the issues of concern. When the matter came up for plenary hearing on January 31, 2023, the applicant appeared in person. Ms Njeri Njagua on the other hand appeared for Paul Ndegwa Thiga (the intended interested party appellant) while Ms Gatheca appeared for the respondent (Ngenda Investment Sacco Limited). There was no appearance for the 1st and 2nd respondents.
5. The applicant while relying on his written submissions dated January 24, 2023, reiterated the averments contained in the supporting affidavit to the motion and submitted that the 3 officials of the Sacco had conducted business of the Sacco without the consent of the other members and terminated the services of the advocates who were previously representing the Sacco.
6. Ms Njeri Njagua on the other hand while opposing the motion submitted that the application for joinder was not merited for reasons that the applicant had not established any interest/personal interest in this matter to warrant joinder as an interested party and that further no prejudice would be suffered by the applicant if the instant motion was not allowed.
7. Ms Gatheca on the other hand did not file submissions and did not oppose the motion.
8. We have carefully considered the motion, the grounds thereof, the supporting affidavit, the replying affidavit, the rival oral and written submissions by the parties, the cited authorities and the law.
9. The applicant is seeking to be enjoined in these proceedings as an interested party. It is not in dispute that the applicant is a member of the respondent Sacco. He therefore has a legitimate concern to protect his interests. It is also not in dispute that there is a conflict within the Sacco as the officials of the Sacco are said to have terminated the services of the previous advocates who had been engaged by the Sacco without the consent of the members.
10. In *Hamisi Yawa & 36,000 others v Tsangwa Ngala Chome & 19 others* [2018] eKLR this court stated as follows as regards joinder of parties:

“We have considered the application, submissions made on behalf of the parties and the law.

The rationale behind the joinder of any party to proceedings is to have on board a necessary party for purposes of determining the real issues in dispute. Perhaps, this is reason behind the general guiding principle that joinder of a party like amendment of pleadings, should be freely allowed and at any stage of the proceedings, provided that it will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs. See this court’s decision in *Nderitu Wachira Receiver & Receiver & Manager of Bulleys Tanneries Ltd (Under Receivership) & 4 others vs Siraji Enterprises Ltd & another* [2016] eKLR. In as much as an application by a party to be joined to any proceedings should not be restricted,



there are criteria to be met by the party intending to be joined. The criteria which are in no way exhaustive include:

1. The applicant must demonstrate that it would be desirable for him/her to be added as a new party and that his/her presence would enable court to resolve all the matters in the dispute.
2. The joinder will not prejudice the other parties.
3. The joinder will not vex the parties or convolute the proceedings with unnecessary new matters and grounds not contemplated by the parties or envisaged in the pleadings.”.

11. See also *Kensalt Limited vs Water Resources Management Authority* [2018] eKLR. Taking into consideration the above principles, we are satisfied that the applicant who is a member of the respondent Sacco, has sufficiently made out a case for joinder as an interested party in these proceedings and that no prejudice will be occasioned to the other parties by reason of his joinder. In any event, the Sacco is not even opposed to the joinder of the applicant as an interested party.
12. Accordingly, we find the applicant’s motion dated June 17, 2022, to be merited and we allow the same. The applicant is hereby granted leave to be enjoined as an interested party in these proceedings.
13. Given the fact that the disputants are all members of a common Sacco, we make no order as to costs.
14. It is so ordered.

DATED AND DELIVERED AT NAKURU THIS 12TH DAY OF MAY, 2023.

F. SICHALE

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JUDGE OF APPEAL

F. OCHIENG

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JUDGE OF APPEAL

L. ACHODE

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

