



**Mogusii Farmers Group & another v Kenya Plantation & Agricultural Workers
Union Nakuru; Nyamira County & 11 others (Interested Parties) (Cause
E063 of 2021) [2022] KEELRC 3966 (KLR) (22 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 3966 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E063 OF 2021
CN BAARI, J
SEPTEMBER 22, 2022**

BETWEEN

MOGUSII FARMERS GROUP 1ST CLAIMANT

MOGUSII TEA CO LTD 2ND CLAIMANT

AND

**KENYA PLANTATION & AGRICULTURAL WORKERS UNION
NAKURU RESPONDENT**

AND

NYAMIRA COUNTY INTERESTED PARTY

**DEPUTY COUNTY COMMISSIONER BORABU SUB COUNTY. INTERESTED
PARTY**

KIPKEBE TEA CO. LTD INTERESTED PARTY

STEPHEN ORINA OKERIO INTERESTED PARTY

HUDSON MOBE INTERESTED PARTY

YOBESH OPENDA MOKAYA INTERESTED PARTY

CHARLES ONDARY ACHOKI INTERESTED PARTY

SAMWEL MOGENI MAROKO INTERESTED PARTY

BILLIAH ONGERA INTERESTED PARTY

MILKA MOTITO INTERESTED PARTY

ISAAC MANONO ACHOKI INTERESTED PARTY

**ZACHARY ODONGO (OCS MATUTU POLICE STATION) INTERESTED
PARTY**



RULING

1. This ruling relates to the claimants' motion application dated January 18, 2022, brought pursuant to section 5 of the Judicature Act, rule 39 of the High Court (Organization and administration) (General) Rules, sections 1A, 1B and 3A of the Civil Procedure Act and order 53 rule 4 of the Civil Procedure Rules.
2. The claimants seek the joinder of Henry Omasire, Stephen Nyamweno, Stephen Orina Okerio, Hudson Mobe, Yobesh Opende Mokaya, Charles Ondari Achoki, Samwel Mogeni Maroko, Billah Ongera, Milka Motito, Zachary Odongo and Charles Igihi in this proceeding as interested parties, and that they be summoned to show cause why they should not be committed to civil jail or penalized for contempt of court for disobeying orders issued on October 15, 2021.
3. The application is supported by the grounds on the face thereof and the affidavit of Erastus Nyamwaya. The crux of which, is that the intended interested parties are directly or indirectly obstructing the claimants from accessing the company premises and further preventing workers from proceeding with their work.
4. The claimants contend that the intended interested parties are necessary parties in these proceedings as they bear the role of implementing the orders of the court.
5. The claimants further argue that the 1st respondent and the 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, and 12th interested parties have deliberately disobeyed the orders of the court granted on the October 15, 2021, despite service.
6. It is argued that the 1st respondent has persistently failed and/or refused to act in accordance with the court order despite several reminders to order that workers resume work.
7. The 1st respondent opposed the motion *vide* a replying affidavit sworn by one Henry Omasire on February 4, 2022, another of February 1, 2022, sworn jointly for the 4th to 10th intended interested parties and yet another of February 3, 2022 sworn by the 12th intended interested party.
8. Parties sought to canvass the application by way of written submissions. The 2nd to 12th interested parties filed their submissions. No submissions were filed for the 1st respondent and the claimants/applicants.

The 2nd and 12th Interested Party's Submissions

9. It is submitted for the 2nd and 12th interested party that the applicants did not demonstrate compliance with the mandatory requirements of order 52 of the Rules of the Supreme Court of England, which are couched in mandatory terms.
10. It is further submitted that the applicants/claimants ought to have sought leave to file contempt of court proceedings, but which they did not. They had reliance in the holding of Hon. Odunga J ex parte Peter Nyamu Karaguri Muhuri Karaguri v Attorney General & 5 others [2013] eKLR, to buttress this position.
11. The 2nd and 12th interested parties submit that both the instant application for contempt and the orders issued on October 15, 2021, were never personally served upon them, and that the applicants have not disputed not having served. It is further submitted that due to its nature and likelihood of limiting the



right to liberty, the procedural requirements ought to have been fully complied with as failure renders the application incompetent.

