



**Republic v Directorate of Public Prosecutions & 3 others; Karuga (Exparte Applicant);
Kuria (Proposed Interested Party) (Judicial Review Application E039 of 2024)
[2024] KEHC 14677 (KLR) (Judicial Review) (30 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 14677 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW APPLICATION E039 OF 2024
JM CHIGITI, J
SEPTEMBER 30, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

DIRECTORATE OF PUBLIC PROSECUTIONS 1ST RESPONDENT

DIRECTORATE OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

CHIEF MAGISTRATES COURT NAIROBI 4TH RESPONDENT

AND

MWAURA KELVIN KARUGA EXPARTE APPLICANT

AND

GEOFFREY KIARIE KURIA PROPOSED INTERESTED PARTY

RULING

1. Through the Application dated 29.3.24 the applicant seeks the following Orders:
 1. That the Honourable court be pleased to grant Geoffrey Kiarie Kurialeave to be enjoined in the instant suit as an interested party.
 2. That the costs of this application be provided for.
2. The application is supported by the affidavit of the applicant he Proposed Interested Party



3. He is the Complainant in Milimani MCCR/E 1107/2023.
4. The Ex-Parte Applicant herein used to be his family's Advocate until December 2021 when his services were terminated leading to his cyber-bullying insulting the family through text message and email, not even our elderly mother was spared.
5. In the year 2023 when he started to insult the applicant's mother in his said emails the applicant decided to report the matter to the police.
6. The Ex parte applicant was summoned by the Investigation Officer and on 18/12/2023, he was arraigned in court and charged with five (5) counts of cyber harassment contrary to section 27(1) (c) as read with section 27(2) of the Computer Misuse and Cyber Crime Act.
7. As the complainant in Milimani MCCR/E 1107/2023 wherein the Ex-parte Applicant is the Accused person, the Applicant strongly believes that he has an interest not just in the proceedings herein, but also in the would be orders of the court.
8. The Application is not opposed by any replying Affidavit. The Ex parte filed submissions which cannot stand on their own.

Ex parte Applicant's case;

9. The Ex-Parte Applicant opposes the case and argues that the decision on whether or not to allow a party to be enjoined in a case as an interested party lies at the discretion of the court.
10. He believes that it is not necessary to enjoin the intended interested party to this case since it is not disputed that there is already a case before the Chief Magistrate Court pitting the applicant and himself.
11. He argues that the enjoinder would in essence mean that he is being subjected to double jeopardy. It is his case that the present application is an offshoot of the matter before the Chief Magistrate's Court Nairobi and the Ex parte Applicant herein seeks to stop the respondents from proceeding with the hearing of the criminal charges against him over the same dispute.
12. It is further his case that since the criminal proceedings have been initiated against him, the proposed Interested Party's interests, as a complainant in the said case, have well been taken care of by the Director of Public Prosecution who is in charge of the prosecution and the Director of Criminal Investigation who is the investigative body in the said criminal proceedings.
13. He believes that the proposed interested party will not, in the totality of the circumstances of this case, be a necessary party to this case, especially because the proposed interested party has not demonstrated that the respondents will be incapable or unwilling to present his/complainant's side of the story in the instant petition.
14. The DPP has a constitutional mandate to independently institute and undertake criminal proceedings and to this end the intended interested party has not placed before court any sufficient material to form a basis for the court to interfere with the said constitutional and discretionary mandates and therefore.
15. To grant the orders sought by the intended interested party, it will amount to the court interfering with the constitutional mandates of other constitutional bodies without a proper basis in law, because the intended interested party is in essence usurping the roles of the Respondents herein.
16. He argues that the contents of his Application for enjoinder dated 29th March 2024, especially where he says in paragraph 9 of his supporting Affidavit dated 29th March 2024, that "the Ex-parte Applicant claimed that he had insulted him via email, he was asked by the Investigation Officer to furnish him



with extracts of the said emails but he was bullish and he arrogantly told the said Investigating Officer that they shall meet in court' which is totally false, and there is no material evidence placed before the Court to ascertain this as a fact.

