



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO. 755 OF 2019

(Before Hon. Lady Justice Maureen Onyango)

KENYA NATIONAL UNION OF TEACHERS.....CLAIMANT/APPLICANT

VERSUS

MERCY NJERI MACHARIA.....1ST RESPONDENT

TEACHERS SERVICE COMMISSION.....2ND RESPONDENT

AND

KENYA UNION OF POST PRIMARY EDUCATION

TEACHERS (KUPPET).....INTENDED INTERESTED PARTY

RULING NO 2

1. Before me for determination is a Notice of Motion Application dated 14th November 2019 filed by the Intended Interested Party seeking orders THAT:

i) THAT this court be pleased to grant leave and allow the interested party be joined in the instant suit

ii) Costs of this application be provided for.

2. The application is based on the grounds as set out on the face of the Notice of Motion Application and in the supporting affidavit of **AKELO MISORI**, the Secretary General of the Applicant, sworn on the 14th November, 2019.

3. The Affiant avers that the Applicant is a duly registered and recognized trade union that represents over 185,000 post primary teachers and trainers in Kenya. That vide the notice issued by the Respondent the present members of the Claimant trade union including post primary teachers and trainers risk being left unionless and therefore without audience with the employer with respect to collective bargaining.

4. The Affiant avers that section 4 of the Labour Relations Act and Article 41 of the Constitution confer upon all unionisable employees a right to join a union. That the Applicant is duty bound to agitate for the best possible terms and conditions of employment including advocating for policies which guarantee job security and fair resolution of grievances of post primary teachers and trainers in Kenya.

5. The Affiant maintains that the recognition agreement with TSC recognizes the Applicant union as sole union representing post primary teachers. The Applicant is therefore seeking to be joined in this suit for purposes of representing the tens of thousands of post primary teachers who risk being rendered without a Union.

6. He avers that the joinder of the interested party will not in any way prejudice the Claimant or the Respondents and therefore prays that the application be allowed as prayed.

Claimant's Case

7. In opposition to the application the Claimant filed a replying Affidavit sworn by **Hon. Wilson Sosion** on 21st January 2021.

8. The Affiant avers that the Claimant entered into a recognition agreement with the 2nd Respondent on 15th May 1968 which agreement is still in force. He states that the Intended Interested Party has no locus standi to be joined in this suit since it has not placed before the court any evidence representing simple majority as required by Section 54 of the Labour Relations Act.

9. It further states that there is no evidence that the Claimant's members have chosen to be represented by the Intended Interested Party and have been denied the right to choose representation.

10. The Affiant further states that the purported recognition agreement between the 2nd Respondent and the Intended Interested Party is illegal and is not in accordance with Section 54 of the Labour Relations Act.

11. The Affiant further states that none of the Claimant's members have joined the Intended Interested Party and therefore the application is frivolous.

Respondents' Case

12. The Respondents opposed the application by way of grounds of opposition dated 20th January 2021.

13. The Respondents contend that the Intended Interested Party is not a party to the Recognition Agreement dated 15th May, 1968 and therefore has no recognizable interest in the outcome of the suit. They further contend that the Intended Interested Party has not set out the case it intends to make before the court nor demonstrated how its joinder to the suit shall assist the court in determining the issue in controversy. Further the Respondents state that the Intended Interested Party has not demonstrated any prejudice it stands to suffer if the proposed joinder is denied.

Intended Interested Party Submissions

14. The Intended Interested Party submits that membership of KNUT includes post primary teachers who are not privy to these proceedings and is apprehensive that should the Court rule in favour of the Respondents the Post Primary Teachers in KNUT will find themselves without a Union and stripped off all the benefits of the collective bargaining agreement with the employer.

15. The Intended Interested Party submits that it owes a duty of care to all post primary teachers employed by Teachers Service Commission whether unionised or not. It further submits that it is a principal and necessary stakeholder whose input in the proceedings will be of great benefit to the overall jurisprudence. It submits that it holds a stake in the education sector as an ambassador of the post primary teachers who are likely to be affected by the outcome of the case.

