



**Triostar Logistics Limited & 4 others v Kenya Ports Authority; Autoports Freight Terminal & another (Intended Interested Party) (Petition E013 of 2024) [2024] KEHC 6533 (KLR) (28 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6533 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
PETITION E013 OF 2024**

**OA SEWE, J**

**MAY 28, 2024**

**IN THE MATTER OF ARTICLES 1, 2(1), 3(1), 10, 19, 20,  
21, 23, 47, 50, 52, 258 & 259 OF THE CONSTITUTION**

**BETWEEN**

**TRIOSTAR LOGISTICS LIMITED ..... 1<sup>ST</sup> PETITIONER  
BEMACY FREIGHTERS LIMITED ..... 2<sup>ND</sup> PETITIONER  
UTMOST FREIGHT MASTERS LIMITED ..... 3<sup>RD</sup> PETITIONER  
PALM FREIGHTERS LIMITED ..... 4<sup>TH</sup> PETITIONER  
JUBILEE CLEARING & FORWARDING ..... 5<sup>TH</sup> PETITIONER**

**AND**

**KENYA PORTS AUTHORITY ..... RESPONDENT**

**AND**

**AUTOPORTS FREIGHT TERMINAL ..... INTENDED INTERESTED PARTY  
COMPACT FREIGHT SYSTEMS LIMITED .. INTENDED INTERESTED PARTY**

**RULING**

- (1) This ruling is in respect of two applications for joinder by the proposed interested parties. The first application is dated 11th April 2024, filed on behalf of Autoports Freight Terminal (hereinafter the 1st applicant) by Mr. Paul Buti, Advocate. The second application is dated 18th April 2024, filed by the firm of M/s Gikandi & Company Advocates on behalf of Compact Freight Systems Limited (the 2nd applicant). I propose to consider them jointly seeing as they raise cross-cutting issues.



- (2) The Notice of Motion dated 11th April 2024 is expressed to have been filed under Rule 7(1) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (hereinafter, “the Mutunga Rules”. It seeks the following orders:
- (a) Spent
  - (b) That Autoports Freight Terminal Limited be enjoined as an interested party in these proceedings for purposes of fully participating in these proceedings.
  - (c) That if and once enjoined, Autoports Freight Terminals be allowed to respond to the Petitioners Notice of Motion application dated 3rd April 2024 as well as the main Petition filed by the petitioner.
  - (d) That costs of the application be in the cause.
- (3) The application was premised on the grounds that the applicant is a Container Freight Station (CFS) and is duly licensed to operate as such by the respondent, Kenya Ports Authority, under Section 12(n) (ii) of the *Kenya Ports Authority Act*, Chapter 391 of the Laws of Kenya. It was further the contention of the applicant that the petitioners have, at paragraph 13 of their Petition, given a skewed version of how cargo is delivered to a CFS; and that, as a CFS, it is imperative that it be enjoined in order to correct the skewed and erroneous assertions by the petitioner for an effectual adjudication of the matters in dispute.
- (4) The applicant also made reference to paragraph 7 of the Petition in which the petitioner complained that some unidentified CFS had been favoured by the respondent in the allocation of cargo. As one of the CFSs, the applicant contended that it has an interest in the dispute in that it stands to be affected by its outcome. In addition, the applicant averred that there are in existence six other disputes in relation to the same subject matter of nomination of cargo by the respondent in which it is a party. In particular, the applicant averred that it is the petitioner in Nairobi High Court Petition NO. E002 of 2023: Autoports Freight Terminals & Another v Cabinet Secretary Ministry of Roads & Transport & Others. It asserted therefore that, in the circumstances, it is only fair and just that it be enjoined to the instant proceedings.
- (5) The application was supported by the affidavit of Tawfiq Mansur, sworn on 11th April 2024 in which the applicant furnished particulars of the Nairobi suits to demonstrate that, indeed, the applicant is a party in those suits. The applicant also endeavoured to show that the matters in issue in those prior suits are the same matters in issue in the instant suit; and therefore that it is only fair that the applicant be enjoined to ventilate its interest in this Petition. Annexed to the Supporting Affidavit are various orders issued in the other suits, including Milimani High Court Commercial Petition No E002 of 2023: Autoports Nairobi Freight Terminal Ltd & Compact Freight Systems Limited v Cabinet Secretary Ministry of Roads & Transport & 6 Others.
- (6) The second application was filed by Compact Freight Systems Ltd under Article 159 of *the Constitution* of Kenya, Section 1A, 1B, 3A of the *Civil Procedure Act*, Order 1 Rule 10 and Order 51 Rule 1 of the Civil Procedure Rules and the Inherent Jurisdiction of the Court for orders that:
- (a) Spent
  - (b) The Court be pleased to allow Compact Freight Systems Limited to be enjoined as an interested party in this matter.
  - (c) The upon the said Compact Freight Systems Limited being joined as an interested party in this Petition, further directions be given by the Court for the transfer of the suit to the High Court



of Kenya at Nairobi so that it may be consolidated with Milimani High Court Commercial Petition No E002 of 2023: *Autoports Nairobi Freight Terminal Ltd & Compact Freight Systems Limited v Cabinet Secretary Ministry of Roads & Transport & 6 Others (hereinafter Petition No. E002 of 2023)*.

