



**Osedo & 15 others v Ken-Knit(Kenya)Limited & another; Tailors
& Textile Workers Union (Proposed Interested Party) (Petition
12 of 2019) [2024] KEELRC 589 (KLR) (7 March 2024) (Ruling)**

Neutral citation: [2024] KEELRC 589 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
PETITION 12 OF 2019
MA ONYANGO, J
MARCH 7, 2024**

BETWEEN

MICHAEL OKELLO OSEDO & 15 OTHERS APPELLANT

AND

KEN-KNIT(KENYA)LIMITED 1ST RESPONDENT

NATIONAL SOCIAL SECURITY UNION 2ND RESPONDENT

AND

TAILORS & TEXTILE WORKERS UNION .. PROPOSED INTERESTED PARTY

RULING

1. The application dated 25th October 2021 has been brought by the Proposed Interested Party seeking to be enjoined as a party to this suit.
2. The application is premised on three grounds as set out in the Chamber Summons and is supported by an undated sworn affidavit of Philemon Kemboi. It is brought under Section 3A of the [Civil Procedure Act](#), Order 1 Rule 10(2) and 14 of the Civil Procedure Rules.
3. The grounds upon which the application is made are that the Applicant's presence before the Honourable Court is necessary at the giving of final orders of the court on 11th November 2021 in order to enable the Honourable court effectively and completely adjudicate upon and settle all questions in the suit; that the Applicant is a trade union representing the Petitioners and other workers of the 1st Respondent and is entitled to charge agency fee on all benefits negotiated by them and lastly, that the Applicant was not enjoined to the suit and only became aware of the same after the judgment of this court was rendered and finally, that the judgment invoked the Collective Bargaining Agreement



negotiated by the Applicant as a basis for settlement. It is therefore the Applicant's case that the joinder is necessary to enable it recover agency fees due to it as per statute.

4. The application is vehemently opposed by the Petitioners. In the Replying Affidavit sworn on 27th May 2022 by the 1st Petitioner Michael Okello Osedo, it is the Petitioners position that the instant application is an abuse of the court process and only meant to delay paying the Petitioners their rightful benefits guaranteed in law. Mr. Osedo deposes that on retirement, the employer offered the Petitioners a single month's salary earned and blackmailed them into executing a discharge of liability form exonerating it from any further obligations in terms of retirement benefits. He contends that the Petitioners are former employees of the 1st Respondent and are entitled to the benefits as deemed by court from their employer without any alteration and that there is no appeal preferred against the decision of the court.
5. The affiant deposes that the Proposed Interested Party's secretary, Mr. Philemon Kemboi has always been in the premises of the 1st Respondent advising the 1st Respondent to deny the Petitioners their rights. That at one time, he called the Petitioners using their colleagues who had retired in August 2021 seeking to sweet talk the Petitioners into withdrawing the claim on condition that he was going to ensure that the Petitioners' dues were paid.
6. The affiant further deposes that during their employment, they were given 21 days leave without allowances whereas the Unionisable employees were given 30 days with full allowances. That this has been done for over 30 years which action according to the Petitioners, was done under the supervision of the Intended Interested Party.
7. It is further contended by the affiant that the Intended Interested Party has no stake in the concluded petition and no order issued by the court will affect it in any manner.
8. Mr. Osedo deposes that the Petitioners ceased to be members of the Applicant and are not subscribed to it. As such, the Intended Interested Party wants to institute a fresh cause and delay compliance with the judgment on the part of the 1st Respondent.
9. The Petitioners urged the court to dismiss the application dated 25th October 2021.
10. Pursuant to the directions of the court issued on 5th June 2023 that the application to be canvassed by way of written submissions, the Petitioners' submissions were filed on 3rd July 2023 whereas the Applicant/Proposed Interested Party's submissions were filed on 14th September 2023.

The Applicant's submissions.

11. The Applicant in its submissions identified the issue for determination to be whether it should be enjoined to this suit as an Interested Party as the negotiator of the Collective Bargaining Agreement between the Petitioners and the 1st Respondent.
12. According to the Applicant, it entered into a Collective Bargaining Agreement with the 1st Respondent on 20th November 2018 to cover the period 1st January 2019 to 31st December 2020. It is the Applicant's submission that since it negotiated the Collective Bargaining Agreement and considering the nature of the proposed settlements and terminal dues, its input will be needed. That it is entitled to 5% agency fee which shall have to be factored in the final agreement.
13. It is further submitted that the Applicant has based its grounds for inclusion on the constitutionally protected right on labour relations and that public policy dictates that the Applicant being a public welfare body, be strengthened by making it financially independent by allowing it to collect what is



due to it. To buttress this position, the Applicant cited the case of Rift Valley Railways Workers Union vs Rift Valley Railways (Kenya) Ltd and Another (2014) eKLR.