12. It is submitted that the orders subject of the contempt application were issued as a result of a consent between the applicants and the respondent in court, without the involvement of the 2nd and 12th interested parties or their advocate, hence the 2nd and 12th interested parties were never parties to the consent and had no role in relation to the implementation of the orders.
13. The 2nd and 12th interested parties further submitted that though the 12th interested party had knowledge of the order subject of this application, their efforts to ensure its implementation were frustrated by the non-appearance of the claimants at the place, time and date agreed for its implementation.
14. It is further submitted that the order issued on October 15, 2021, was not very clear on the role of the 12th interested party in terms of compliance as the order only expressly stated the OCS Matutu police station to provide security and which the 12th interested party has demonstrated that it provided 15 armed police officers for the exercise. They sought to rely in [*Housing Finance Company of Kenya Ltd*](#) where the court stated:

“I am of the view that because of the very nature of the application for contempt that jurisdiction needs to be exercised with care. The standard of proof in contempt proceedings is higher than on a balance of probabilities. The breach of the contemnor needs to be specifically defined.....I find and hold that the term ‘status quo be maintained’ without regard to what is being ordered, amounts to not being an order capable of attracting an order of contempt. The terminology depending on who is interpreting it would have different meaning...”

Submissions by the 4th to 10th Interested Parties

15. It is submitted that the 4th to the 10th interested parties were not parties to the substantive suit which was compromised by way of a consent between the claimants and the respondents, and hence were not privy to the consent and were not required to perform any obligation in relation to the consent order.
16. That to be joined would be irregular, illegal and unprocedural premised on the fact that the matter had been finalized through the consent agreement. It is further submitted that though a party can be joined to the suit at any stage, this matter having been concluded by consent, the joinder will only be tenable if the consent orders are reviewed and/or set aside. They had reliance in [*Absolom Opini Mekenye v James Obegi*](#) (2018)eKLR
17. It is submitted that the 4th to 10th interested parties cannot be cited for contempt as they were not parties to the suit and the consent adopted by the court. It is further submitted that the claimants can only cite the principle parties that executed the consent. They sought to rely on the holding in [*Moses Wachira v Nile Bruel & 3 others*](#) (2014) eKLR to support this position.
18. The interested parties submit that the workers resumed work on October 18, 2021, and that they have since been executing their duties peacefully and without hindrance whatsoever.

Determination

19. I have considered the application, the affidavits, grounds and the submissions filed for the intended interested parties. The issues that fall for determination are:
 - i. Whether the intended interested parties should be joined to this suit; and



- ii. whether the 1st respondent and the intended interested parties are liable for contempt of court.

Whether the intended interested parties should be joined to this suit

20. Order 1 rule 10(2) of the *Civil Procedure Rules* states:

“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.”

21. The claimants/applicants seek to join the 4th to the 12th interested parties to this suit, wherein, a consent had been recorded and the same adopted as a judgment of the court.
22. Although the *Civil Procedure Rules* do not envisage joinder as an interested party, there is nothing inherently objectionable in a person applying either to be joined or to join another person as an interested party in a pending suit. A party is joined in a suit where he/she is making a claim or where someone is making a demand against him.
23. The claimants/applicants are seeking to join the 4th to 10th intended interested parties to the suit for reason that they are agents of the 1st respondent, and who have failed and/or neglected to comply with orders of the court, while the 12th intended interested party is the officer commanding Matutu police station (OCS) and who had been directed vide the consent order to ensure compliance of the order, and hence are necessary parties to the suit. Odunga J in *Gladys Nduku Ntbuki v Letsbego Kenya Limited; Mueni Charles Maingi (Intended Plaintiff)* [2022] eKLR held that necessary parties who ought to have been joined are parties who are necessary to the *constitution* of the suit without whom no decree at all can be passed.
24. In *Pravin Bowry v John Ward and another* [2015] eKLR the Court of Appeal considered the principles to be considered in an application for joinder of parties to a suit, and referred to the Ugandan case of *Deported Asians Custodian Board v Jaffer Brothers Ltd* [1999] 1 EA 55 (SCU) and *Civicon Limited v Kivuwatt Limited and 2 others* [2015] eKLR wherein the court stated:

“The objective of these rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined...from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in order i rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.