- (d) Spent
  - (e) That the costs of the application be in the cause.
- (7) The application was based on the grounds that the subject matter of the Petition concerns the warehousing and handling of cargo destined for South Sudan through the port of Mombasa, which is also the very subject matter of Petition No. E002 of 2023. The 2nd applicant further contended that Petition No. E002 of 2023 is anchored on the doctrine of *acta jure imperii* which underscores the immunity of states from the jurisdiction of other states concerning acts performed in their sovereign capacity. The 2nd applicant further stated that as the petitioners in Petition No. E002 of 2023, they enjoy a conservatory order issued on 18th August 2023; and therefore that the issuance of any conservatory orders in this suit would create an awkward and embarrassing situation whereby contradictory orders are issued by two courts of concurrent jurisdiction in respect of the same subject matter.
- (8) The 2nd application was supported by the affidavit of Peter Ng'ang'a Kahura, the General Manager of the 2nd applicant. Mr. Kahura averred that the proposed interested parties, Autoports Nairobi Freight Terminal Limited and Compact Freight Systems Limited, were appointed by the Government of South Sudan as the only entities permitted to handle and warehouse cargo destined for South Sudan through the Port of Mombasa. They further deposed that when the Government of Kenya later tried to renege on the said appointment, the proposed interested parties filed Petition No. E002 of 2023 in Nairobi, which is pending hearing and determination.
- (9) The 2nd applicant further averred that certain interlocutory orders have already been made in Petition No. E002 of 2023 and therefore there is the real possibility that contradictory orders may be made in this matter unless it is enjoined to articulate its interests herein. Reference was also made to the ruling of the Court delivered herein on 15th April 2023 in which the Court found as a fact that the subject matter of this Petition relates to the handling and warehousing of cargo destined to South Sudan through the Port of Mombasa, and therefore is similar to the subject matter in Petition No. E002 of 2023. It therefore prayed for joinder so as to be afforded a hearing.
- [10] The first application was opposed by the petitioners. They relied on their Grounds of Opposition dated 6th May 2024 to the effect that:
- (a) The application falls short of the elements required for joinder of an interested party as set out by the Supreme Court in the case of *Francis Kariuki Muruatetu & Another v Republic & 3 others* [2016] eKLR as it fails to:
    - (i) identify the intended interested party's personal interest in the Petition.
    - (ii) identify the prejudice that the intended interested party will suffer for failure to be joined.
    - (iii) explain the relevance to the proceedings and the reason for believing their participation will be useful to the court and different from those of the principal parties.
  - (b) The Petition is for enforcement of the Bill of Rights under Article 22 of *the Constitution* whereby the petitioners are accusing the respondent of infringing their right to fair



administrative action and right to hearing as set out under Articles 47 and 50 of *the Constitution*, respectively.

- (c) The intended interested party has not demonstrated how its interests, if any, are linked to the infringement of the petitioner's right to fair administrative action and right of hearing. The interests of the intended interested party, if any, attempts to expand the cause of action presented by the petitioners and attempts to introduce a new cause of action.
  - (d) The reasons given for the joinder are irrelevant to the matters in issue.
  - (e) The intended interested party has not shown how any of the prayers sought by the petitioners will affect it, or whether any of those prayers cannot be determined without its participation.
  - (f) An intended interested party has no locus to apply for transfer and consolidation of a suit or stay of order that do not directly affect it.
  - (g) The issues raised in Petition No. E002 of 2023 are different from the issues raised in this Petition and cannot be heard and determined together.
- (11) Upon directions being given on 15th May 2024 that the application be canvassed by way of written submissions, the 1st applicant filed its written submissions dated 3rd May 2024. It reiterated the factual basis of its application as adverted to in the Supporting Affidavit and underscored the main complaint by the petitioners, namely, that the respondent has been redirecting cargo to CFSs without consulting the petitioners or their principals. It was therefore the submission of the 1st applicant that it is only fair that it be enjoined as a CFS to protect its interest and avoid any precipitate orders being made without being afforded an opportunity of being heard.
- (12) The 1st applicant also reiterated the fact that it is a party to similar matters that are pending before the High Court at Milimani, Nairobi and submitted that it is only fair and just that it be enjoined to this Petition as well. To augment its submissions, the 1st applicant relied on *Joan Akoth Ajuang & Another v Michaels Owuor Osodo - Chief Simur Kondiek, Ukwala Location & 3 Others; Malaika Foundation (Proposed Interested Party) [2020] eKLR*.
- (13) The petitioners, on their part, relied on Rule 2 of the Mutunga Rules, *Trusted Society of Human Rights Alliance v Mumo Matemu & Others [2014] eKLR* and *Francis Kariuki Muruatetu & Another v Republic & Others (supra)* as to the definition of an interested party and the acceptable grounds for joinder. They accordingly submitted that the applicants have not demonstrated any of the grounds set out in the above authorities to warrant joinder.
- (14) Rule 1 of the Mutunga Rules defines an interested party as follows:
- “interested party” means a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation.”
- (15) In *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others [2014] eKLR*, the Supreme Court enunciated the following principles, which were later reaffirmed in *Francis Kariuki Muruatetu & Another v Republic & 5 Others (supra)*:

“



“(37) From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party:

One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:

- 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.
- iii. Lastly, 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. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court...”

