



**Otieno v Teachers Service Commission; Kenya Union of Post
Primary Education Teachers (KUPPET) (Interested Party) (Cause
E020 of 2022) [2023] KEELRC 1810 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1810 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
CAUSE E020 OF 2022
HS WASILWA, J
JULY 27, 2023**

BETWEEN

CHRISTOPHER ODHIAMBO OTIENO CLAIMANT

AND

TEACHERS SERVICE COMMISSION RESPONDENT

AND

**KENYA UNION OF POST PRIMARY EDUCATION TEACHERS
(KUPPET) INTERESTED PARTY**

RULING

1. Before me for determination is the intended interested party's Application dated 17th March, 2023, filed under certificate of urgency and brought pursuant to sections 3, 20(1) and 22 of the [Employment and Labour Relations Court Act](#), Section 3A of the [Civil Procedure Act](#), Order 10 Rule 2 of the [Civil Procedure Rules](#) and all other enabling provisions of the law, seeking for the following Orders;-
 1. Spent.
 2. This Honourable Court be pleased to grant leave for the Union of Post Primary Education Teacher (KUPPET) to join these proceedings as an interested party.
 3. That upon being admitted as an interested party, the Honourable Court do grant the Applicant leave to provide information, material and evidence that may be in its possession and or knowledge to enable the court to completely and effectually determine the matter in dispute herein.
 4. That cost of the Application be provided for.



2. The basis upon which this application is made is that KUPPET union is registered under the [Labour Relations Act](#), with its core purpose geared towards championing the interest of teacher countrywide. Therefore, that the claimant herein being a teacher within the meaning of section 2 of the [Teacher Service Commission Act](#) as read with the [Rules](#) and [regulations](#) attached therein and an active member of the Union herein, they have interest in participating in the proceedings herein and protecting the interest of claimant.
3. It stated the Union is legitimately justified to appear and make representation in court in a matter involving one of its members. Therefore, that it is in the interest of justice that the Applicant herein be admitted in these proceedings because it will aid the court in effectively determining the matter herein
4. He added that no prejudice will be visited on the Respondent if the applicant herein is admitted as an interested party.
5. The application is also supported by the affidavit of Maurice Titus Akelo Misori, the Applicant's secretary General, sworn on 17th March, 2023. He reiterated the grounds of the application and in addition stated that their joiner in these proceedings will benefit the Court since they are coming in with wealth of experience in labour disputes and ancillary matter. Also, that they have a genuine interest in this matter as pertains to how one of its members was terminated from employment.
6. The Application herein is opposed by the Respondent who filed a replying affidavit by Evaleen Mitei, the Respondent's acting Director in charge of field service, deposed upon on 15th June, 2023.
7. In her affidavit, the affiant stated that the Respondent herein is an independent commission with the principal function of registering teacher, recruiting and employing teacher, promoting and transferring teachers and exercise disciplinary control over the said Teachers. Further that Article 237 of the [Constitution](#) empowers the commission to Review standard of Education and training of persons entering the teachers service, review national demand for and the supply of teachers and advice national government on matter relating to the Teaching profession.
8. Also that section 11 of the [Teacher Service Commission Act](#), empowers the commission to formulate policies to achieve its mandate, provide strategic leadership and direction, prescribe teaching standards, manage the teachers payroll, facilitate career progression and monitor conduct and performance of teachers, together with all other things necessary for effective discharge of its mandate.
9. Based on that, the Respondent opposed the Application and stated that the issue herein relates to termination of employment of the claimant and the Applicant is merely seeking to join these proceedings to serve its ulterior motive. He added that the issue of termination emanates from a private contract between the claimant and the Respondent, which cannot be enforced against a person that is not a party including the Applicant. Therefore, the orders that will eventually be issued by this court will not affect the applicant in any way. Also, that the alleged interest that the interested party want to protect can be adequately protected by the advocate that is already on record for the claimant.
10. It is stated that the Applicant herein has not indicated that its what its bringing to the suit is over and above what has already been brought by the claimant. Thus, that applicant is not a necessary party in these proceedings and in fact that their joiner to this suit will derail the expedient disposal of the suit. He urged this Court to dismiss the application herein with costs.
11. The Application was disposed of by written submissions with the Applicant filing on the 27th June, 2023 and the Respondent filed on 29th June, 2023.



Applicant's Submissions.