14. In summary, the Applicant submits that the Petitioners were allowed to recalculate their terminal benefits taking into account all the concluded Collective Bargaining Agreements in force during the time the Petitioners were in employment. That the Collective Bargaining Agreements mentioned by the court in its judgment in this Petition were negotiated by the Applicant and therefore its joinder is necessary to enable it recover agency fee due to it.

The Petitioners' submissions

15. In their submissions, the Petitioners contended that the Applicant has not established an interest that will compel the court to enjoin it as a party as the Court has already determined the dispute in their favor. The Petitioners placed reliance on the Supreme Court case in Francis Kariuki Muruatetu & Another vs Republic & 5 others (2016) eKLR, where the court observed that in order for a party to be enjoined as an interested party in a petition, that party must demonstrate:
 - 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.
16. The Petitioners also submitted that paragraph II Clause 7 of the “Mutunga Rules”, *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, Legal Notice No. 117 of 2013, provides that a person with leave of court may make an oral or written application to be joined as an interested party or the Court, on its motion, may join an interested party to the proceedings before it.
17. According to the Petitioners, the Applicant herein did not seek leave of the Court to be enjoined in this suit.
18. It is the submission of the Petitioners that the Applicant has not demonstrated or established how the ends of justice would better be served by enjoining it in the Petition when the Petitioners are in the process of executing the decree of the court herein. In support of this position, the Petitioners cited the cases of Kenya Medical Laboratory Technicians and Technologists Board & 6 others vs Attorney General & 4 others (2017) eKLR and Communications Commissions of Kenya & 4 others vs Royal Media Services Limited & 7 others (2014) eKLR.
19. The Petitioners urged the court to dismiss the instant application with costs.

Determination

20. I have carefully considered the application by the proposed interested party, the opposition thereto and the rival submissions. The only issue for determination is whether the Proposed Interested Party has an identifiable stake or legal interest in this case for it to be enjoined as an Interested Party to this suit.



21. Rule 2 of *The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 defines an interested party 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.”

22. 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”.

23. In the case cited by the Petitioners, Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others [2017] eKLR the court held as follows: -

“In determining whether or not an applicant has a legal interest in the subject matter of an action sufficient to entitle him to be joined as an interested party the true test lies not so much in an analysis of what are the constituents of the applicant’s rights, but rather in what would be the result on the subject-matter of the action if those rights could be established”.

24. From the above case, it is clear that a party claiming a right to be enjoined in proceedings must demonstrate that it has a legal and identifiable interest in the final outcome of a case.

25. The Applicant has in support of its application argued that the Court in its judgment delivered in the instant petition ordered that the Petitioners’ terminal benefits be recalculated taking into account all the concluded Collective Bargaining Agreements in force during the time the Petitioners were in employment.

26. It is the Applicant’s submission that the CBAs referred to by the court were negotiated by the Applicant and that as such, it is entitled to agency fees from those negotiations.

27. I have perused the court’s judgment delivered by my brother Hon. Justice J.N. Abuodha. At the tail end of the judgment, the court held as follows:

“..In conclusion, the Petition will only be allowed to the extent that the 1st Respondent shall recalculate and forward to the Petitioner’s counsel concurrence, the Petitioner’s terminal benefits taking into account all the concluded CBAs in force during the time the Petitioners were each in employment of the 1st Respondent...”

28. From the award in the Judgment it is clear that agency fees was not an issue in dispute in the petition. As was observed by the court in Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others (supra), the “true test lies not so much in an analysis of what are the constituents of the applicant’s rights, but rather in what would be the result on the subject-matter of the action if those rights could be established.”



29. Order 1 Rule 10(2) is further explicit that the court may order joinder of a party 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.
30. As was stated by the Court of Appeal in Tanzania in *Tang Gas Distributors Ltd vs. Said & Others* [2014] EA 448:

“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.”
31. In the instant suit, judgment has already been entered by the court. There is no outstanding issue for determination by the court that would necessitate the joinder of the applicant to assist the court to completely adjudicate. The joinder of the applicant as an interested party is therefore not necessary at this stage of the suit as the court has already made a final determination of the suit.
32. As stated by the Petitioners, the prayer by the Proposed Interested Party constitutes a fresh cause of action which should have been made before the suit was determined so that the claim would have been part of the issues for determination in the judgment. Adding the Applicant to the suit now as an interested party would not entitle it to the orders it seeks against the Petitioners.
33. Consequently, I find no merit in the application dated 25th October 2021. The same is accordingly dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 7TH DAY OF MARCH 2024.

MAUREEN ONYANGO

JUDGE

