



**Haki na Sheria Initiative v Cabinet Secretary Ministry of Interior and Co-ordination of National Government & 4 others; Katiba Institute Legal Advice Centre t/a Kituo Cha Sharia (Interested Party) (Constitutional Petition E011 of 2022) [2024] KEHC 7519 (KLR) (24 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7519 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CONSTITUTIONAL PETITION E011 OF 2022**

**JN ONYIEGO, J  
JUNE 24, 2024**

**IN THE MATTER OF ARTICLE 1(1), 1(3)(B), 3(1),10,12,14(1),18,19,20,21,22(1)  
(2)(C),27,29,38,39,43,45,47,53,73(1)(A)(I), 129,153(4),  
159, 165(3) AND 258 OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF SECTION 7 OF THE BIRTHS  
AND DEATHS REGISTRATION ACT CAP 149**

**BETWEEN**

**HAKI NA SHERIA INITIATIVE ..... PETITIONER**

**AND**

**CABINET SECRETARY MINISTRY OF INTERIOR AND CO-ORDINATION  
OF NATIONAL GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

**GENERAL OF CITIZENSHIP AND IMMIGRATION SERVICES .... 2<sup>ND</sup>  
RESPONDENT**

**PRINCIPAL REGISTRAR OF BIRTHS AND DEATHS ..... 3<sup>RD</sup> RESPONDENT**

**COMMISSION FOR REFUGEE AFFAIRS ..... 4<sup>TH</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**AND**

**KATIBA INSTITUTE LEGAL ADVICE CENTRE T/A KITUO CHA  
SHARIA ..... INTERESTED PARTY**



## RULING

1. The intended interested party through Kituo Cha Sheria moved this court via an application dated 24.01.2024 seeking the following reliefs:
  - i. That leave be granted to the intended interested party to be admitted in this petition as an interested party.
  - ii. That the intended party be granted an opportunity to submit affidavits, written and or oral arguments or any other information that may be relevant in this petition.
  - iii. That there be no costs concerning this application.
2. Annexed to the application is a supporting affidavit sworn on 24.01.2024 by Dr. Annette Mbogoh who deposed that the intended interested party is the oldest human rights non-governmental organization in Kenya whose work entails; empowering the poor and marginalized; to enhance equity and access to justice for all through advocating, networking, legal aid and representation as well as advocacy. That the intended interested party's mandate and registered objects is therefore directly implicated in the questions raised before the court in this petition.
3. It was urged that the applicant has previously participated in numerous cases that addresses the rights of refugees in Kenya to wit Attorney General vs Kituo Cha Sheria & 7 Others, CA 108 of 2014 [2017] eKLR which case addressed the nature and extent of the rights and fundamental freedoms of refugees residing in urban areas in Kenya.
4. That the intended interested party is currently engaged in litigating Constitutional Petition No. E046 of 2023 at the High Court at Nairobi in a similar matter relating to the rights of refugees' resident in Kenya continuously for more than seven years and their right to acquire permanent residency and citizenship in accordance with article 15(2) of the *constitution*. That in April 2023, the intended interested party published a report titled 'Finding durable solutions: Refugees' access to citizenship and permanent residence in Kenya' in collaboration with Refugee Studies Centre (RSC) at the University of Oxford, Refugee-Led Research Hub (RLRH) and RELON – Kenya being a network of refugee led organization (RLOs) based in Kenya whose leaders are refugees from a diverse refuge background.
5. It was urged that the findings of the said report would be useful to the determination of this matter as the intended interested party has an identifiable stake, legal interest and duty in the subject matter of the petition and no party would be prejudiced if the same is allowed. This court was therefore urged to allow the joinder application as sought.
6. The respondents opposed the application via grounds of opposition dated 26.01.2024 urging that the application is merely an attempt by the intended interested party to introduce new evidence in support of the petitioners' case wherein pleadings have already closed and directions on filing of submissions given by the Honourable Court. That since the intended interested party's interest is currently being litigated in Nairobi Constitutional Petition No. E046 of 2023, a similar matter relating to the right of refugees, its presence in the instant petition is of no judicial or jurisprudential value.
7. That the intended interested party has not demonstrated a clearly identifiable interest proximate enough to be distinguished from anything that is merely peripheral to the matters in issue. It is urged that the applicant did not demonstrate that its purported interest will not be properly and accurately articulated unless it is admitted into the proceedings to defend its cause. It was further contended that the petitioner and intended interested party are some of the oldest non-governmental human rights



