



**Minazini Enterprises Limited & 2 others v SMB Bank (K) Limited & another;
Capital Youths Cacaus Association (Intended Interested Party) (Environment &
Land Case 203 of 2020) [2024] KEELC 14017 (KLR) (18 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 14017 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 203 OF 2020
NA MATHEKA, J
DECEMBER 18, 2024**

BETWEEN

**MINAZINI ENTERPRISES LIMITED 1ST PLAINTIFF
ABDALLA MOHAMED ABDALLA (SUING THROUGH HIS REGISTERED
ATTORNEY SANIYA ABDALLA MOHAMED) 2ND PLAINTIFF
ZUBEDA SAID MOHAMED 3RD PLAINTIFF**

AND

**SMB BANK (K) LIMITED 1ST DEFENDANT
COUNTY GOVERNMENT OF MOMBASA 2ND DEFENDANT**

AND

**CAPITAL YOUTHS CACAUS ASSOCIATION INTENDED INTERESTED
PARTY**

RULING

1. The application is dated 1st November 2024 and is brought under Section IA, 1B, 3A and 18 of the *Civil Procedure Act*, Cap. 21 Laws of Kenya and under Order 1 Rule 10(2) and Order 51 Rule 1 of the Civil Procedure Rules 2010 seeking the following orders;
 1. The Applicants herein Capital Youths Cacaus Association be enjoined as interested party in these proceedings.
 2. The cost of this application be provided for.
2. It is based on the grounds that this matter is coming up for hearing on 17th January, 2024. That the issue herein touches on land of which the interested party has interest in and any order issued herein without



his input would greatly prejudice him. That the Interested party has had possession of part of the suit land and/or property since the year 2002. That the Applicant has permanent structure building on the suit land which are his source of livelihood. That the Plaintiff and the Defendant will not be prejudiced if the orders sought herein do issue. That it is in the interest of Justice that the Intended Interested party is enjoined to these proceedings

3. The 1st Defendant stated that the Application is only meant to deny the 1st Defendant, a Bank, its rights to exercise the power of sale vested on it by law in pursuit of its rights as set out in the Agreement of the parties. That vide the Conditional Letter of Offer dated 14th June, 2019, the 1st Defendant agreed to take over the 1st Plaintiff's existing facility with Fidelity Commercial Bank Limited of Kshs. 53, 908, 083. That in the foregoing and as a consequence, the 1st Defendant took over the existing Charges created over Mombasa/Block XVI/601 & 602, Mombasa/Block XVI/606, 607, 608 & 609 and Mombasa/Block/784 respectively, as security. That similarly, the 1st Defendant took over the existing Debenture created over the 1st Plaintiffs assets for Kshs. 52, 600,000.00, as security. That further, the 2nd and 3rd Defendants issued Personal Guarantee and Indemnity as the directors of the 1st Plaintiff for Kshs. 53, 908, 083.60. That the facility was governed by the terms and conditions contained in the conditional Letter of Offer dated 14th June, 2019. That the purpose of the charges was to secure the payment of monies lent to the 1st Plaintiff by the 1st Defendant together with interest and any other associated costs. That at the point of engaging in the said contractual transactions, the Plaintiffs did not disclose to the 1st Defendant that there were any Third Parties that had any interests in the properties issued to the 1st Defendant as securities. That when the 1st Defendant conducted its due diligence prior to accepting the securities as collateral, the interests of the Applicant to the instant Notice of Motion were not in existence as the same were not registered. That the Applicant has not disclosed when the alleged rights, if any, crystalized and has not proved that there was any agreement leading to the creation of any such rights. Further that the Applicant has not disclosed any reasonable cause of action as against the 1st Defendant to warrant their participation in the instant matter. That as such, the Applicant's alleged rights do not override and/or defeat the 1st Defendant's registered rights in respect of the securities.
4. This court has considered the application and the submissions therein. The applicant seeks to be enjoined an interested party. As to whether they ought to be enjoined in the suit as a defendant or an interested party, the Court is guided by Order 1 Rule 10(2) of the Civil Procedure Rules which 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”.



5. The Supreme Court decision in Communications Commission of Kenya And 4 Others vs Royal Media Services Limited & 7 Others Petition No. 15 OF (2014) eKLR where the Court pronounced itself on who an Interested Party is and held as follows:

“In determining whether the applicant should be admitted into these proceedings as an interested party, we are guided by this Court’s decision in the 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. Similarly in the case of Meme v. Republic, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- (i) Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings;
- (ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- (iii) Joinder to prevent a likely course of proliferated litigation.

We ask ourselves the following questions:

- a) what is the intended party’s state and relevance in the proceedings and
- b) will the intended interested party suffer any prejudice if denied joinder.?”

6. It is therefore clear that the parties who should be made parties to a suit are persons who are necessary for a complete and effectual adjudication of disputes before the court. The Applicant claims that they have possession of the part suit land and/or property since the year 2002. That they have a permanent structure building on the suit land which is their source of livelihood. I find that the Applicant has interest over the suit property and ought to be enjoined. I find that no prejudice shall be suffered by the parties herein as the addition of the Applicant as an interested party to this suit is necessary and shall enable the Court to completely and effectually determine all questions involved in the suit herein in finality. For these reasons I find that this application is merited and I grant the following orders;

1. That Capital Youths Cacaus Association to be enjoined as an interested party in the proceedings.
2. Costs of this application to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 18TH DAY OF DECEMBER 2024.

N.A. MATHEKA

JUDGE

