



**Tipper Hauliers Limited v Mzungu & another (Suing as administrators and legal representatives of the Estate of Amani Mwanjala Mwangati (Deceased); Trident Insurance Co Limited (Intended Interested Party) (Civil Appeal 69 of 2022) [2024] KEHC 3669 (KLR) (21 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3669 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
CIVIL APPEAL 69 OF 2022  
SM GITHINJI, J  
MARCH 21, 2024**

**BETWEEN**

**TIPPER HAULIERS LIMITED ..... APPELLANT**

**AND**

**MARIAH CHARI MZUNGU & SHAMIMU NJIRA NGELEKELE (SUING AS ADMINISTRATORS AND LEGAL REPRESENTATIVES OF THE ESTATE OF AMANI MWANJALA MWANGATI (DECEASED) ..... RESPONDENT**

**AND**

**TRIDENT INSURANCE CO LIMITED ..... INTENDED INTERESTED PARTY**

***((Being an Appeal against the Judgment of Hon O.O.Koranje – RM issued on the 21st March, 2022 in Cmcc No.E114 of 2021))***

**RULING**

- 1 For determination is the Appellant’s Notice of Motion brought under Section 1A, 3B and Order 51 of the Civil Procedure Rules seeking the following orders;
  1. Spent.
  2. That the intended interested party be hereby enjoined to these proceedings solely for purposes of prosecuting this application.
  3. That a declaration hereby do issue that by virtue of admittance of the cheques remitted in favour of the respondent herein which is cumulative of Kshs. 3 million; do hereby have the said matter marked as duly settled therein.
  4. That and/or any further directions that this honourable court shall deem fit to grant herein.



5. That each party to bear the costs of the application.
- 2 The application is founded on the grounds set out on its face and the supporting affidavit of Said Rashid a director of the Appellant who deponed that a consent dated 26<sup>th</sup> January 2023 was entered between the Appellant, the Respondent and the Intended Interested Party for an all-inclusive sum of Kshs. 3 million and have the matter marked as settled. That the initial remittance of Kshs. 500,000 was to be paid on or before 28<sup>th</sup> February 2023 and that the final instalment was to lapse on the 28<sup>th</sup> March 2024. He stated that the Intended Interested party did not comply with the remittance of the 1<sup>st</sup> instalment but instead entered into a new agreement with the Respondent without the Appellant's knowledge. He further stated that by virtue of implication and conduct on part of the respondent the same was estopped and bound by the terms of the new engagement as the cheque dated 4<sup>th</sup> October 2023 has since been banked marking the matter as duly settled.
- 3 The application was opposed through the sworn affidavit of Maria Chari Mzungu the Respondent who deponed that a consent only becomes binding when adopted in court and the impugned consent was never adopted in court despite the same having been filed in court. She stated that the applicant's assertion that the respondent and intended interested party entered into a consent was not true and no evidence has been provided in support of the same. She further stated that the balance of the decretal sum stands at Kshs. 1,565,531 and thus the matter cannot be marked as closed in the face of the pending balance.

#### **Analysis and Determination**

- 4 I have considered the application and the grounds upon which it is raised and equally considered the replying affidavit for the respondent. Parties did not file any submissions but chose to rely on the strength of their pleadings. The issues for determination are;
  1. Whether the intended interested party should be enjoined to the proceedings.
  2. Whether a declaration can issue that the matter be marked as settled.
- 5 The Black's Law Dictionary, 9th Edition at page 1232 defines an interested party as;

“A party who has a recognizable stake (and therefore standing) in the matter”
- 6 While the *Civil Procedure Act*, Cap 21 is silent on the concept of “interested party”, Order 41 Rule 5 of the Civil Procedure Rules 2010, make a reference to the term “interested party” and states;

“The court either on its own motion or on application by any interested party, remove a receiver appointed pursuant to this order on such terms as it thinks fit”
- 7 The ‘Mutunga Rules’, *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, Legal Notice No. 117 of 2013, defines an interested party as;

“A person or an entity that has an identifiable stake or legal interest or duty in the proceedings and may not be directly involved in the litigation”
- 8 The Rules further at Part II Clause 7 provides that, a person with leave of the Court may make an oral or written application to be joined as an interested party or the Court, on its own motion, may also join an interested party to the proceedings before it.



- 9 The Black's Law Dictionary, 9th Edition defines a "Necessary Party" as being; -
- "A party who being closely connected to a lawsuit should be included in the case if feasible but whose absence will not require dismissal of proceedings"
- 10 In *Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others* [2017] eKLR, Mativo. J. explained when an interested party ought to be enjoined in a proceeding. He stated: -
- "A person is legally interested in the proceedings only if he can say that it may lead to a result that will affect him legally that is by curtailing his legal rights. In determining whether or not an applicant has a legal interest in the subject matter of an action sufficient to entitle him to be joined as an interested party the true test lies not so much in an analysis of what are the constituents of the applicant's rights, but rather in what would be the result on the subject-matter of the action if those rights could be established. It is apparent that a party claiming to be enjoined in proceedings must have an interest in the pending litigation, but the interest must be legal, identifiable or demonstrate a duty".
- 12 In the case of *Communications Commission of Kenya & 4 others v Royal Media Services Limited & 7 others* [2014] eKLR the Supreme Court of Kenya held that;
- “(22) In determining whether the applicant should be admitted into these proceedings as an Interested Party we are guided by this Court’s Ruling 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...”
- 13 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 questions 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.”
- 14 In the case at bar, the applicant has not demonstrated what stake the intended interested party has. The intended interested party is the Applicant’s insurer and there is no declaratory suit that would make them a party or even have bearing in this proceedings. In addition, the interested party is sought to be joined in order to show that the respondent has been paid. In my view, this is not necessary since the Applicant would have attached the documentary evidence of payment as annexures in its application.
- 12 As to declaration that the matter be marked as settled, the Respondent states that there is a pending balance of the decretal sum in the amount of Kshs. 1,565,531 that is yet to be paid. The Applicant did not provide any evidence to controvert the respondent’s position. I have also looked at the impugned consent. Though filed, the same was not adopted and made an order of this court and the same cannot



be enforced. In the circumstance therefore, it would defeat logic to have the matter declared settled while some decretal sum is claimed to be unsatisfied. In the premise therefore, I find the application in want of merit and the same is hereby dismissed with costs to the respondent.

**RULING READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 21<sup>st</sup> DAY OF MARCH, 2024.**

.....

**S.M. GITHINJI**

**JUDGE**

In the Presence of; -

Mr Maliambo holding brief for Mr Kokul for the Appellant.

Mr Mutuku for the Respondent absent

Mr Maliambo; -We request for 30 days stay to comply.

Court; -30 days' stay is granted. Mention on 12/6/2024.

3.2024

