



**Republic v Cabinet Secretary, Ministry of Interior & Co-ordination of National Government & 4 others; Mohamed & another (Exparte); Togweine Residents' Welfare Group (Interested Party); Abdi Koropu Tepo, MP Isiolo South Constituency (Applicant) (Judicial Review E001 of 2021) [2022] KEHC 2967 (KLR) (14 April 2022) (Ruling)**

Neutral citation: [2022] KEHC 2967 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
JUDICIAL REVIEW E001 OF 2021**

**A ALI-ARONI, J**

**APRIL 14, 2022**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

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

**REGIONAL COMMISSIONER, NORTH EASTERN REGION .... 2<sup>ND</sup> RESPONDENT**

**COUNTY COMMISSIONER, GARISSA COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**DEPUTY COUNTY COMMISSIONER, LAGDERA SUB-COUNTY .... 4<sup>TH</sup> RESPONDENT**

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

**AND**

**MCA MODOGASHE WARD ..... EXPARTE**

**MOHAMED ABEY MOHAMED ..... EXPARTE**

**AND**

**TOGWEINE RESIDENTS' WELFARE GROUP ..... INTERESTED PARTY**

**AND**

**ABDI KOROPU TEPO, MP ISILOLO SOUTH CONSTITUENCY ..... APPLICANT**



## RULING

1. The application before court for determination is the one dated February 22, 2021 seeking to have the named applicant; Hon. Abdi Koropu Tepo, MP Isiolo South enjoined as an interested party, and secondly to have all pleadings and orders in the matters served upon him.
2. The application is predicated on grounds that Isiolo South which the Applicant represents is affected administratively by the directive issued by the 1<sup>st</sup> Respondent as the Chiefs who initially trespassed his Constituency; Garbatulla Sub-County are the ones required to relocate to Lagdera Sub-County and therefore, on behalf of his constituents he has an interest on the outcome of this suit and this warrants him being enjoined to the suit.
3. In his supporting affidavit the Applicant states that there have been constant fights and wrangles between two bordering communities from the two sub-counties of Lagdera and Garbatulla occasioned by trespass of one community, as a result a security meeting was held by the 1<sup>st</sup> Respondent and attended by political and administrative leaders of both Isiolo and Garissa counties. The directive issued by the 1<sup>st</sup> respondent was as a result of the said meeting; the said directive merely requires chiefs to remain in their areas of jurisdiction.
4. The Respondents do not oppose the application. On their part the Ex -parte Applicants oppose the same by way of an affidavit dated the June 14, 2021 and sworn by Mohamed Aly Mohamed, the 1<sup>st</sup> Ex-parte Applicant.
5. In the affidavit the 1<sup>st</sup> Ex-parte Applicant urges that joinder of the intended interested party will unduly delay the expeditious disposal of the Petition noting the gravity and urgency of the same; the applicant fails to give plausible reasons for joinder, has not proved any stake and interest if any is too remote, and indirect. Further no likely prejudice is likely to be suffered and the said joinder will add no jurisprudential value to the matter.
6. From the pleadings before court the two communities living in Lagdera and Garbatulla sub-county claim that the administrative decision taken by the 1<sup>st</sup> Respondent affects them. One side claim that there was no public participation before the decision was arrived at, and the said action would negatively affect the said community in contrast this will be to the advantage of the other community. The second Community allege that there were consultations and the directive is as a result thereof and merely asking those who moved and trespassed illegally to return to their areas of jurisdiction; the action of the 1<sup>st</sup> Respondent is to rectify an illegality.
7. The administrative action of the 1<sup>st</sup> Respondent appears to have been informed by the wrangles between the two communities occupying Lagdera and Garbatulla sub-counties. The 1<sup>st</sup> respondent seeks to move the administrative units from one point to another.
8. In *Judicial Service Commission v the Speaker of the National Assembly & another* Petition No 514 of 2013 the court held:

“*The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2012, defines an interested party as “a person or entity that has an identifiable stake or legal interest in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation”. From the foregoing it is clear that an interested party as opposed to an amicus curiae or a friend of the court may not



be wholly indifferent to the outcome of the proceedings in question. He is a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly non-partisan as he is likely to urge the Court to make a determination favourable to his stake in the proceedings....”

9. In *Trusted Society of Human Rights Alliance v Mumo Matemu* [2014] eKLR the Supreme Court stated;

“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.....”

10. In *Francis Muruatetu v Republic & 5 others* [2016] eKLR the scope of admission of an interested party was stated to be as follows;

“

“(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.”

11. It is not lost to this court either that Order 53 rules 3(2) and 6 provides as follows;

“3(2) the notice shall be served on all persons directly affected, and where it relates to any proceedings in or before a court, and the object is either to compel the court or an officer to do any action in relation to the proceedings or quash them or any order therein, the notice of motion shall be served on the presiding officer of the court and all parties to the proceedings.

(6) Right to be heard in opposition

On the hearing of any such motion as aforesaid, any person who desires to be heard in opposition to the motion and appears to the High Court to be a proper person to be heard shall be heard, notwithstanding that he has not been served with the notice of summons, and shall be liable to costs in the discretion of the court if order shall be made.”



12. Based on the background of the case, the law and precedents cited above this court is of the view that the applicant has sufficiently demonstrated his stake in the matter; his interest is so clear that should he fail to be involved in this matter the people he represents as a member of Parliament stands to suffer prejudice as the decision of this court will affect them anyway, whether or not the administrative units will be moved would have a bearing on the inhabitants of the two areas. Therefore, it will only be fair for the Applicant to have an opportunity to articulate his issues as the same will certainly enrichen the court on the matters in question.

The application is thus meritorious, same is allowed.

13. Costs will abide the outcome of the main suit.

**DATED, DELIVERED AND SIGNED AT GARISSA THIS 14<sup>TH</sup> DAY OF APRIL, 2022.**

**ALI-ARONI**

**JUDGE**

