



**Barclays Bank of Kenya Ltd (Now ABSA Bank Kenya PLC) v Commissioner of Domestic Taxes (Large Taxpayers Office); Retail Trade Association of Kenya (RETRAK) Through its Officials Leonard Mudachi John Muthee and Kenneth Karoki (Proposed Interested Party) (Petition 12(E014) of 2022) [2022] KESC 63 (KLR) (Civ) (7 October 2022) (Ruling)**

Neutral citation: [2022] KESC 63 (KLR)

**REPUBLIC OF KENYA  
IN THE SUPREME COURT OF KENYA  
CIVIL  
PETITION 12(E014) OF 2022  
PM MWILU, DCJ & VP, SC WANJALA, N NDUNGU, I LENAOLA & W OUKO, SCJJ  
OCTOBER 7, 2022**

**BETWEEN**

**BARCLAYS BANK OF KENYA LTD (NOW ABSA BANK KENYA PLC) ..... APPELLANT**

**AND**

**COMMISSIONER OF DOMESTIC TAXES (LARGE TAXPAYERS OFFICE) ..... RESPONDENT**

**AND**

**RETAIL TRADE ASSOCIATION OF KENYA (RETRAK) THROUGH ITS OFFICIALS LEONARD MUDACHI JOHN MUTHEE AND KENNETH KAROKI ..... PROPOSED INTERESTED PARTY**

*(Being an application for joinder as an interested party)*

**RULING**

1. Upon perusing the Notice of Motion by the Applicant, Retail Traders Association, dated July 7, 2022 and filed on July 8, 2022 brought pursuant to Section 3 of the *Supreme Court Act* 2011 and Rule 24 of the *Supreme Court Rules*, 2020 for leave for joinder as an interested party; and
2. Upon considering the grounds in support of the application and the supporting affidavit by Rosalin Wambui Wamwiri, the Chief Executive Officer of the applicant where the applicant claims to be the central administrative body that conveys the views of the applicant's members to the Government and relevant bodies; that the applicant plays an important role in the scheme of service that involves



payment of goods and services by way of debit and credit cards within the retail industry and; that the applicant intends to guide the Court on the interpretation of Section 35 of the Income Tax Act and its import on imposing tax management and professional fees on interchange fees; and

3. Also considering the applicant's written submissions dated July 7, 2022 contending that it has met the requirements under Rule 24 of the Supreme Court Rules, 2020 and that it has demonstrated that it has a stake/ interest in the matter, stands to suffer prejudice should it not be joined and will advance relevant arguments pertinent to the petition if joined as an interested party;
4. Further considering the respondent's replying affidavit sworn by Philip Munyao, an officer with the Respondent's Large Taxpayer's Office (LTO) and written submissions opposing the joinder of the applicant as an interested party contending that the applicant has failed to comply with the provisions of Rule 24(1) of the Supreme Court Rules, 2020, failed to demonstrate the personal interest in the matter nor any prejudice its stands to suffer if not joined and has also failed to set out its case with precision as was held in Francis Kariuki Muruatetu & another v Republic & 5 others, SC Petitions No. 15 and 16 of 2015; [2016] eKLR (Muruatetu Case) and Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others, SC Petition No. 12 of 2013; [2014] eKLR (Mumo Matemu Case) and; that whatever the applicant intends to bring to the petition is properly covered by the parties as the contested issues between the appellant and respondent are largely factual and uncontested; and
5. Having considered the provisions of Rule 24 of the Supreme Court Rules, 2020 and the principles set out in this Court's decisions in Mumo Matemu and Muruatetu on the joinder of an applicant as an interested party, we find that the applicant has failed to clearly identify the precise and specific interest it has in the matter. Its mandate is also peripheral to the issues in contestation and with respect, we do not see what issues of law or fact it will submit to court outside those already on record. Furthermore, we have not been shown any prejudice they stand to suffer in case of non-joinder. We therefore find no merit in the application and we accordingly dismiss it.
6. There shall be no order as to costs.
7. It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF OCTOBER 2022**

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**P. M. MWILU**

**DEPUTY CHIEF JUSTICE & VICE PRESIDENT OF THE SUPREME COURT**

.....

**S.C. WANJALA**

**JUSTICE OF THE SUPREME COURT**

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**NJOKI NDUNGU**

**JUSTICE OF THE SUPREME COURT**

.....

**I. LENAOLA**

**JUSTICE OF THE SUPREME COURT**

.....



**W. OUKO**

**JUSTICE OF THE SUPREME COURT**

*I certify that this is a true copy of the original*

**REGISTRAR,**

**SUPREME COURT OF KENYA**

