



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

PETITION NO.11 OF 2017

INTERNALLY DISPLACED PERSONS

INITIATIVE SUPPORT.....APPLICANTS

-VERSUS-

PERMANENT SECRETARY MINISTRY OF

DEVOLUTION & PLANNING.....RESPONDENTS

RULING

1. The application dated 29th May 2017 is filed by **Internally Displaced Persons Support Initiative**, a non-government organization that champions the welfare of some 1170 displaced persons. They seek to be enjoined in the present petition as Interested Parties.
2. Their application is premised on the grounds that they were the legitimate beneficiaries of the Kshs. 6 billion fund set aside by the Government of Kenya for Internally Displaced Persons (IDPs) compensation being the subject matter of the present petition; that it was necessary to be enjoined to enable the court arbitrate fairly on the dispute; that their being enjoined would prevent multiplicity of suits; and, that the applicants stand to suffer irreparably if the orders sought were not granted.
3. The supporting affidavit sworn by one **Julius Mwangi Njuguna** the chairman of the applicant, makes averments which mirror the grounds aforesated. In addition, he avers at paragraph 3 that the petitioners were not part of the IDP to benefit from the Kshs.6 billion set aside for compensation.
4. There was no response filed in response to the application. When the matter came up on 17th September 2017 parties elected to make oral submissions in reply.
5. **Ms. Kerubo** for the proposed Interested Party argued the application. She submitted that the applicants numbered 1,170 IDPs. She drew the court's attention to the list attached to the application further asserting that the said list was of the legitimate IDPs who were legally supposed to benefit from the compensation fund. She urged the court to enjoin them to enable them ventilate their claims.
6. **Ms. Ogange** for the 1st petitioner opposed the application. She submitted that the said application did not disclose who the 1,170 IDPs were. She further submitted that the real interest of the applicant was to oppose the ultimate orders sought by the petitioners further arguing that the 1st petitioner were the sole beneficiaries of the Kshs.6 billion IDPs fund. She asked the court to dismiss the application.

7. **Mr. Morintat** for the 2nd petitioner initially indicated that they were not opposed to the application. He however changed his mind upon hearing the argument that the proposed Interested Party was questioning the legitimacy of the petitioners in Petition No.11 /2017. He submitted that the applicant ought to participate in the petition through the respondents. He urged that the application be dismissed.

8. **Ms. Cheruiyot** for the 1st, 2nd and 3rd respondents did not oppose the application. She submitted that the applicants had a right to be enjoined and did not have to participate through the respondents.

9. In response, **Ms. Kerubo** submitted that they were opposed to the petitioners listed in Petition No.11/2017 as being genuine IDPs.

10. The only legal issue in this application is whether or not the applicants should be enjoined as interested parties in the petition.

11. At the heart of the petition is a compensation fund allegedly set aside by the Government to compensate IDPs. The petitioners came to court to seek orders prohibiting the respondents (read government) from disbursing the funds before putting in place a mechanism of ensuring public participation and verifying genuine beneficiaries. The proposed interested party say in their application that they were genuine beneficiaries and wished to be enjoined in petition to stake their claim.

12. **Black's Law Dictionary, 9th Edition 1232** defines Interested Party as "a party who has a recognizable stake (and therefore standing) in a matter." In the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013, "Interested Party" means a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation. In **Trusted Society of Human Rights Alliance V Mumo Matemo & 5 others (2014) eKLR**, the Supreme Court defined 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.**"

13. The applicants have told the court that they have a stake in the Kshs.6 billion compensation fund. They regard themselves as legitimate beneficiaries having been internally displaced in the 2007/2008 post-election violence. They assert that they will be affected by the outcome of the petition.

14. The petitioners' opposition to the application appears to be premised on the proposed Interested Party's intended claim that the petitioners were not the genuine beneficiaries of the compensation fund. The question as to who amongst the petitioners and interested parties would be a genuine beneficiary is not one to be addressed in this application. It is one that goes to the substance of the petition. It should be sufficient for the proposed Interested Party to demonstrate to the court that it had a stake in the petition. The validity of their claim or stake as it were would unfold in the proceedings to follow.

15. In considering this application, I have taken notice that there are similar petitions already filed in this court. It is my view that prudent use of judicial resources would favour the enjoining of the applicants in the present petition to avoid proliferation of petitions seeking similar reliefs. As stated in **Meme –V- Republic (2004) (EA 124)**, joinder may be effected in the following circumstances:-

“(i) Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;

(ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;

(iii) Joinder to prevent a likely course of proliferated litigation.”

16. I am persuaded by the applicants' argument that they are entitled to be enjoined in this petition. They

have demonstrated that they have a stake in the Government funds in question. They will be better placed to argue their case before the court and not through the respondents. I am satisfied that the applicants are deserving of the order to be enjoined as Interested Parties in this petition. The application dated 29th May 2017 is thus allowed with no order to costs.

Judgment delivered, dated and signed in open court this 24th day of October 2017

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R. LAGAT KORIR

JUDGE

In the presence of:

C/A Emojong

Mr. Kambo for applicants

N/A for respondents