organizations which undertake public interest litigation and that there is no difference in the roles they will play in the petition and joinder would not be of any importance as it will only serve to regurgitate issues leading to imprudent use of judicial resources.

8. That the interested party, Katiba Institute is also another of the oldest non-governmental human rights organizations which undertake public interest litigation and has already filed submissions advocating for the rights of refugees in this petition. It was averred that the non –joinder of a second (intended) interested party will thus not prejudice the determination of the petition. That the application is an afterthought and meant to derail the gains already made in settling the matter for hearing and thereafter final determination. The court was therefore urged to dismiss the application with costs.
9. The petitioners and the interested party did not participate in the application herein.
10. The court directed that the application be canvassed by way of written submissions wherein the intended interested party in its submissions dated 16.02.2024 urged that rule 7 of Constitution of Kenya on (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (Mutunga Rules) gives a definition of who an interested party is. That the same is defined as 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.
11. The court was referred to the case of Trusted Society of Human Rights Alliance vs Mumo Matemu [2014] eKLR where it was held that an interested party is one who has a stake in the proceedings, though he or she was not a party to the cause ab initio.
12. In the same breadth, the intended interested party placed reliance on the case of Francis Karioko Muruatetu & Another v Republic & 5 Others [2016] eKLR where the Supreme Court additionally set out applicable elements for admission as an interested party to wit; personal interest or stake that the party has in the matter must be set out in the application; the interest must be identifiable and must be proximate enough to stand apart anything that is merely peripheral; the prejudice to be suffered by the intended interested party in case of non-joinder and; that a party must set out the case and/or submissions it intends to make before the court and demonstrate the relevance of those submissions.
13. The applicant urged that it has an identifiable and proximate stake or legal interest in these proceedings for the reason that the interested party is a non-governmental organization whose mandate is to empower the poor and marginalized to enhance equity and access to justice through legal aid and legal representation. That it is through that mandate that the intended interested party advances the rights of refugees. Reliance to support the same was placed on the case of Attorney General vs Kituo Cha Sheria & 7 Others [2017] eKLR where the rights of the refugees residing in urban areas in Kenya was addressed.
14. That the intended interested party would be prejudiced if it is not admitted as an interested party as the issues raised herein affects its mandate. Counsel urged that the intended interested party’s participation and submission will not be a replication of what other parties will be submitting. That it intends to submit on its research findings of its study aforementioned as the court would greatly benefit from a great deal in reaching its determination. It was therefore urged that the application herein be allowed as prayed.
15. Despite the respondent indicating that they had filed their submissions on 9-3-24, the same was not uploaded as per the court record in the VPN system. To that extent the court will not make reference to the same.



16. I have considered the application herein and the objection thereof. I have also considered rival submissions by both parties. The only issue which germinates for determination is whether the applicant has met the threshold for joinder.
17. Order 1 rule 1 of the [Civil Procedure Rules](#) 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.
18. 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.”
19. The relevant tests for determination whether or not to join a party in proceedings were restated by Nambuye, J (as she then was) in the case of [Kingori vs Chege & 3 Others](#) [2002] 2 KLR 243 where the learned Judge stated that the guiding principles when an intending party is to be joined are as follows:
- i. He must be a necessary party.
  - ii. He must be a proper party.
  - iii. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff.
  - iv. The ultimate order or decree cannot be enforced without his presence in the matter.
  - v. His presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.
20. In [Departed Asians Property Custodian Board vs Jaffer Brothers Ltd](#) [1999] 1 EA 55 it was held as follows:  
“A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the Court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involve in the suit. A party may be joined in a suit, not because there is a cause of action against it, but because that party’s presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involve in the cause or matter...For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders, which the plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such a person joined so that he is bound by the decision of the Court in that suit. Alternatively, a person qualifies, (on an application of a Defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.”