17. It is his case that in any event, it is the said Investigating officer who ought to put this in Affidavit, and he invites this court to see that indeed this Application is Vexatious, scandalous and an abuse of the Court process, which is ripe to be dismissed with costs.
18. The intended interested party has conveniently failed to address this Court on the fact that he has two email addresses being Geoffrey.kiariek@gmail.com and Joivoh00@gmail.com and that the email address that he had email chats from mwaarakelvin6@gmail.com retrieved from was Joivoh00@gmail.com and concealed his email chats from Geoffrey.kiariek@gmail.com to mwaarakelvin6@gmail.com because that is where his offensive emails originated from, yet the Communications Authority of Kenya established that the email address Geoffrey.kiariek@gmail.com indeed belongs to him, and that is not a mere technicality but the very reason why the present Application for Judicial Review dated 2nd February 2024 was instituted, because the Investigating officer was acting on the behest of the Complainant Geoffrey Kiarie and therefore the Concealment of the email chats from Geoffrey.kiariek@gmail.com to mwaarakelvin6@gmail.com was very deliberate so as to hide the fact that he committed Cyber harassment against him and therefore the investigations and events leading to him being charged were actuated by Malice, bias, they took into account factors which ought not to have been considered, and failed to take into account factors which ought to have been considered, and therefore they were irrational, unreasonable and resulted in a violation of the Constitution and the Fair Administrative Actions Act.
19. He argues that the application primarily challenges the respondents' exercise of their Constitutional and statutory functions and not the evidence to prove the alleged cyber harassment which will be determined by the criminal court should the criminal charges against me, the ex parte Applicant proceed.
20. He argues that he has also filed a complaint against the said intended interested party, Geoffrey Kiarie Kuria with the 2nd Respondent herein, and they have begun their investigations as well, and they recently contacted him regarding the Contents of my Complaint letter addressed to the 2nd Respondent herein dated 14th March 2024, and they phoned him concerning it, and he indeed misled the detectives again, that my complaints were being handled by Nairobi area DCI office, which is false since that is where the Applicant reported him.
21. He believes that the application is a last minute attempt at convoluting issues, and abusing the Court Process, and it is strange that the Investigating Officer has been silent and has not filed any response as to how he escaped seeing Geoffrey Kiarie Kuria's offensive emails from Geoffrey.kiariek@gmail.com to my email address mwaarakelvin6@gmail.com.
22. He believes that what has motivated the filing of this Application is the applicants fear that the Hearing in Criminal case E1107 of 2023 will not proceed, because he intends to air his dirty linen in public, and that is why he has gone ahead to reproduce "evidence" before this Honourable Court, yet it is not the trial Court, and moreover, he has adduced "evidence" of text messages allegedly sent by myself, which text messages have clearly been truncated to again, conceal the text messages he sent to myself as well, and these texts (sms) also are not part of the investigating officer's record, they are not part of the record in Criminal case E1107 of 2023.
23. He believes that this is highly prejudicial to myself once again, and therefore this Court ought to be alive to the fact that the Applicant is hell-bent on settling personal scores/ vendetta and is merely using the Criminal Justice Process to achieve ulterior Motives.



Analysis and Determination:

Issues for determination is whether the applicant is entitled to the order sought.

24. 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:
1. He must be a necessary party.
 2. He must be a proper party.
 3. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff.
 4. The ultimate order or decree cannot be enforced without his presence in the matter.
 5. His presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.
25. As the complainant in MilimaniMCCR/E 1107/2023 wherein the Ex-parte Applicant is the Accused person, it is clear to this court that the Applicant has an interest not just in the proceedings herein, but also in the would be orders of the court.
26. This court is satisfied that the applicant as a complainant in the criminal case his presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.

Disposition;

27. The application has merit.

Order;

1. The application is allowed.
2. The Exparte Applicant and the Respondents shall serve the interested party with all the pleadings.
3. The interested party is hereby granted leave to respond within 14 days thereafter.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF SEPTEMBER, 2024.

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J. M. CHIGITI (SC)

JUDGE