(16) In the instant case, the applicants have complied and moved the Court by way of a formal application. The applicants have also shown that the Petition makes reference to certain CFSs in connection with the arbitrary actions of the respondents of which the petitioners complain at paragraphs 13 and 15 thereof. The applicants have demonstrated that as licenced CFSs, they stand to be affected by the decision of the Court in this Petition. Additionally, the applicants have shown that they are parties to Petition No. E002 of 2023 in which the same issues are being canvassed.

(17) Indeed, the Court has had occasion to express itself in connection with that matter in its ruling dated 15th April 2024. In particular, the Court held that:

“(11) Having given due consideration to the documents presented herein by both sides, it is plain that nearly all of the documents relied on by the petitioners, particularly the agency agreements at pages 2-36, 38-40, 44, 45 and 48 of the annexures to the Supporting Affidavit are in connection with consignees based in Juba, South Sudan. There are also numerous letters of appointment in that regard; and therefore there is no gainsaying that the bulk of the cargo that is the subject of this Petition were or are destined for South Sudan...”

(18) I am therefore satisfied that the applicants have demonstrated sufficient interest in this suit to warrant their joinder as well as the prejudice they stand to suffer in the event of non-joinder. Moreover, as was pointed out in *Judicial Service Commission v Speaker of the National Assembly* (supra), unlike an *amicus curiae*, an interested party "...may not be wholly indifferent to the outcome of the proceedings in question...he may not be wholly non-partisan as he is likely to urge the court to make a determination favourable to his stake in the proceedings."

(19) The 2nd applicant also prayed for the transfer of this Petition to the High Court at Nairobi. In this regard, Rule 8 of the Mutunga Rules stipulates that:

- (1) Every case shall be instituted in the High Court within whose jurisdiction the alleged violation took place.



- (2) Despite sub-rule (1), the High Court may order that a petition be transferred to another court of competent jurisdiction either on its own motion or on the application of a party.
20. It is noteworthy that the application has been made, not by a party to these proceedings, but by an interested party. It bears repeating that an interested party for purposes of the Mutunga Rules means:
- “...a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation.” (emphasis added)
- (21) Granted the circumscribed nature of the role of an interested party, it is my considered view that it is not open for such a party to purport to take over the suit and proceed to seek the sort of drastic orders such as transfer. The Supreme Court pointed out in *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others* (supra) that:
- “A suit in Court is a ‘solemn’ process, “owned” solely by the parties. This is the reason why there are laws and Rules, under the Civil Procedure Code, regarding Parties to suits, and on who can be a party to a suit. A suit can be struck out if a wrong party is enjoined in it. Consequently, where a person not initially a party to a suit is enjoined as an interested party, this new party cannot be heard to seek to strike out the suit, on the grounds of defective pleadings.”
- (22) By parity of reasoning, it is my finding that it is not open to the 2nd applicant to seek the transfer of this Petition to Nairobi as it purported to do in Prayer 3 of its Notice of Motion dated 18th April 2024. Nevertheless, a transfer under Rule 8 of the Mutunga Rules is also permissible on the Court’s own motion. Hence, on account of the ruling of the Court as to the similarity between this case and Petition No. E002 of 2023, it is only appropriate that this matter be transferred to Nairobi for consolidation with Petition No. E002 of 2023.
- (23) In the result, the two applications for joinder are hereby allowed and orders given in respect thereof as hereunder:
- (a) That leave be and is hereby granted for the applicants, Autoports Freight Terminal Ltd and Compact Freight Systems Ltd to be enjoined as interested parties in these proceedings for purposes of fully participating in these proceedings.
- (b) That leave be and is hereby granted to the applicants to respond to both the petitioner’s Notice of Motion dated 3rd April 2024 and the Petition filed herein.
- (c) That this Petition be and is hereby transferred to the High Court, Nairobi, for consolidation with Milimani High Court Commercial Petition No E002 of 2023: *Autoports Nairobi Freight Terminal Ltd & Compact Freight Systems Limited v Cabinet Secretary Ministry of Roads & Transport & 6 Others*.
- (d) That the costs of the application be in the cause.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 28TH DAY OF MAY, 2024**

**OLGA SEWE**

**JUDGE**

