



Ikiao v Methodist Church in Kenya Trustees Registered & 2 others; Kimuu & 2 others (Interested Parties); Mwenda & 2 others (Proposed Interested Parties) (Cause E133 of 2024) [2025] KEELRC 1067 (KLR) (3 April 2025) (Ruling)

Neutral citation: [2025] KEELRC 1067 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E133 OF 2024**

M MBARŪ, J

APRIL 3, 2025

BETWEEN

BISHOP JOSHUA MITHIKA IKIAO CLAIMANT

AND

**METHODIST CHURCH IN KENYA TRUSTEES REGISTERED 1ST
RESPONDENT**

METHODIST CHURCH IN KENYA 2ND RESPONDENT

**PRESIDING BISHOP OF THE METHODIST CHURCH IN
KENYA 3RD RESPONDENT**

AND

REV PATRICK MWITI KIMUU INTERESTED PARTY

RE. JOSHUA KINYUA RINKANYA INTERESTED PARTY

REV EVANS KITHURE KIRIMI INTERESTED PARTY

AND

ABRAHAM JOHN MWENDA PROPOSED INTERESTED PARTY

DAVID KABURIA PROPOSED INTERESTED PARTY

SAMSON MUTURI PROPOSED INTERESTED PARTY

RULING

1. The ruling relates to two applications filed by the proposed interested parties, dated 11 March 2025 and 17 March 2025.



2. In the application dated 11 March 2025 filed by;
Rev. Patrick Mwiti Kimuu;
Rev. Joshua Kinyua Rinkanya; and
Rev. Evans Kithure Kirimi,
3. The three seek to be enjoined herein as interested parties and be allowed to defend themselves in the respondent's application dated 11 February 2025 to the Court to review its orders of 3 March 2025 directing that a ruling on the subject apparition be delivered—the Court to issue any further orders for the orderly proceedings herein. The applicants' affidavits support the application, and on the grounds that they have become aware of these proceedings herein, they have been named by the respondents in their application dated 11 February 2025 to be cited for contempt of Court on the orders issued herein on 29 January 2025. They were not served with these orders and have not been parties in these proceedings. They seek to be given a hearing and not condemned unheard. The scheduled ruling on 20 March 2025 will prejudice these applicants, and they are apprehensive that, unless enjoined herein, contempt proceedings being quasi-criminal, their right to a hearing should be secured by the Court.
4. In the application dated 17 March 2025, by;
Abraham John Mwanda;
David Kaburia; and
Samson Muturi
5. The three seek that the ruling due following the application dated 11 February 2025, scheduled for 20 March 2025, be stayed to allow them to join these proceedings as interested parties. The application is supported by Abraham John Mwenda, who avers that he has learnt that they are named by the respondents in the application dated 11 February 2025 as contemnors. They are not parties in that application and have not been served with the orders of 29 January 2025 to attend and defend themselves; hence, they seek to be enjoined as parties to respond to the application.
6. In reply to both applications, the respondents filed the Replying Affidavit of Bishop Isaya Deye, the 3rd respondent, with authority from the 1st and 2nd respondents and aver that the Court issued orders on 14 February 2025, citing the proposed interested parties for being in contempt of Court following orders of 29 January 2025. The Court was scheduled to issue directions on 17 February 2025, and in compliance, the respondents served all the proposed interested parties, including the claimants. Returns are filed to this effect, and an Affidavit of Service has been filed to confirm receipt. Each proposed interested party was served through email or mobile phone number.
7. Bishop Deye avers that the Court should proceed and deliver its ruling on the contempt of court application to preserve the rule of law and respect for due process.
8. The claimant opted to remain neutral on both appellations.
9. Parties attended and made oral submissions in Court and filed skeleton written submissions.
10. The submissions by the applicants are primarily similar to the extent that they rely on Order 1 Rule 10(2) of the Civil Procedure Rules, which gives the right to join a suit and be given a hearing where one is adversely mentioned. As held in *Zephir Holdings Ltd v Mimoso Plantation Ltd & 2 others* [2014] eKLR. The questions before the Court are whether the applicants are necessary or proper parties and



whether the orders sought by the respondents, once enforced, will affect their rights. The applicants are parties required to enable the Court to wholly and fully address the matter.