25. I would not say that the 4th to the 10th intended interested parties are not reasonably affected by these proceedings for reason that they are said to be agents of the 1st respondent who already is party to the suit, and from whom the claimants can and have sought relief from.
26. The dispute between the parties herein has already been resolved by consent of the parties and the only thing pending is the implementation of the consent order, hence joining the 4th to 10th intended interested parties is an exercise in futility. In *Moses Wachira v Niels Bruel & 3 others* (2014) eKLR, the court stated:
- “.....Notably, the final judgment was delivered herein by Okwengu J on March 30, 2011. That meant that all the issues that had been placed before the court had been determined as a finality..... essentially all doors were closed to any other parties who would have wished to be enjoined in the proceedings herein after the judgment was delivered.”
27. In light of the forgoing, I decline the prayer to join the 4th to 10th intended interested parties to this suit.
28. The 12th intended interested parties was directed under the consent order to facilitate compliance through providing security to the claimants/applicants to enable them access their offices. For reason that the orders are yet to fully be complied with, I hereby find the 12th intended interested party, a necessary party to these proceedings for purposes solely of providing security whenever it is needed by the claimants/applicants in relation to the consent order of October 15, 2021.
29. To this end, the prayer for joinder of the 12th intended interested party is granted.
- Whether the 1st respondent and the intended interested parties are liable for contempt of court.
30. The *Black's Law Dictionary* (ninth Edition) defines contempt of court as:
- “conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”
31. In *Samuel M. N Mweru and other v National Land Commission & 2 others* [2020] eKLR, it was held that for a party to succeed in an application for contempt, the party must satisfy the court on following four elements:
- i. That the terms of the order were clear, unambiguous and were binding on the defendant.
 - ii. The defendants had knowledge of or proper notice of the terms of order
 - iii. The defendant has acted in breach of the terms of the orders, and
 - iv. The defendants conduct was deliberate.
32. As correctly submitted by the intended interested parties, they were all not party to this suit at the time the consent order was entered into and on its subsequent adoption as an order of the court. Further, up to the time of writing this ruling, the persons sought to be cited for contempt of court, are still not party to this suit and there were no particular orders directed at them save for the 12th interested party.
33. For the singular reason that the persons cited for contempt are not party to the suit, no case of contempt can or has been proved against them to warrant their committal to civil jail or any other form of penalty whatsoever.
34. The 12th interested party was specifically directed to provide security to enable the implementation for the consent order. He has in his defence told the court through his replying affidavit and the



submissions filed before this court, that he did provide fifteen (15) security officers to facilitate compliance with the orders, but that the claimants/applicants did not avail themselves for purposes of being assisted to access their offices in compliance with the court order.

35. Contempt of court is in the nature of criminal proceedings and proof of a case against a contemnor is higher than that of balance of probability. This is informed by the fact that the liberty of the subject is usually at stake and the applicant must prove willful and deliberate disobedience of the court order, if he were to succeed. In *Gatharia K Mutikika v Baharini Farm Limited* [1985] KLR 227, the court stated:

“A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily.... It must be higher than proof on a balance of probabilities....

The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the court where contempt is alleged to or has been committed, and or an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.”

36. The claimants/applicants did not file any rebuttal to the 12th interested party's assertion and for this reason there is no prove that the 12th interested party willfully and deliberately disobeyed the court order as to warrant his committal to civil jail.

37. In the upshot, the court makes orders as follows:

- i. That the 12th intended interested party is joined to this suit as the 4th interested party.
- ii. That the prayer to join the 4th to 10th intended interested party to this suit is declined.
- iii. That the prayer to summon and commit the 2nd to 12th intended interested parties for contempt of court is declined.
- iv. That each party shall bear their own costs of the application.

38. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 22ND DAY OF SEPTEMBER, 2022.

CHRISTINE N. BAARI

JUDGE

Appearance:

Mr. Kerosi present for the Applicants

Mr. Ochoki present for the 4th-10th Intended Interested Parties.

Mr. Wabwire present for the 2nd and 12th Intended Interested Parties.

