



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. 488 OF 2015

MARGARET WANGUI MWANGI & 64 OTHERS.....CLAIMANTS

VERSUS

THE NATIONAL SOCIAL SECURITY FUND.....RESPONDENT

JANEIRENE GATHONI NDEGWA.....1<sup>ST</sup> INTERESTED PARTY

FRANCIS MAKANDA.....2<sup>ND</sup> INTERESTED PARTY

MARGARET W. KARUMBA.....3<sup>RD</sup> INTERESTED PARTY

**RULING**

1. The Application by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties dated 4<sup>th</sup> March 2020 seeks the following orders *inter alia*:-

1. That this application be certified urgent and service of the same application be dispensed with in the first instance.
2. The Interested Parties herein **JANEIRENE GATHONI NDEGWA, FRANCIS MAKANDA and MARGARET W. KARUMBA** be granted leave to be enjoined as 65<sup>th</sup>, 66<sup>th</sup> and 67<sup>th</sup> Claimants.
3. That the Interested Parties herein be granted leave to amend the Claim out of time.
4. That all along Interested Parties thought that they are included in the suit.
5. That its until 29<sup>th</sup> February, 2020 that the Interested Parties came to Court to peruse the Court file and they realized that they are not in the suit.
6. The Interested Parties had paid legal fees so as to be Claimants but the advocate omitted their names.
7. The Interested Parties have a constitutional right to be heard and their dispute resolved.
8. That if the Interested Parties are not enjoined as Plaintiff's Claimants they will suffer prejudice.
9. It is just and fair and in the best interests of justice if this Honourable Court allows the orders sought.

The Application was premised on 13 grounds on the face of the motion and supported by the affidavit of Janeirene Gathoni Ndegwa the 1<sup>st</sup> Interested Party sworn on 4<sup>th</sup> March 2020. In short, the 3 Interested Parties seek to be joined in the suit as the 65<sup>th</sup>, 66<sup>th</sup> and 67<sup>th</sup> Claimants. They assert that they all along thought they were parties in the suit only to realise that they were not parties when they came to peruse the Court file in February 2020.

2. The Respondent was opposed and filed a Replying Affidavit sworn by the counsel for the Respondent one Judson Adonirum Oriema Okoth sworn on 6<sup>th</sup> October 2020. He stated that the matters giving rise to this cause took place between the year 2010 and 2013, while the matter was filed before this honourable court on the 26<sup>th</sup> March 2015. He deponed that this court had subsequently granted leaves that lead to substantial amendments of the plaintiffs claims forcing the Respondent to amend their Statement of Response as well on various dates in the

year 2019. asserted that the pleadings of all the parties were finally settled and the court gave directions for hearing of the matter on the basis of those pleadings and indeed the hearing of the case commenced on 22<sup>nd</sup> January 2020 and one witness was heard to conclusion before the matter was adjourned having been partly heard. He deponed that for a set of new parties to be enjoined to these pleadings at this stage will mean further amendment of the pleadings as has been done more than twice before and would cause unnecessary confusion in the ongoing hearing. He deponed that no proper explanation has been given as to why the intended claimants did not take steps from March 2013 when the last circular being challenged was issued, or from 2015 when this cause was instituted, and trying to seek joinder into this cause will unnecessarily clog the trial of the same. He asserted that in any event, there is no reason why the said intended claimants cannot file their own cause and have it determined separately from this and that the delay in seeking joinder into this cause is so inordinate that it ought logically and justifiably to be denied. He sought a dismissal of the motion dated 4<sup>th</sup> March 2020 with costs.

3. The Claimants 1-64 filed grounds of opposition in which it was asserted that the matter is at an advanced stage and the Applicants have not participated in the trial process and hence it is just that they are not enjoined as Claimants and that the provisions of Sections 1A, 1B, 3 and 3A of the Civil Procedure Act were not meant for the indolent but to expedite justice. The Claimants assert the motion is fatally defective, misconceived, bad in law and has failed to make material disclosure. The Claimants state that the motion is frivolous, vexatious, lacks merit and is an abuse of the Court process and a waste of precious judicial time. They urged the striking out of the motion with costs.

4. The motion by the Interested Parties is in respect of the cause of action that accrued in 2013. They assert that they all along thought they were in this suit and that they only realised they were not in February 2020 when they came to court to peruse the file. Various provisions of the law such as Section 90 of the Employment Act and Sections 1A, 1B, 3 and 3A of the Civil Procedure Act were not meant to cater for laxity nor are they for the indolent but are in place to expedite justice. A party who is aggrieved cannot assert they waited for 7 years after their cause of action accrued for them to seek to establish if they were part of the action by fellow colleagues who moved the Court within the 3 years period provided for under Section 90. To permit the joinder of the parties who will craft their claim in 2020 on action that took place in 2013 is manifestly unmerited and the motion of 4<sup>th</sup> March 2020 thus fails. I dismiss it with costs capped at Kshs. 30,000/- to be shared equally by the Respondent's counsel and the Claimants' counsel. By way of obiter, the case already has a 65<sup>th</sup> Claimant who is the 64<sup>th</sup> person after the 1<sup>st</sup> Claimant Margaret Wangui Mwangi.

It is so ordered.

**Dated and delivered at Nairobi this 9<sup>th</sup> day of December 2020**

**Nzioki wa Makau**

**JUDGE**