21. In *Civicon Limited vs Kivuwatt Limited and 2 Others* [2015] eKLR the court observed as follows:

“Again the power given under the *Rules* is discretionary which discretion must be exercised judicially. The objective of these Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined...from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order I rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”

22. In this case, the intended interested party urged that it is one of the oldest human rights non-governmental organization in Kenya and it works to empower the poor and marginalized and to enhance equity and access to justice for all through advocating, networking, legal aid and representation as well as advocacy. That the intended interested party’s mandate and registered objects is therefore directly implicated in the questions raised before the court in this petition.

23. In the same breadth, it was argued that the party has previously participated in numerous cases that address the rights of refugees in Kenya and their right to acquire permanent residency and citizenship in accordance with article 15(2) of the *constitution*. Additionally, that in April 2023, the intended interested party published a report titled ‘Finding durable solutions: Refugees’ access to citizenship and permanent residence in Kenya’ in collaboration with Refugee Studies Centre (RSC) at the University of Oxford, Refugee-Led Research Hub (RLRH) and RELON – Kenya being a network of refugee led organization (RLOs) based in Kenya whose leaders are refugees from a diverse refuge background hence the court would thus find useful the said report.

24. As already mentioned above, the petition pending before this court which the intended interested party seeks to be enjoined relates to citizenship rights of children born in Kenya of a parent who is a Kenyan citizen and a parent granted or seeking refugee status in Kenya. The petition basically questions the legality of the actions of the respondents that impede the attainment of citizenship rights and means to the documents that are integral to the grant of citizenship by the subjects of the petition or persons similarly situated to them, who are Kenyan citizens.

25. In determining whether the applicant has a legal interest in the subject matter of an action sufficient to entitle it to be joined as an interested party, the true test lies not so much in an analysis of what the constituents of the applicant’s rights are, but rather in what would be the result on the subject matter of the action if those rights could be established. In the instant case, the intended interested parties enlightened this court on its core mandate and the role it has played in refuge affairs but in my humble view failed to demonstrate that this court will not reach affair and conclusive determination of the issues before it without the applicant’s inclusion.

26. Although it was urged that the intended interested party has previously participated in numerous cases that address the rights of refugees in Kenya and their right to acquire permanent residency and citizenship in accordance with article 15(2) of the *constitution*, no evidence was tendered to



demonstrate or show the substance on their contribution towards the said cases. In the same breadth, the fact that research was carried out whose finding was alleged to be capable of helping this court reach an informed determination, it is my considered view that the same is far-fetched as this court is possessed of the ability to determine issues before it on its own merits. Besides, the applicant did not demonstrate that its purported interest will not be properly and accurately articulated unless it is admitted into the proceedings to defend its cause.

27. To say the least, it did not demonstrate any legal or identifiable interest in the subject matter in this case to warrant a right to participate in the proceedings herein. In any event, the petitioner and the Katiba institute already on board are heavy weights in constitutional matters and therefore competent enough to articulate what the intended interested party wants to bring on board.
28. In my view, the intended interested party's presence and participation in these proceedings is unnecessary and uncalled hence likely to prolong the hearing of this matter whose pleadings have since closed. To that extent, I do not find merit in the application hence dismiss it with no order as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24<sup>TH</sup> DAY OF JUNE 2024**

**J. N. ONYIEGO**

**JUDGE**

