



REPUBLIC OF KENYA

IN THE HIGHCOURT OF KENYA AT MERU

PETITION NO 10 OF 2020

JACOB MANTILI KINGANGA.....1ST PETITIONER

JOHN MURIKI RUKUNGA.....2ND PETITIONER

HARUN MURANGIRI KOBIA.....4TH PETITIONER

PATRICK MUNGATHIA MILA.....3RD PETITIONER

AND

THE SPEAKER, MERU COUNTY ASSEMBLY.....1ST RESPONDENT

MERU COUNTY ASSEMBLY.....2ND RESPONDENT

HON. ROMANO MUGAMBI MWITO.....1ST INTERESTED PARTY/APPLICANT

HON GERALD KIMATHI ITHUBIA.....2ND INTERESTED PARTY/APPLICANT

HON GABRIEL CHOKERA NJENJERE...3RD INTERESTED PARTY/RESPONDENT

AND

JULIUS KIBURI MEEME.....INTENDED 4TH INTERESTED PARTY

ELIJAH MUNGATHIA KIRIMA.....INTENDED 5TH INTERESTED PARTY

RULING

(APPLICATION DATED 23rd JULY 2020 & 4th August 2020)

Two applications

1. By order of the court, the two applications dated 23rd July 2020 and 4th August, 2020 were heard together. This ruling relates to both applications. Nonetheless, I have determined each one of them separately and made final orders for each application.

Application dated 23rd July, 2020

2. This is a Notice of Motion dated 23rd July, 2020 in which the Applicant, Hon Romano Mugambi, the 1st interested party who is a member of the 2nd Respondent is seeking the following orders: -

- a) That the application be certified as urgent and the same be heard expeditiously.
- b) That the CONSERVATORY ORDERS issued on 8/7/2020 and extended on 15/7/2020 be discharged and/or varied.
- c) That the petition herein be struck out with costs.

e) That costs of this application be provided for.

3. The application is supported by the grounds set out in the Motion and the Applicant's affidavit sworn on the date of the application.

4. The grounds cited are:

(1) That the Petitioners misrepresented facts to the court in their application for conservatory orders and the petition.

(2) That the Petitioners are not registered members of the Party of National Unity (PNU) as such they lack locus standi to file the petition, thus, rendering the petition incompetent. They attached a letter from the registrar of political parties as proof.

*(3) Lastly, that Section 14(4) of the County Government Act is couched in mandatory terms that every Member of the County Assembly **MUST** belong to at least one committee of the House and that the conservatory orders issued herein has negated this statutory provisions hence need for varying.*

5. The respondents (the petitioners herein) opposed the application through a replying affidavit sworn on 28th July, 2020 by Harun Murangiri Kobia, the 3rd Petitioner on his own behalf and with the authority from the other co-petitioners.

6. According to the respondents, the application herein and the supporting affidavit is full of falsehoods, forgeries, misrepresentation of facts and diversions all tailor-made to hoodwink the court from knowing the truth. The respondent reiterates the averments in the petition and the notice of motion dated 8.7.20 and the supporting affidavit thereon that they are bona fide members of the Party of national Union (PNU); and, it was only on 23.7.20 when they learnt that they belong to another political party namely Jubilee Party.

7. The petitioners in their averments stated that they wrote a letter dated 23.7.20 to the Registrar of political Parties and copied the same to PANU complaining about mis-registration in parties they never joined. They attached the said letter as proof. Further they averred that on 27.7.20 the Party of National Unity responded affirming that all the petitioners are members of Party of National unity.

ANALYSIS AND DETERMINATION

8. I have considered the above application, the affidavit in support, the replying affidavit by the petitioners and the submissions filed by parties herein together with authorities. The following emerge as the issues for determination by this court: -

i. Whether the petition should be struck out because the petitioners do not have locus standi to file this petition.

ii. Whether the conservatory orders should be varied.

Locus standi

9. The Constitution of Kenya 2010, grants the individual much wide scope of *locus standi* in the filing of constitutional petitions on violation or alleged violation of the Constitution. Compare this with Section 84(1) of the repealed Constitution which severely restricted *locus standi* in the filing of constitutional petitions. The specific article of the Constitution on *locus standi* is article 258 of the Constitution of Kenya, 2010 which provides as follows: -

258. Enforcement of this Constitution

(1) Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.

(2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—

(a) a person acting on behalf of another person who cannot act in their own name;

(b) a person acting as a member of, or in the interest of, a group or class of persons;

(c) a person acting in the public interest; or

(d) an association acting in the interest of one or more of its members.

10. The Court of Appeal in **MUMO VS. TRUSTED SOCIETY OF HUMAN RIGHTS ALLIANCE & 5 OTHERS [2012] eKLR** explained the constitutional broadening of locus standi in the filing of constitutional petitions as follows: -

“Our commitment to the values of substantive justice, public participation, inclusiveness, transparency and accountability under Article 10 of the Constitution by necessity and logic broadens access to the courts. In this broader context, this court cannot fashion nor sanction an invitation to a judicial standard of locus standi that places hurdles on access to the courts, except only when such litigations is hypothetical abstract or is an abuse of the judicial process.”

However, we must hasten to make it clear that the person who moves the court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice. Where a person is acting for personal gain or private profit or out of political motivation or other oblique consideration, the court should not allow itself to be seized at the instance of such person and must reject the application at the threshold.”

