



**Kenya Concrete, Structural Ceramic Tiles, Wood Plys & Interior Design Worker Union
v Warren Company Limited; Kenya Quarry & Mine Workers Union (Intended Interested
Party) (Cause E085 of 2022) [2023] KEELRC 533 (KLR) (2 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 533 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E085 OF 2022**

**K OCHARO, J
MARCH 2, 2023**

BETWEEN

**KENYA CONCRETE, STRUCTURAL CERAMIC TILES, WOOD PLYS &
INTERIOR DESIGN WORKER UNION CLAIMANT**

AND

WARREN COMPANY LIMITED RESPONDENT

AND

**KENYA QUARRY & MINE WORKERS UNION INTENDED INTERESTED
PARTY**

RULING

1. The Application before this court by the Applicant dated the 2nd June 2022 is expressed to be brought pursuant to section 12 of the Employment and Labour Relations Court Act, section 18 (1) (b) & (2) of the *Civil Procedure Act* 2010, seeks orders:
 - a) That this Application be certified urgent and be heard *ex parte* in the first instance.
 - b) That the Applicant be and is hereby enjoined as an interested Party in these proceedings.
 - c) An Order to issue directing the herein Claimant to serve the Interested Party with its pleadings for the purposes of making a reply thereto.
 - d) That the interested Party be and is hereby allowed to file a replying affidavit to the cause filed herein.
 - e) That the Cost of this Application be in the cause.



2. The Application is anchored on the grounds at obtain the face of it and supported by the annexed affidavit of the Mr.Wafula Musamia, the General Secretary of the intended Interested Party Union. In it he avers that the issue in contention relates to membership of the employees of the Respondent herein who happen to be paid members of the intended Interested party Union.
3. The affiant contends that the employees of the Respondent have not resigned from the intended interested party union.
4. The affiant further contend that the intended interested party union has a valid recognition agreement with the Respondent. Moreover, it has also a Collective Bargain Agreement with the Respondent herein.
5. The affiant avers that the intended interested party union herein has a direct interest in the outcome of this cause and it is necessary to be enjoined as an interested party to enable it protect its interest the cause by filing a replying affidavit to the main cause before the same is heard and determined.
6. It is the affiant's position that the decision the court may arrive at shall in one way or the other affect its interest and thus the need to be enjoined as a party to these proceedings to avoid a situation of being condemned unheard and that the Claimant stands to suffer no prejudice should the court grant the orders prayed for in the Application.

The Response

7. In opposition to the Application, the Claimant filed a replying affidavit dated the 4th October 2022 sworn by Dshon Angoya its General Secretary. In it he averred that the Intended Party has not attached any form "S" required by the law to authenticate any claimed membership according to the mandatory requirements of section 48 (3) of the Labour Relations Court Act 2007 or payslips to ascertain such deduction and remittance of an employee, even a by-product showing remittance in favour of her alleged members.
8. It is contented that the attached Recognition Agreement appears to be a forged document as it lacked the mandatory requirements such as the actual names of the Authorized Representatives of the union and the employer, effective date of the Agreement as required under section 54 of the Labour Relations Act.
9. The affiant contends that there is no link as to the purported Memorandum of Agreement and any purported membership in terms of job descriptions, earnings, allowances or any other fringe benefits and such averments remains far-fetched.
10. It is the affiant's position that the intended interested party Applicant's actions, amount to an of attempt to lock out workers from enjoying their constitutional rights of joining a union of their own choice, upon pretence that there exists a recognition agreement. It is a union which seems to be working at the behest of the employer contrary to the stipulations of the law.
11. It its contented that the 2nd June 2022 Application should be disallowed for want of justification on the part of the interested party as to the extent of its interest. The matters raised by the interested party are those that can be adequately canvassed by the Respondent.
12. Article 36 of the Constitution of Kenya 2010 guarantees every person the right to freedom of association which includes the right to join, form and to participate in the activities of the association of any kind stand. The Claimant's right under this Article stand to be prejudiced if the intended Interested party is enjoined in these proceedings.