16. The Intended Interested Party relies on Order 1 Rule 10 of the Civil Procedure Rules which 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 the plaintiff or defendant be struck out and that the name of any person who ought to have been joined either as the plaintiff or defendant or whose presence before the court may be necessary in order to enable court effectually and completely adjudicate upon and settle all questions involved in the suit to be added.

17. The Intended Interested Party further relied on in the case of **Benson Mwangi Wangai v Ibrahim Ndwiga & Another [2005] eKLR**, the Court held that:

“Under Order I Rule 10(2) the court has unfettered discretion to order that any party who ought to have been joined either 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 question involved in a suit be joined. It can even do so on its own motion.”

18. It submits that **Mativo J. ratio decidendi** in allowing the Intended Interested Party's application for joinder in **Nairobi High Court Petition 37/2017: Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 Others [2017] eKLR** was that interested parties' interventions are of great value in litigation because they at times enable the courts to hear arguments which are of wider import than the concerns of the particular parties to the case. That judicial decisions do more than merely decide disputes between, or determine the guilt or innocence of, individuals. They decide how the law of the land is applied to all. In this regard, it is unsurprising that independent evidence and submissions on the scope and impact of the law may assist judges to reach a fairer and more sustainable result.

19. It further relies on the case of **Mai Mahiu Kijabe/Longonot Co. Ltd v Ayub Mugo Njoroge & 5 Others Civil Suit No. 1672 of 2001 eKLR** which laid down the principles of joinder as follows:

“It is a cardinal rule procedural that any party who stands to be directly affected by any orders that may be in any such and whose participation is necessary in a suit for effective adjudication of the matters in issue ought to be.”

20. The Intended Interested Party submits that it has met the threshold for joinder and prays that it be admitted in these proceedings. It submits that the instant suit has potential to set judicial precedent and should TSC have its way and revoke KNUT's Recognition agreement the case is likely to affect numerous teachers who are not joined in this case having identified the potential harm which the teachers who are absent in these proceedings are likely to suffer and this is where it derives its locus to move the court as an interested party.

21. The Intended Interested Party further submits that neither the Claimant nor the Respondents have demonstrated how its joinder to these proceedings would injure their case.

22. The Intended Interested Party prays that the application be allowed as prayed.

Claimant's Submissions

23. The Claimant submits that the Intended Interested Party is not going to add any value to the proceedings. Further that the application does not meet the threshold set out in Order 1 Rule 10(2) of the Civil Procedure Rules.

24. It relies in the case of **Francis Kariuki Muruatetu & Anor v Republic & Others Petition 16 of 2015** where it was held that an Amicus brief should address points of law not already addressed by the parties to the suit or by other *amici* so as to introduce only novel aspects of the legal issue in question that aid the development of the law.

25. The Claimant also relies on **ELRC Cause No. E466 of 2020 Fredrick W. Simiyu v The Acting CEO Kenya Medical Supplies Authority** where the Trial Court in dismissing an application for joinder of a party to the suit held that the joinder of an Interested Party would only be allowed by the Court where the joinder would assist the Court in arriving at a just determination of the dispute.

Respondents' Submissions

26. The Respondents submit that the Intended Interested Party is not a party to the Recognition Agreement dated 15th May 1968 between the Claimant and the 2nd Respondent and that it was only recognized by the 2nd Respondent as a trade union on 2nd June 2010.

27. It relied on **Civil Case No. 84 of 2008: Louis Roger Ouandii v Bank of India & Another and Laxmanbhai Construction [2012] eKLR**, where the High Court while considering a similar matter rendered itself as follows;

"I have little doubt that if the Applicant is joined as a plaintiff there would be no relief flowing from the defendants to it due to want of privity of contract. On the second condition, the presence of the Applicant is not necessary from the standpoint."

28. The Respondents submit that the Intended Interested Party is not privy to the agreement and not bound by the terms therein. That it does not have a legitimate or recognized stake or interest to protect and it shall not be affected by the decision of the court.