[11] In light thereof, Article 258(1) grants every person the right to institute court proceedings claiming that this constitution has been contravened, or is threatened with contravention. Court proceedings may also be instituted by any person acting in the public interest (Article 258(2)). In the present case, the Petitioners filed their Petitions on their own behalf as residents of County of Meru and registered members of the Party of National Unity (PANU), and also in the public interest. They have an interest in the legitimate and lawful exercise of functions by the county assembly whose impact is not only on him as an individual but also on the residents of Meru County. It be known that such concerns are not personal desires but legitimate concerns which are justiciable before a court of law by petitioners or other persons who express concern over violation or threat of violation of the Constitution.

[12] I do not see any evidence of bad faith or political motivation, or other collateral advantage in the filing of the Petition. In addition, membership in a political party is not a pre-requisite to or of such relevance or vitality in the filing of such petition. The challenge before the court is on the legality of appointments by the Respondents to public office which the petitioner has standing to lodge in court on his behalf as well as on behalf of other residents of Meru County.

[13] Accordingly, I find that the Petitioners have *locus standi to file this petition*. Striking out such litigation of public nature is not to be undertaken lightly unless the petition is actuated by malice, bad faith or reasons other than vindicating the Constitution and the law. I reject the invitation to strike out the petition.

Variation of conservatory order

[14] The applicant seeks variation of conservatory order issued herein. According to section 14(4) of the County Governments Act which provides that every member of the county assembly must belong to at least one committee of the house. Such is an express statutory requirement and command, and which must be given effect at all times by the County Assembly. Accordingly, the earlier order should and is hereby varied to allow the Respondents in this petition to belong to at least one committee of the House pending the hearing and determination the petition. As proceedings are pending, it is right that the respondents herein should discharge their duties as provided in law. Order be accordingly varied.

Application dated 4th / 08/2020

[15] This application seeks the following orders:

- (1) Leave to the Applicants to be enjoined as interested parties in this Petition**
- (2) Leave for the Applicants to file relevant pleadings herein.**
- (3) Status quo in the proceedings to be maintained pending the determination of this application.**
- (4) Costs of this Application be in the cause.**

[16] The application is supported by the supporting affidavit by Julius Kiburi Meeme the 4th Intended interested party who deposes that he is a registered voter in Mikinduri ward which is represented by the 3rd interested party as its ward representative in the Meru county assembly. He avers that he is a duly registered member of the Party of National Unity that sponsored the 3rd interested party and who now holds the seat.

[17] He further deposes that the petition herein will determine primarily whether or not the intended 4th interested party's ward will be represented in the Assembly Committees in furtherance of Article 1(2) of the Constitution of Kenya that bestows authority upon elected representatives to act on their electorates.

[18] The application is also supported by the affidavit of Elijah Mungathia Kirima the 5th Intended Interested party whose averments are similar to those of the 4th intended interested party.

[19] The applicants filed their written submissions in support of the application on 26th august 2020.

Analysis and determination

[20] I will formulate the issue herein to be: -

i. Has the intended interested party demonstrated sufficiently identifiable interest which cannot be articulated by any other party except self as to deserve to be joined in this proceeding as an interested party?

[21] From the depositions by the interested party it appears that they seek joinder for two reasons: (1) they are registered voters in Mikinduri ward which is represented by the 3rd interested party as its ward representative in the Meru county assembly; and, (2) thus, their interest is to know whether their ward will be represented in the county assembly committees by their elected leader.

[22] Under Rule 7 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013, (hereafter the Mutunga Rules):

Interested party

1. A person with leave of the court may make an oral or written application to be joined as an interested party
2. A court may on its own motion join any interested party to the proceedings before it.

[23] Rule 2 of the Mutunga Rules defines 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 proceeding or may not be directly involved in the litigations.”

[24] The Supreme Court defined an interested party in the case of **Trusted Society of Human Rights Alliance v Mumo Matemu [2014] e KLR**, as follows:

“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. 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 herself appears in the proceedings, and champions his or her cause...”

[25] The intended interested party must demonstrate an identifiable interest which cannot be properly articulated or argued in this case except by self. I do note that the intended interested parties are registered voters within Mikinduri ward. They therefore have a general interest in representation by their elected leader in the committee of the county assembly. Their interest is not any more or higher than that of any or other registered voters in the said ward. If that kind of interest is to be used as the single basis for joinder, then courts will be inviting trouble; all registered voters in the ward will apply to be joined in the proceedings; the proceedings will be overloaded with parties; choked by a surfeit of finery; become murkier and out of control.

[26] In addition, there is nothing to suggest that the interest of the applicants is of a nature that it cannot be articulated or argued by the petitioners except by the applicants. The petitioners’ pleadings capture the core of the complaint and relief required. I do not think they suffer any deficiency which will occasion prejudice to the interest of the intended party or which could only be ameliorated or augmented by the joinder of the applicants. The common question of law or fact is capable of ascertained and determined in the proceedings without the intended interested parties. The applicant’s account in support of joinder in the proceedings does not depict their presence is necessary to enable the court to adjudicate effectively and completely the issues in the proceedings.

[27] In applying the well-defined principles for admitting a party as an interested party in judicial proceedings, the applicants have not demonstrated such identifiable interest which cannot be articulated except by self. In so finding, I am well aware of Article 48 of the Constitution which provides for access to justice to all persons as enabler of right to a fair hearing and due process.

[28] For the reasons stated above, the Notice of Motion for joinder of interested party dated 4th August 2020 is not merited and is dismissed with no orders as to costs. It is so ordered.

Dated and signed at NAROK this 14th day of December, 2020

F. GIKONYO

JUDGE

Dated, signed and delivered at Meru this 16th day of December 2020

T. W. CHERERE

JUDGE