13. Members of the Claimant have an unlimited constitutional Right under Article 41(1), (2) (a), (b) & (c) to fair labour practices which includes the right to remuneration, reasonable working condition, to form, join and participate in the activities and the programmes of the Trade Union of their own choice. This right stand to be prejudiced if the intended interested party is to brought into this matter.
14. The Claimant avers further that the intended Interested party's Application does not satisfy the threshold for grant of enjoinder of an intended interested party as was laid down in the case of *Communication Commission of Kenya & 4 others v Royal Media Services Limited & 7 others*.
15. The Intended Interested Party filed its written submissions on the 11th October 2022 while the Claimant chose to rely on its replying affidavit.

Analysis and Determination.

16. I have carefully considered the Applicant's application herein, the grounds upon which it is premised and the affidavit in support thereof, and gained an undoubtable impression that it seeks for an order of enjoinder as an interested party.
17. *Black's law Dictionary* defines an Interested party as:
"a party who has recognizable stake and therefore a standing in a matter."
18. Similarly, Rule 2 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, [2013] defines as:
"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."
19. In the case of *Communication Commission of Kenya & 4 others v Royal Media Services Ltd & 7 others* [2014] eKLR, the Supreme Court of Kenya held as follows:
 - "(22) In determining whether the applicant should be admitted into these proceedings as an Interested Party we are guided by this Court's Ruling in the Mumo Matemo case where the Court (at paragraphs 14 and 18) held:
 - "[An] interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause..."
 - (23) Similarly, in the case of *Meme v Republic*, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:
 - (i) Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;
 - (ii) joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;



(iii) joinder to prevent a likely course of proliferated litigation.”

20. Before I delve deeper on whether the Applicant has met the threshold of being enjoined as an interest party, it is imperative to state that the conditions that one has to fulfil before being enjoined, were aptly set out in the Court of Appeal case in *Kenya Medical Laboratories Technicians & Technologists Board & 6 others v The Attorney General & 4 others* [2017] eKLR where the court held as follows:

“The test is not whether the joinder of the person proposed to be added as an interested party would be according to or against the wishes of the petitioner or whether the joinder would involve an investigation into a question not arising on the cause of action averred by the petitioner. It is whether the intended interested party has an identifiable stake, or a legal interest or duty in the proceedings.

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.

It is a mandate of the court that as far as possible all matters in controversy between the parties should be completely and finally determined and all multiplicities of legal proceedings concerning any of the matters be avoided. In this regard, it would be appropriate and in the interest of justice that all matters touching and concerning the subject matter of the suit in the case at hand be determined finally and completely to avoid litigating over the same matters again.”

Reliance has also been placed on the *Muruatetu Case*, where the Supreme Court of Kenya outlined the requisite elements to being joined as an interested party to a suit when it held thus;

“ [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:

One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:

- 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.”

21. I have carefully considered the material placed before me by the parties, including to the effect that the Intended interested party has a recognition agreement and Collective Bargaining Agreement with the Respondent, which is current. Equally, the general nature of the matter before me has not escaped my mind. I am left with the view that the intended interest party has an identifiable interest in the matter, not too remote; all issues in controversy in the dispute herein shall be conclusively determined if the intended interested party is brought on board ; a multiplicity of suits will be avoided as between the parties herein; and findings are likely to be made in this matter that will affect the intended interested party, and they should be enjoined to avoid a situation of the appearing to have been condemned unheard.
22. The Claimant has assailed the recognition agreement and the collective bargaining agreement that have been placed before me, from many fronts. The attack can only be properly engaged not through affidavit evidence as is in the instant application, but through evidence in the substantive suit, evidence by all the parties on their respective cases, which shall then be subjected to cross examination to test its validity, credibility and authenticity. The Claimant’s horses should be held therefore till that moment.
23. In view of the above; it is hereby ordered that the Intended Interested Party’s Application dated the 2nd June 2022 is hereby allowed, in the following terms;
 - I. The applicant is hereby allowed to come on board the matter as an interested party.
 - II. The Applicant is granted leave to file a response to the Claim herein within 14 days, of service of the Claimant’s pleadings.
 - III. The Claimant to serve the pleadings on the Applicant for this stated purpose.
 - IV. Costs of the application be in the cause.
24. Orders Accordingly.

READ, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 2ND DAY OF MARCH 2023

OCHARO KEBIRA

JUDGE

In presence of

Mr. Odongo for Angoya for Applicant.

Ms Oketch for Mosese for Respondent.

Mr. Jumo for Intended Interested Party.

