



Kagiri v Business Registration Service; Mwangi (Interested Party) (Judicial Review E083 of 2023) [2024] KEHC 1213 (KLR) (Judicial Review) (31 January 2024) (Ruling)

Neutral citation: [2024] KEHC 1213 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW E083 OF 2023
JM CHIGITI, J
JANUARY 31, 2024**

BETWEEN

BEATRICE WAIRIMU KAGIRI APPLICANT

AND

THE BUSINESS REGISTRATION SERVICE RESPONDENT

AND

TABITHA WAMBUI MWANGI INTERESTED PARTY

RULING

1. The Application before this court is dated 8th November, 2023 through which the applicant seeks the following orders that: -
 - a. Tabitha Wambui Mwangi be joined as an Interested Party in the suit.
 - b. The Orders given on 4/7/2023 in this matter be set aside pending the hearing and determination of this Application
 - c. Costs to be in the cause.
2. Based on the following grounds: -
 - a. On 7th March 2018, Tabitha Wambui Mwangi (the proposed Interested Party) incorporated a school christened as St. John Junior School Njiru Limited as a sole director.
 - b. To her utter shock and dismay, the proposed interested party's role of directorship has been replaced with the Applicant and her children known as Stellar Muthoni Mwai and Chris Githinji Mwai, without her knowledge.



- c. These changes were effected in a fraudulent manner and without following the due process provided in the *Companies Act*
 - d. The Proceedings in this matter were instituted without the ntrne Interested Party's knowledge.
3. The proposed joinder of the party is purposed to enable the Honourable Court to ventilate on the issues raised by the Applicant and the Respondent herein as there is a common question of law and/ or fact that arises between the said intended party.
 4. The Applicant and the Respondent will not be prejudiced in their lair by this Application joining the proposed Interested Party as a party to the proceedings herein. It is only fair and just that this application for joinder be allowed.
 5. The application is supported by the Affidavit of Tabitha Wambui Mwangi.

The interested parties case:

I. Whether this honourable court should grant the orders sought in the application dated 8th November 2023.

6. The Interested Party became a director of St. John Junior Njiru Limited herein on or about 7th March 2018.
7. The said school was initiated as a joint venture between the Interested Party and the Applicant in the ratio of 30:70.
8. The Interested Party oversaw the construction of the school, acquiring assets as well as marketing the school, attracting close to 800 pupils.
9. Contrary to the terms of the joint venture, the Applicant fraudulently and illegally caused change of directorship which resulted to changes in the Company's Register, where the Interested Party was replaced with the Applicant's Children known as Stellar Muthoni Mwai and Chris Githinji Mwai.
10. Without her approval and without her signing any documents to support the changes and the documents annexed to the Applicant's Motion dated 10 July 2023 were forged.
11. She has not been benefiting from the agreed 30% of the proceeds as per the Agreement entered between here and the Applicant.
12. Her share has since been benefiting the Applicant and her Children hereinabove who were not part of the said Agreement to the detriment of the Interested Party.
13. Black's Law Dictionary, 9th Edition, (at p.1232) defines "Interested Party") as a party who has a recognizable stake (and therefore standing) in a matter. Consequently, an Interested Party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio.
14. The applicant relies on Section 23 of the *Supreme Court Act*, 2011 which is couched in the following terms:
 - “(1) An person entitled to join as a part or liable to be joined as a part in a proceeding before the Court may, on notice to all parties, at any stage of the proceedings, apply for leave to intervene as a party.
 - (2) An application under this Rule shall contain information on-



- (a) the identity of the person interested in the proceeding;
- (b) a description of that person's interest in the proceeding;
- (c) any prejudice that the person interested in the proceeding would suffer if the intervention were denied; and
- (d) the grounds or submissions to be advanced by the person interested in the proceeding, their relevance to the proceeding and the reasons for believing that the submissions will be useful to the Court and different from those of the other parties".

15. She also relies on the Supreme Court Rules, 2012 which provide in Rule 25 thus:

- “(1) A person may at any time in a proceeding before the Court apply for leave to be Joined as an interested party.
- (2) An application under this rule shall include- (a) a description of the interested party;
- (b) a prejudice that the interested party would suffer if the intervention was denied; and
- (c) the grounds or submissions to be advanced by the person interested in the proceeding, their relevance to the proceedings and the reasons for believing that the submissions will be useful to the Court and different from those of the other parties”.

16. In the case of Francis Kariuki Muruatetu & Another v Republic & 5 others Petition 15 as consolidated with 16 of 2013 [2016] eKLR, elements applicable where a party seeks to be enjoined in proceedings as an interested party, are particularized to include:

- 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.

17. The applicant believes that she has satisfied the requirements as stipulated above, for her to be enjoined as an interested party.

