



Kenya Shipping Clearing Freight Logistics & Warehouses Workers Union v Morgan Air & Sea Freight Logistics (K) Ltd; Mitchell Cotts Freight Kenya Ltd (Interested Party) (Cause E923 of 2024) [2025] KEELRC 1553 (KLR) (29 May 2025) (Ruling)

Neutral citation: [2025] KEELRC 1553 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E923 OF 2024**

CN BAARI, J

MAY 29, 2025

BETWEEN

**KENYA SHIPPING CLEARING FREIGHT LOGISTICS & WAREHOUSES
WORKERS UNION APPLICANT**

AND

MORGAN AIR & SEA FREIGHT LOGISTICS (K) LTD RESPONDENT

AND

MITCHELL COTTS FREIGHT KENYA LTD INTERESTED PARTY

RULING

1. Before Court is a Notice of Motion application dated 27th December, 2024, wherein the Claimant/Applicant seeks orders THAT: -
 - a. Spent
 - b. Spent
 - c. This Honourable Court be pleased to issue an order enjoining Mitchell Cotts Freight Kenya Ltd as an Interested Party to these proceedings in order to ensure the full and just adjudication of the issues at hand
 - d. Costs be provided for.
2. The application is supported by grounds on the face thereof and the affidavit of Mr. James O. Tongi, the General Secretary of the Applicant.



3. The Applicant avers that it neither has been served nor seen the agreement executed between the Respondent and the Proposed Interested Party which agreement is central to their motion and constitutes the principle issue in the suit herein.
4. The Applicant states that the Respondent has since filed the agreement in court, but which it has not had opportunity to review. It states further, that it wrote to the intended Interested Party on the proposed joinder, and that the latter consented to being joined to this proceedings.
5. The Applicant further avers that it will suffer great prejudice if the proposed Interested Party is not joined in this suit, and prays that its application be allowed.
6. Both the Proposed Interested Party and the Respondent opposed the motion vide their Replying affidavits dated 13th February, 2025. The Proposed Interested Party argues that the subject claim arises from a private employer-union dispute which the proposed Interested Party has no direct, substantial nor legitimate interest in the matter being litigated between the parties.
7. It further asserts that the Applicant has failed to outline the Proposed Interested Party's interest in the case and their reason for believing that its inclusion is necessary. It avers that there is no nexus between the proposed interested party and the other parties to this suit as there is no employment relationship between the proposed interested party and the other parties. That there only exists a business relationship between the proposed interested party and the Respondent.
8. The Proposed Interested Party states that it has no discernible stake nor interest in the suit, and has no ability to ensure that the veracity of matters laid before the Court is carefully ascertained for lack of facts or information about the matter in issue nor the employment relationship of the parties herein.
9. It avers further that it is aware that it shall not be affected in any way by the decision of the Court when it is made in determination of the main suit.
10. It states that the Claimant/Applicant is attempting to circumvent clearly laid down civil procedure laws as well as laws on evidence as pertains production of evidence in Court. That the Applicant has alluded in the instant application that the only reason it seeks to drag the proposed interested party into this matter is so that the proposed interested party may produce a certain (different) version of the Contract which the Respondent filed in Court, which is unprocedural as there are well laid down laws and procedures on production and compulsion to produce evidence which does not involve the dragging of a private third party into a private dispute.
11. It is the Proposed Interested Party's position that the Applicant is attempting to unlawfully involve/tag it into a private labour dispute between the Claimant/Applicant and Respondent that it has no business getting involved in, and it has no useful insight or information to add to assist this Court reach a fair determination as the business contract between it and the Respondent has already been shared/filed with the Court by the Respondent as admitted by the Claimant/Applicant in the instant application.
12. The Proposed Interested Party avers that the Claimant/Applicant's intention for advocating for the joinder of the proposed interested party, is so that the proposed interested party would assist it prosecute its own civil case, which intention is incomprehensible and unlawful and must not be allowed especially since the proposed interested party has no stake or interest in the case.
13. The Respondent on its part avers that the Agreement that was entered into between the Respondent, MASF, and Mitchell Cotts Freight (MCF) was filed with the Supplementary affidavit to answer to



matters raised by the Claimant in the two letters that the Claimant unprocedurally and without leave of court annexed to its submissions.

14. The Respondent further states that from the pleadings, it is clear that the dispute before the court is between the Claimant and the Respondent, and that the Claimant has not provided sufficient grounds to the court as to why Mitchell Cotts Freight Kenya Limited should be joined to the suit as an interested party.
15. It states that the Claimant will not suffer any prejudice if the proposed interested party is not joined as a party to the suit.
16. The Motion was canvassed by way of written submissions. All parties filed submissions, and which have been duly considered.

Determination.

17. I have considered the application, the grounds and affidavit in support thereof, the Replying affidavits in opposition together with the rival submissions. The issue for determination is whether the Claimant/Applicant has justified the joinder of Mitchell Cotts Freight Kenya Ltd to this proceedings.
18. The Supreme Court of Kenya laid down guiding principles for admission of an interested party in the case of *Trusted Society of Human Rights Alliance v Mumo Matemu SC Petition No. 12 of 2013 [2015] eKLR (Mumo Matemu case)* and which principles were reiterated and reaffirmed in *Francis K. Muruatetu and Another v Republic SC Petition No. 15 of 2015 as consolidated with Petition No. 16 of 2015 2015 [2016] eKLR (The Muruatetu case)* as follows: -“[37] From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party: -
 - i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
 - ii. 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.
 - iii. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.”
19. The Applicant/Claimant’s contention is that it neither has been served nor seen the agreement executed between the Respondent and the Proposed Interested Party which agreement constitutes the principle issue in the suit herein. It states further, that it wrote to the intended Interested Party on the proposed joinder, and that the latter consented to being joined to these proceedings.
20. The Respondent on its part avers that the Agreement that was entered into between itself, MASF, and Mitchell Cotts Freight (MCF) was filed with the supplementary affidavit to answer to matters raised by the Claimant in the two letters that the Claimant unprocedurally and without leave of court annexed to its submissions.
21. The Applicant confirmed that the Respondent has since filed the said agreement in court, but which it has not had opportunity to review.



22. The Proposed Interested Party contends that the Applicant vide the instant application, is only attempting to unlawfully involve/tag it into a private labour dispute between the Claimant/Applicant and Respondent that it has no business getting involved in, and it has no useful insight or information to add to assist this Court reach a fair determination as the business contract between it and the Respondent has already been shared/filed with the Court by the Respondent as admitted by the Claimant/Applicant in the instant application.
23. By dint of the foregoing, parties do not dispute that the agreement between the Respondent and the Proposed Interested Party has since been lodged in court, and indeed, all the Claimant/Applicant says is that it has not had opportunity to review the said agreement.
24. It is then clear to this court that the grounds for which the Claimant/Applicant seeks the joinder of Mitchell Cotts Freight Kenya Ltd to this suit is merely peripheral. The Claimant/Applicant has similarly not demonstrated the prejudice it stands to suffer in case of non-joinder.
25. In whole, I reach the conclusion that the Claimant/Applicant's motion is devoid of merit and is hereby dismissed.
26. Costs shall abide the cause.
27. Orders accordingly.

SIGNED, DATED AND DELIVERED AT NAIROBI THIS 29TH DAY OF MAY, 2025

C. N. BAARI

JUDGE

Appearance:

Mr. Mutongoi present for the Claimant/Applicant

Ms. Aketch h/b for Mr. Michuki for the Respondent

Ms. Awuor present for the Proposed Interested Party

Ms. Esther S - Court Assistant

