



Hussein v Registrar of Societies; Swaleh (Intended Interested Party) (Judicial Review Miscellaneous Application E027 of 2022) [2022] KEHC 13031 (KLR) (Judicial Review) (21 September 2022) (Ruling)

Neutral citation: [2022] KEHC 13031 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E027 OF 2022
AK NDUNG'U, J
SEPTEMBER 21, 2022**

BETWEEN

ABDULRAHAN HUSSEIN APPLICANT

AND

REGISTRAR OF SOCIETIES RESPONDENT

AND

FEISAL HUSSEIN SWALEH INTENDED INTERESTED PARTY

RULING

1. By a Notice of Motion application dated May 11, 2022 the *ex parte* applicant seeks one primary prayer as follows;

“ that Feisal Hussein Swaleh be and is hereby enjoined in these proceedings as an interested party.”
2. The application is supported by an affidavit sworn by Feisal Hussein Swaleh(intended interested party)on May 11, 2022. In the affidavit Mr Swaleh depones that on April 9, 2012, he appended his signature as the chairman of the taskforce that was in charge of a constitutional review after the General Assembly of the Embu Municipality Matakari Muslim Group ratified the current constitution and pledged to be guided by the enactments therein including but not limited to the dual classification of general assemblies and importantly, when elections should be held.
3. In addition, he depones that he is the incumbent treasurer of the association and that in his letter dated July 6, 2021 he protested about the largely boycotted elections as according to him the same were



conducted in outright contempt of the Presidential Executive Order on public gatherings. Further that the association's constitution provides that elections should be carried out on the last Sunday of the year. The deponent contends that if not joined as a party he stands to lose his position as a treasurer in an unconstitutional and illegal manner.

4. He also alleges to have been involved together with the *ex parte* applicant in the consultative meeting held at the Attorney General chambers with the view of resolving the election dispute impasse in an amicable manner.
5. Mr Abdulrahman Hussein the applicant and chairman of Embu Municipality Matakari Muslim association herein in his Replying Affidavit urges that it is not in contention that the intended interested party was the sole drafter of the Constitution and as such it is only unfair and unjust that he was allowed to hold a position in the same association.
6. He also confirms that the intended interested party was a party to the consultative meeting but he was not allowed to attend due to Covid-19 protocols at the time and that Mr Swaleh was allowed to express himself before the respondent herein. This was not the case on the part of the elected officials of the association.
7. The intended interested party is faulted for failing to prove before this court that he will suffer any prejudice if he is not joined as a party in the proceedings. Further that the application is based on a technicality and intended to delay proceedings.

Parties Submissions

8. The application was canvassed by way of written submissions. It is the intended interested party's case that the proceedings before this court are meant to determine whether the administrative action by the Registrar offended the fair administrative action's letter and spirit.
9. The intended interested party also submits that contrary to the applicant's assertion that he was not allowed to attend the consultative meeting he was present and ably represent by his counsel Mr Doli.
10. The Supreme Court case of Francis Kariuki Muruatetu & Another v Republic & 5 Others [2016] eKLR was cited on who is an interested party in a suit. Learned counsel for the intended interested party also cited the cases of Meme v. Republic, [2004] 1 EA 124 and Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others [2017] eKLR on reasons why a court may enjoin a party to a suit.
11. In rebuttal learned counsel for the applicant contends that the intended interested party fails to meet the required threshold as set out in the Muruatetu case (*supra*). The intended interested party is also faulted for having failed to provide an overview of his case and his submission as was held in the case of Harpal Singh Sembi & 4 Others vs Zebrabanu Janmohammed & 3 Others; Sports Registrar & 9 others [2020] eKLR a ground that could lead to the striking out of an application for enjoinder as an intended interested party.

Determination

12. I have considered the pleadings filed in court and the arguments adduced by both parties and I find that there is only one issue for determination and that is whether the intended interested party should be joined in these proceedings.



13. The Supreme Court in the case of *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others* [2014] eKLR held as follows;

“Black’s Law Dictionary, 9th Edition, defines “intervener” (at page 897) thus:

“One who voluntarily enters a pending lawsuit because of a personal stake in it” (emphasis provided); and defines “Interested Party” (at p.1232) thus:

“A party who has a recognizable stake (and therefore standing) in a matter.

On the other hand, an amicus is defined in Black’s Law Dictionary thus:

“A person who is not a party to a lawsuit but who petitions the court or is requested by the court to file a brief in the action because that person has a strong interest in the subject matter”

14. Similarly, the Supreme Court in the case of *Francis Kariuki Muruatetu & another v Republic & 5 others* [2016] eKLR while faced with the question of determining whether Katiba Institute, KNCHR, ICJ-Kenya, and Legal Resource Foundation had met the threshold of being joined as interested parties stated 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.

15. The applicant herein in the chamber summons dated February 23, 2022 seeks the following judicial review orders;

“4. The honorable court be pleased to grant leave to the applicants to apply for:

- a. An order of *certiorari* to quash the findings and directives of the respondent declaring that the elections for the executive committee held on July 4th, 2021 is unconstitutional, null and void;
- b. An order of *mandamus* compelling the respondent to register the executive committee members as elected on the July 4, 2021;



- c. In the alternative and without prejudice to the above, An order of *mandamus* compelling the respondent direct elections of the executive committee of the Embu Municipality Matakari Muslim Association be held within one month of the decision of this honourable court and to be conducted by the local IEBC office.”

16. A cursory look at the said application shows that the same is in regard to the elections for the executive committee held on July 4th of, 2021 and as such the same directly affects the incumbent members of the executive committee. It has not been denied by the applicant that the intended interested party herein is the incumbent treasurer of the association and as such a member of the said committee.
17. The intended interested party herein has moved this court vide a formal application dated May 11, 2022 and it is established that being the incumbent treasurer he has a personal stake in the instant matter as the said elections that were nullified by the respondent directly affect him. Mr Swaleh in his affidavit contends that he stands to lose his position as a treasurer in an unconstitutional and illegal manner and if joined to the proceedings herein he will shed light on what really transpired pre and post the impugned elections.
18. In light of the foregoing I find that the applicant has met the threshold of being joined as a party to the suit before this court as stipulated by the decisions cited above by the Supreme Court. The applicant herein has not convinced this court that he stands to suffer any prejudice if the intended interested party is joined to the proceedings herein.
19. I make the following orders;
 - i. That Feisal Hussein Swaleh be and is hereby joined in these proceedings as an interested party.
 - ii. I make no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY SEPTEMBER, 2022

AK NDUNG'U

JUDGE

