



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**PETITION NO. E027 OF 2021**

**MARGARET WANJA MUTHUI.....PETITIONER**

**VERSUS**

**MINISTRY OF TRANSPORT, INFRASTRUCTURE,**

**HOUSING URBAN DEVELOPMENT AND PUBLIC WORKES.....1<sup>ST</sup> RESPONDENT**

**KENYA RURAL ROADS AUTHORITY (KERRA).....2<sup>ND</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. The applicant, Kenya Institute of Supplies Management, filed an application dated 12<sup>th</sup> March, 2021 seeking to be joined as an interested party to the suit on the basis that the petitioner is a member of the proposed interested party.
2. That the proposed interested party is a body corporate established under Section 3(1) of the Supplies Practitioners Management Act, 2007 and its mandate *inter alia*, is to train, register, Licence, discipline and regulate the practice of supplies practitioners in Kenya. That pursuant to the stated mandate, the proposed interested party has registered and licensed the practitioner as a supplies practitioner.
3. That under Section 5(a) (f) of the Act, the proposed interested party is mandated to “*safeguard the interest of all supplies practitioners.*”
4. That under Article 22(2) (d) of the Constitution of Kenya, 2010, the proposed interested party, has a right to act in the interest of one or more of its members and that it is in the interest of justice and fairness that the applicant be granted leave to participate in this petition in pursuit of the interest of its members aforesaid.
5. That the association will take care of public interest in the suit regarding the standards of supplies practices applicable to public procurement in Kenya.
6. The applicant relies on the case of **Kenya Medical Laboratory Technicians and Technologists Board and 6 Others –vs- Attorney General and 4 Others [2017] eKLR** in which the Court set out the principles the Court should apply in exercise of its discretion to or not to join an interested party to a pending suit.
7. That the proposed interested party will address the Court on the applicable standards of supplies practice in order to help the Court determine whether the petitioner practiced her functions of office in accordance with Section 5(a) of the Act, which mandates the association to establish, monitor, improve and publish the standards of the supplies practitioners,
8. The application is opposed by the respondents on the grounds that the applicant has not raised sufficient grounds to allow them to be joined as party to the suit.
9. That the applicant’s intention is to aid the petitioner to delay the hearing and determination of the suit.
10. That the matter before Court is purely an employee and employer dispute and the applicant has no role whatsoever in the matter.
11. That the petitioner is well represented by N.O. Sumba advocates who are on record in this

matter.

12. That the mandate of the applicant as a professional body under Section 3(1) of the Act, does not include representation of employees who are its members in Court.
13. That the issue before Court does not affect the interests of all the members of the association.
14. That the applicant aim is to meddle in employment issues between its member and an employer.
15. The respondents rely on the case of **Harpal Singh Semhi and 4 Others –vs- Zehrabanu Jammohammed and 3 Others; Sports Registrar and 9 Others [2020] eKLR** in which it was held that an applicant for joinder as an interested party should demonstrate the prejudice he or she stands to suffer if they are not joined to the suit.
16. That the applicant ought to present an overview of their case and submissions they intend to make before Court and to show their relevance to the suit.
17. The respondents submits that the applicant has failed in this respect.
18. That the applicants have not revealed an interest at stake to warrant their joinder to the proceedings. The respondents relied on the case **In the Trusted Society of Human Rights Alliance –vs- Mumo Matemu and 5 Others [2015] eKLR** in which an interested party was defined thus:-

**“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.**

19. The respondents pray that the application be dismissed with costs.

#### Determination

20. The Court has considered the rival depositions and submissions by the parties and the grant of the application 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 herein and the Court has in particular considered the principles enunciated by the Supreme Court in guiding joinder of interested parties in Raila Amolo Odinga and Another and Independent Electoral and Boundaries Commissions and 2 others and Michael Wainaina Mwaura (as Amicus Curie) 2017 eKLR with reference to Francis Karili Muruatetu and Another –vs- Republic and 5 Others – Petition 15 as consolidated with 16 of 2013 92016) eKLR as follows:-

**“One must move the Court by way of a formal application. Enjoinment is not as of right”**

(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. With profound respect to the applicant association, it has completely failed to satisfy all the three elements that must be established for the Court to exercise its discretion to join an applicant as an interested party to a suit.
22. The applicant has failed to establish any personal interest in this dispute which is purely an employee and employer matter. The applicant has equally failed to demonstrate the prejudice it would suffer if it was not joined in the suit and lastly the applicant has failed to demonstrate its case and and/or submissions it intends to make before Court which do not constitute a mere replication of the case set out by the petitioner in this matter.
23. In this respect, the Court notes that the right under Article 22 (2) (d) sought to be exercised by the applicant is one to institute a suit by an association acting in the interest of one or more of its members.
24. In the present matter, the member has through her advocate instituted the petition and so this provision has been invoked wrongly.
25. Accordingly, the application for joinder as an interested party in this suit lacks merit and is dismissed with costs.

**DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 16TH DAY OF SEPTEMBER,**

**2021.**

**MATHEWS N. NDUMA**

**JUDGE**

**Appearances**

Mr. Gachuba for Applicant

Leah Odhiambo, Litigation Counsel, Attorney General Chambers

Ekale – Court clerk