



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CONSTITUTIONAL PETITION NO. 37 OF 2019

MURANG'A COUNTY EXECUTIVE.....PETITIONER

VERSUS

MURANG'A COUNTY ASSEMBLY & 5 OTHERS.....RESPONDENTS

EQUITY BANK KENYA LIMITED & 4 OTHERS.....INTERESTED PARTIES

RULING

1. Sidian Bank Limited prays for leave to be *enjoined* as an interested party.
2. The applicant avers that it advanced credit to Murang'a Water & Sanitation Company Limited (the 5th respondent) and Murang'a South Water & Sanitation Company Limited (the 6th respondent) secured by assets of the two companies. It contends that if the reliefs sought in the petition are granted, they will invalidate the contracts or jeopardize the securities.
3. Those matters are set out at length in the notice of motion dated 14th February 2020 and the annexed deposition of *Beverline Chweya*, the Legal Officer of the applicant. She has attached copies of the relevant agreements and debentures.
4. The motion is contested by the petitioner. There is a replying affidavit of *David Waweru*, the County Executive Committee Member for Finance. He contends that the petition only seeks to regulate borrowing by the respondents as public entities owned by the county without approval by the petitioner or the assembly. According to him, the fears expressed by the applicant are misplaced; intended to obfuscate the issues; and, to delay the trial.
5. The 1st to 6th respondents; and, the 1st interested party did not oppose the application.
6. The court has *discretion* to enjoin an interested party. The applicant must show that it has an *identifiable stake* in the suit as decreed by Rule 2 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013*. See ***Trusted Society of Human Rights Alliance v. Mumo Matemu & 5 Others***, Supreme Court Petition No. 12 of 2013, [2014] eKLR.
7. The court is also enjoined by Article 159 (2) (d) of the **Constitution** to do *substantial justice* to the parties. ***Harit Sheth Advocate v Shamas Charania*** Nairobi, Court of Appeal, Civil Appeal 68 of 2008 [2010] eKLR.
8. I remain alive that an interested party may not frame new issues for determination by the court. See ***Francis Karioko Muruatetu & another v Republic & 5 others*** Petition 15 & 16 of 2015 [2016] eKLR.
9. One of the prayers in the petition is a declaration “*that the unauthorized borrowing of money by the 5th and 6th respondents without the approval of the Murang'a County Assembly above the prescribed statutory limits is contrary to sections 142 and 149 of the PEMA and violates the principles of public finance under Article 201 of the Constitution*”.
10. I thus find that the fears by the applicant are not unfounded. Furthermore, the petitioner enjoined other banks being the 1st to 4th interested parties. I am satisfied that the applicant has clearly demonstrated a genuine and identifiable stake in the outcome of the suit.
11. The upshot is that Sidian Bank Limited is enjoined into the petition as the 6th Interested Party. It must file and serve any reply to the Notice of Motion and Petition dated 7th October 2019 within 21 days of today's date. I will grant the petitioner corresponding leave to reply.
12. Costs shall be in the cause.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 28th day of October 2020.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of-

Mr. Kimani holding brief for Mr. Muriithi for the applicant instructed by Kimani & Muriithi Associates Advocates.

No appearance by counsel for the petitioner.

No appearance by counsel for the 1st to 6th respondents.

No appearance by counsel for the for the interested parties.

Ms. Dorcas Waichuhi & Ms. Susan Waiganjo, Court Assistants.