11. The applicants submitted that the contempt proceedings commenced by the respondents are quasi-criminal, and their liberty is under threat. Accordingly, they should be allowed to attend and defend themselves, as held in *Sammy Kanyi Kareithi v Barclays Bank of Kenya & 2 others* [2021] eKLR.
12. Being joined as parties in this case will not prejudice the applicants, and the Court will be wholly able to determine their submissions.
13. The respondents submitted that in the case of *EH v CSM Civil Appeal No. 16 of 2020*, the Court was faced with a similar application as herein and held that when considering whether to reopen a matter, the Court should evaluate the excuse given for non-attendance in Court to determine whether it is necessary to set aside its orders. The Court must ask whether there was proper service or whether the respondent failed to appear in Court for a justified cause.
14. In this case, the applicants were served correctly but failed to attend court. They have not given any reasons whatsoever why they did not participate as required and give their responses after being in contempt of the Court, as held in *The Registered Trustee of the Archdiocese of Dar es Salaam v The Chairperson Bunju Village Government & 8 others Civil Appeal No. 147 of 2006*. The applicants have not challenged the contact details in the Affidavit of Service nor demonstrated any sufficient reason why they failed to attend Court.
15. In *Christopher Ndolo Mutuku & Others v CFC Stanbic Bank Limited* [2015] eKLR, the Court held that the legal considerations the Court makes when a stay application is filed are subject to judicial discretion. In the interests of justice, the Court must determine whether setting aside its orders to accommodate a party who is served and failed to attend is just and expedient.
16. In this case, the applicants are in contempt of Court and have moved to stop the process to be joined herein without demonstrating any good cause. The Court should proceed and deliver its pending ruling on the application dated 11 February 2025.

Determination

17. In their submissions, the respondents agree that the applicants should be joined as interested parties. However, such a joinder should not take parties back on the application dated 11 February 2025, which was served, and there are returns to confirm each was served. The respondents also concede that applicants are not listed as parties herein, and the participation only arose upon the orders of 29 January 2025, which they disobeyed.
18. The main issue herein is the claimant and his application to withdraw the claim after the respondents sought to cite him for contempt.
19. It is also a common cause that the claimant has filed various suits, including one at the subordinate Court, over the same matters as raised herein.
20. It is also a common cause that the option to remain neutral in the applicant's application was not contested, given the claimant's application to withdraw this suit.
21. What emerges clearly to the Court is that in the Orders issued on 29 January 2025, the applicants were mentioned as contemnors while they are not parties herein as claimants or respondents. The applicant, dated 11 February 2025, further cites them as contemnors while they are not listed as claimants or respondents.



22. The respondents appreciate the need to be enjoined as parties herein, save that they should not be allowed to take the Court backwards on the pending ruling.
23. In the case of *Sadera & 2 others v Kerema & 7 others* [2025] KECA 458 (KLR), the Court, in considering a similar matter, held that;

the power of the Court to add a party to proceedings can be exercised at any stage of the proceedings; that a party can be joined even without applying; that the joinder may be done either before or during the trial; that it can be done even after judgment where damages are yet to be assessed; that it is only when a suit or proceeding has been finally disposed of and there is nothing more to be done that the rule becomes inapplicable; and that a party can even be added at the appellate stage.
24. A party may be joined in a suit, not because there is a cause of action against it, but because its presence is necessary to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the cause or matter.
25. This position is reaffirmed in *Civicon Limited vs. Kivuwatt Limited & 2 Others* [2015] eKLR, which holds that any party reasonably affected by the pending litigation is a necessary and proper party and should be enjoined.
26. It may be concluded that being a discretionary order, the Court may allow the joinder of a party as a defendant or interested party in a suit based on the general principles set out in Order I rule 10 (2) of the Civil Procedure Rules, bearing in mind the unique circumstances of each case concerning the necessity of the party in determining the subject matter of the suit.
27. Where an applicant can demonstrate a direct prejudice likely to be suffered by the party and the practicability of the execution of the Order sought in the suit, if the claim should succeed, then that is a necessary party. All an applicant needs to do is demonstrate sufficient interest in the suit, and the interest need not be the kind that must succeed at the end of the trial. See *United India Insurance Co. Ltd vs East African Underwriters (Kenya) Ltd* [1985] E.A. and the case of *Del Monte Kenya Limited v Githae & 3 others* [2024] KECA 370 (KLR) that The prejudice to be suffered by the intended interested party in case of non-joinder must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.
28. In this case, the application dated 11 February 2025 primarily focuses on the applicant's conduct. Where the application is determined, they will mainly feature in the outcome. Therefore, they must attend and make their responses before the Court can decide.
29. Contempt of court proceedings are, in their nature, a challenge to the rule of law, and where found justified, possible sanctions exist.
30. The applicants must be enjoined herein and file their responses within the shortest time possible to allow the Court to decide. The claimant's option to remain neutral is noted.
31. Accordingly, applications dated 11 and 17 March 2025 are allowed and the applicants enjoined as interested parties; the ruling pending on the application dated 11 February 2025 is placed in abeyance; the applicants are enjoined as interested parties and shall file responses within 14 days and serve; application dated 11 February 2025 will be heard on 24 April 2025; no orders on costs. The interested parties will be listed as follows;
 1. Rev. Patrick Mwitii Kimuu;



2. Rev. Joshua Kinyua Rinkanya;
3. Rev. Evans Kithure Kiriimi;
4. Abraham John Mwanda;
5. David Kaburia; and
6. Samson Muturi interested parties

DELIVERED IN OPEN COURT AT MALINDI THIS 3 DAY OF APRIL 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Davies Wekesa