29. The Respondents rely on the decision in Petition No. 12 of 2013: Trusted Society of Human Rights Alliance v Mumo Matemo [2014] eKLR, where the Supreme Court defined an Interested Party as follows;

"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."

30. The Respondent also relied on the decision in **Petition No. 16 of 2015, Francis Kariuki Muruatetu & Another v Republic & 5 others [2016] eKLR**, where the Supreme Court reiterated that enjoinder as an Interested Party in a suit *"is not as of right"* and that an Applicant ought to lay *"sufficient ground"* for the intended joinder. These grounds include;

i. A clearly identifiable and proximate personal interest or stake that the party has in the matter.

ii. A realistic prejudice to be suffered by the Intended Interested Party in case of non-joinder.

iii. A clear outline of the case and/or submissions the Applicant intends to make before the Court, the relevance of those submissions, and a demonstration that those submissions are not merely a replica of the positions already held by the parties already in the suit.

32. The Respondents submit that the Intended Interested Party is not privy to the agreement hence lacks identifiable interest in the matter. It further states that the matter before court is purely contractual between the Claimant and the Respondents. That the Intended Interested Party has not set out its case nor shown how it will suffer should the joinder be denied. The Court of Appeal in **Civil Appeal Application) No. 132 of 2017. Attorney General v Kenya Bureau of Standards & Another** observed that;

"...we do not think what the Applicant wishes to bring in to these proceedings is any different from those of the other parties already on record. He, similarly, has not demonstrated what prejudice he or indeed the country stands to suffer if his intervention is denied ..."

33. The Respondents urged the court to dismiss the application with costs.

Analysis and determination

34. I have considered the application by the Intended Interested Party together with the grounds and affidavit in support thereof. I have further considered the replying affidavits of the Claimant and Respondent in opposition thereof. The only issue for determination is whether the Intended Interested Party has justified its joinder to these proceedings as an interested party.

35. Orders 1 Rule(2) of the Civil Procedure Rules provides for joinder of parties as follows –

(2) 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.

36. As was stated by the Court in **Benson Mwangi Wangai v Ibrahim Ndwiga & Another supra**, joinder of a party will be ordered by the Court where the presence of such party before the Court is necessary to enable the Court effectually and completely adjudicate upon and settle all questions involved in a suit.

37. The Applicant herein has submitted that it desires to be enjoined to this suit because it owes a duty of care to all post primary teachers employed by the 2nd Respondent whether unionised or not. It further argues that it is a principal stakeholder whose input will be of benefit to the overall jurisprudence. That it is an ambassador of post primary teachers who are likely to be affected by the outcome of this case.

38. The Applicant does not state how its presence will determine the issue in dispute herein. Being a stakeholder in a matter is not a justification for joinder. The Applicant has not stated how its joinder will assist the Court in determining the dispute herein, which is the termination of the Recognition Agreement between the Claimant and the 2nd Respondent. It has not demonstrated that it has evidence that if it submits to the Court would add value to the evidence adduced by the parties hereto. It has not stated how either the Claimant or Respondents will be prejudiced by its non-joinder or how the Applicant itself will be prejudiced by the non-joinder.

39. As has been submitted by both the Claimant and Respondents the Applicant is not party to the Recognition Agreement which is the subject matter of the claim herein. It has not demonstrated that it has any stake in the proceedings herein.

40. As was stated by the Supreme Court in the case **of Muruatetu (supra)**, joinder of an Interested Party is not a right and a person seeking to be joined as an interested party must satisfy the Court that it has sufficient ground to be enjoined which the Court identified as an identifiable and proximate personal interest or stake in the matter, prejudice that it would suffer from non-joinder and an outline of its case setting out the relevance of its case to the suit before the Court. The Applicant has not demonstrated any of the grounds.

41. It is my finding that the Applicant has failed to satisfy the Court that its joinder to these proceedings as an Interested Party will add any value by assisting the Court to arrive at a just determination on the issues in dispute in this suit. For these reasons, I find no merit in the application and dismiss it with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 16TH DAY OF JULY 2021

MAUREEN ONYANGO

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2) (d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

MAUREEN ONYANGO

JUDGE