12. The Applicant submitted from the onset that it intends to join this suit to address this court on legal issues and submitted on two issues; whether the applicant has legal interest in the suit and what orders should the court grant.
13. On the first issue, it was submitted that the Respondent has not indicated why its does not want the interested party to be joined to these proceedings. He argued that the Respondent has merely made blanket assertion that the Applicant does not have any interest in the matter without indicating any prejudice they will suffer if the Applicant is admitted in this proceedings. On the contrary that the Applicant will be prejudiced if its not allowed to make legal submissions that will champion the interest of its membership. In this he relied on the case of *Trusted Society of Human Rights Allicance V Mumo Matemo & 5 others* [2014] eKLR where the Court held that;-

“consequently an interested party is one who has stake in the proceedings, though he or she was not a party to the cause ab initio, He or she is one who will be affected by the decision of the Court when its 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 as and champion his or her cause.”

14. Similarly, that some of the issues, the Applicant intends to submit on are; whether its fair and lawful for a principal of a secondary school to be punished for a decision that was made by the School Board of management, whether a school principal should in law take personal responsibility for decision taken by the School's Board of management and whether its lawful for a public servant to forfeit terminal benefits accumulated over long period of service on account of dismissal. He argued that the issues raised herein above raises serious questions of law, that do not only interest the parties in this suit but also the applicant as a Union representing teachers. He reiterated that its not going to submit on the contested facts of this case. To support its argument, they relied on the case of *H. E Raila Amolo Odinga & Another V IEBC & 3 Others* [2017] eKLR where the Supreme Court cited the case of *Francis Kariuki Muruatetu & another v Republic & 5 others* Petition 15 as consolidated with 16 of 2013 [2016] eKLR where the Court held that;

“The elements applicable where a party seeks to be enjoined in proceedings as an interested party , they are: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.”



15. The Applicant in conclusion urged this Court to allow its application for joinder and added that its willing to abide by any conditions that this Court will set forth to give it an opportunity to submit on the issue raised herein.

Respondent's Submissions.

16. The Respondent submitted also on two issues; whether the applicant has met the threshold to be joined as an interested party in the proceedings herein and whether the issue in this suit is based on a contractual relationship and governed by private law.

17. It was submitted that an interested party is defined in Blacks law dictionary as a party that has a recognizable stake in a matter. He argued that the Applicant has not demonstrated any interest or stake that it has in this matter to be admitted in the proceedings. In this they relied on the case of *Communication Commission of Kenya & 4 Others V Royal Media Services Limited & 7 others*, [2014] eKLR where the Court cited 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...”

18. To put emphasize to their argument, they relied on the case of *Francis K Muruatetu and another V Republic & 5 others*[2016] eKLR where the court listed the three key considerations to be observed by a court before a joinder application is allowed. The first being personal stake and or interest that the party has and that stake must be indicated in the Application. This interest must be clearly identifiable, proximal and stand apart from anything else that is peripheral. Secondly, that the party must indicate the prejudice it will suffer and thirdly , that it must set out the submission that party intends to make and demonstrate relevance of those submissions.

19. Based on the foregoing, the Respondent submitted that the Applicant has not met any of the above conditions, therefore that their application is misconceived and a non-started. In this they relied on the case of *Skov Estate Limited & 5 others V Agricultural Development Corporation & Another* [2015] eKLR, where the Court held that:-

“In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in a suit as interested party.”

20. Accordingly, it was submitted that issues raised by the Applicant herein can be addressed by the claimant and therefore the joinder of the Applicant in these proceedings is not necessary.
21. On the second issue, the Respondent submitted that the issue in dispute are in the arena of private law, as they emanate from a contract of employment between the Respondent and the Claimant. Which



issues the Applicant will not be personally affected with the decision that will eventually be made by the Court.

22. He maintained that the Applicant has not demonstrated the basis of its application and urged this Court to dismiss the application with costs for lacking in merit.
23. I have examined all the averments and submissions of the parties.
24. The applicant has sought to be enjoined in this suit being a union to represent the interests of the claimant herein who is their member.
25. They aver that they are a necessary party in the proceedings as a union in that the claimant is their member and they have a mandate to represent the interests of their members.
26. The respondents have opposed this application indicating that there is nothing new that the applicants would add to this claim which cannot be articulated by the claimant.
27. The applicants have indicated that the claimant is their member and they are a union representing the interest of teachers like the claimant herein.
28. The union indeed has a mandate to represent interests of their members and Article 41 of the Constitution grants the right for Union membership and therefore union representation.
29. There is no prejudice the respondents have demonstrated they stand to suffer if the applicant union is enjoined in these proceedings.
30. It is my finding that the application is merited.
31. The same is allowed and the applicant union is allowed to be enjoined in this claim.
32. Costs of the application will be in the claim.

RULING DELIVERED VIRTUALLY THIS 27TH DAY OF JULY, 2023.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:-

Mulaku holding brief for Ochieng for Respondent – present

Juma for Interested Party – present

Kemboi for Claimant – present

