



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MILIMANI (NAIROBI)

CONSTITUTIONAL & HUMAN RIGHTS DIVISION

PETITION NO.382 OF 2017

ETHICS AND ANTI-CORRUPTION COMMISSION.....PETITIONER

AND

GRANTON GRAHAM SAMBOJA.....1ST RESPONDENT

AND

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION.....2ND RESPONDENT

AND

KENYATTA UNIVERSITY.....1ST INTERESTED PARTY

AND

DOMINIC MWAMBI MWASARU.....INTENDED 2ND INTERESTED PARTY

RULING

1. Before me is a Notice of Motion brought pursuant to Rule 2 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013, order I rule 1,8 and order 51 rule 1 of the Civil Procedure Rules; section 1A and B; 3A of Civil Procedure Act and all other enabling provisions of law. The 2nd intended interested party seeks the following orders:-

a. That Dominic Mwambi Mwasaru be allowed to join these proceedings as the 2nd intended party;

b. That costs of the application be provided for.

2. The application is premised on grounds 1 – 5 on the face of the application being *inter-alia*:- that the applicant is a resident and voter in Taita Taveta County and therefore a stakeholder in Taita Taveta County; that the applicant has been greatly aggrieved by the actions of the Respondent, who have allowed an unqualified person to run for the position of Governor for Taita Taveta County; that the Applicant's right as a member of Taita Taveta County have been greatly infringed by the Respondent's; that any orders; directions, ruling or judgement of this Honourable Court shall affect the applicant and residents of the great Taita Taveta County and that it is in the interest of justice, that the application herein is allowed as prayed.

3. The application is supported by supporting affidavit of Dominic Mwambi Mwasaru sworn on 26th March 2018. The Applicant has deponed, that Granton Samboja has now purportedly been elected a Governor for Taita Taveta County, where he is a resident, this suit is of great interest to him and the residents of Taita Taveta County and any orders made in this suit will directly affect him and other residents of Taita Taveta County. That it is in the interest of justice that he be allowed to enjoy the suit herein to enable him participate in the suit as an interested party.

4. The 1st and 2nd Respondents are opposed to the application. The 1st Respondent filed grounds of opposition dated 29th October 2018; whereas the 2nd Respondent filed a Replying affidavit by Clapton E. Kagimu sworn on 25th July 2018.

5. The Honourable court gave directions, that the 2nd intended interested party's application be determined by way of written submissions. The intended 2nd intended party's submission were filed on 22nd November 2018, whereas those of the 1st Respondent were filed on 20th March 2019 and for the 2nd Respondent were filed on 22nd November 2018.

6. Rule 2 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 defines "*an interested party*" as follows:-

"Interested party means a person or entity that has an identifiable or legal interest or duty in the proceedings before the Court but is not a party to the proceedings or not be directly involved in litigation."

7. It is further provided under **Rule 7(2) of the said Rules**, that a court may on its own motion join any interested party to the proceedings before it.

8. The Constitution of Kenya 2010 provides for access to justice under **Article 48** which provides:-

"The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice."

The Applicant herein urges by virtue of **Article 48 of the Constitution**, he has a right to institute a similar petition to the one before court against the 1st Respondent, however to avoid clogging the courts with similar petitions, he has opted to apply to be enjoined in the current proceedings.

9. For any party to be enjoined in a matter, he or she, has to demonstrate, he or she, has identifiable stake in a matter. In the case of **Trusted Society of Human Rights Alliance vs Mumo Matemo & 5 others (2014) eKLR** the court thus:-

"Consequently, 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. It is trite, for an applicant to be enjoined in a suit as an interested party, he must in its application, set out his case and/or submissions he intends to make before the court. In the case of **Francis Kariuki Muruatetu & another vs Republic & 5 others (2016) eKLR**, the elements applicable when a party seeks to be enjoined in the proceedings as an interested party were set out as follows:-

"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 element:-

i. The personal interest or stake that the party has in 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 if 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. In the instant application, it is not in dispute, that the Applicant is a resident and voter of Taita Taveta County, where the 1st Respondent is a Governor and whose University degree is in question in this suit. The elements to be satisfied where a party seeks to be enjoined in the proceedings being "*an identifiable stake*" or "*legal interest*" have been met. The Applicant as a resident and a voter in Taita Taveta, he has a stake in the outcome of these proceedings, the issue for consideration being that of gubernatorial race of Taita Taveta in the last general election, gives the Applicant herein a "*legal interest*" in these proceedings.

12. I find the applicant's application, if allowed, would not only enable this court to determine the real questions in controversy between the parties herein but will ensure the intended interested party gets access to justice, as court considers all issues raised in the petition. I find the enjoining of the intended interested party will occasion no prejudice to any party in this petition.

13. The Notice of Motion dated 26th March 2018 is meritorious and I proceed to make the following orders:-

a. The intended interested party Dominic Mwambi Mwasaru be and is HEREBY allowed to join these proceedings as 2nd Interested party.

b. The 2nd Interested party do file and serve his response to the petition herein within 15 days from the date of this ruling.

c. Costs of the application be in the cause.

Dated, signed and delivered at Nairobi this 23rd day of May, 2019.

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J .A. MAKAU

JUDGE