The expertise applicants case:

18. According to the Exparte applicant BEATRICE WAIRIMU KAGIRI the application is not only unnecessary but constitutes a stratagem to convolute the issues herein and confuse this Honourable Court.

19. The issues being enumerated in the instant application were raised and were the subject matter of the Complaint dated 15 May 2023, upon which the Respondent wishes to act upon.

20. According to the Exparte applicant, the proposed Interested Party's concerns are well catered for by the Respondent and that no prejudice has been demonstrated by the Proposed Interested Party especially



in light of the admitted fact that she lodged her complaint to the Respondent vide the Complaint dated 15 May 2023 by the Social Watch Organization.

21. The submissions that the Proposed Interested Party wishes to make, will be a mere duplication/ replica of the Response from the Respondent.
22. The joinder of the Proposed Interested Party will not in any way whatsoever assist this Honourable Court to settle the intricate/pertinent details herein.
23. The application as drawn does not demonstrate any independent claim of her own distinct from the Complaint lodged by the Social Watch Organization on her behalf since the Proposed Interested Party is a mere interloper who wishes to convolute the matters herein thus not deserving of the orders sought.
24. It is further their case that the applicant has never been a relevant party herein deserving of being served for the simple reason that her grievances are to be ventilated by the Respondent who has the requisite jurisdiction to rectify the company register.
25. The application does not meet the threshold for joinder nor setting aside.

Analysis and determination:

Issues for determination:

1. Whether the applicant has made out a case to warrant Tabitha Wambui Mwangi to be joined as an Interested Party in the suit.
2. Whether The Orders given on 4/7/2023 in this matter be set aside pending the hearing and determination of this Application.
3. Who should bear the Costs.

Whether the applicant has made out a case to warrant Tabitha Wambui Mwangi to be joined as an Interested Party in the suit.

26. The Supreme Court in Francis Kariuki Muruatetu & another v Republic & 5 others Petition No. 15 gave three conditions to satisfy a party to be enjoined in a case as an interested party;
 - i. The personal interest or stake that the party has in the matter must be set out in the application, must be clearly identifiable and 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.
 - iii. 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 and that they are not a replication of what the other parties will be making before the Court.
27. Order 1 rule 1 of the Civil Procedure Rules under which the application is brought provides as hereunder:

“All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist,



whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise.”

28. Order 1 rule 10(2) of the said Rules 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 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.”

29. In law, joinder should be permitted of all parties in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally; or in the alternative, where if such persons brought separate suits, any common question of law of fact would arise. See also Order 7 Rule 9 of the Civil Procedure Rule.

30. The court may even in its own motion add a party to the suit if such party is necessary for the determination of the real matter in dispute or whose presence is necessary in order to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit.

31. Joinder of parties can be done at any stage of the proceedings. But, joinder of parties may be refused where such joinder: will lead into practical problems of handling the existing cause of action together with the one of the party being joined; is unnecessary; or will just occasion unnecessary delay or costs on the parties in the suit.

32. The determining factor in joinder of parties is that a common question of fact or law would arise between the existing and the intended parties. This is the test I shall apply in this case.

33. From the intended applicant's affidavit, I find that that the interested party has an interest in this suit particularly on the questions whether or not:

- a. The Interested Party became a director of St. John Junior Njiru Limited herein on or about 7th March 2018.
- b. The said school was initiated as a joint venture between the Interested Party and the Applicant in the ratio of 30:70.
- c. The Interested Party oversaw the construction of the school, acquiring assets as well as marketing the school, attracting close to 800 pupils.
- d. Contrary to the terms of the joint venture, the Applicant fraudulently and illegally caused change of directorship which resulted to changes in the Company's Register, where the Interested Party was replaced with the Applicant's Children known as Stellar Muthoni Mwai and Chris Githinji Mwai.

Disposition;

34. Having considered the issues raised by the parties herein, I find the application dated 8th November, 2023 merited and leave is hereby granted to join the Intended Applicant herein, as the interested party in this suit.

The 2nd issue is moot.



Order:

1. Accordingly, to enable the court to determine the real issues in dispute among all the parties, Tabitha Wambui Mwangi is hereby made a party in the suit.
2. Consequently, the Exparte Applicant shall amend their pleadings within 7days from the date of this ruling with liberty to the Respondent to amend their response within 7 days from the date of service of the amended pleadings.
3. The Applicant shall serve the pleadings within 7 days thereafter.
4. The Respondent and the interested party shall file their replying Affidavits within 7 days thereafter.
5. The matter shall be mentioned on with a view to reporting compliance.
6. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED IN COURT AT NAIROBI THIS 31ST DAY OF JANUARY 2024.

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JOHN CHIGITI (SC)

JUDGE

