



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL PETITION NUMBER 561 OF 2015

**IN THE MATTER OF ALLEGED VIOLATION AND INFRINGEMENT OF THE PROVISIONS
OF ARTICLE 1 (1), 2 (2), 3(1), 6(2), 96, 125, 157, 174, 189, 195, 225, 226 (2) OF THE
CONSTITUTION OF KENYA**

BETWEEN

WYCLIFFE AMBETSA OPARANYA.....1ST PETITIONER

COUNTY GOVERNMENT OF KAKAMEGA.....2ND PETITIONER

COUNCIL OF COUNTY GOVERNORS.....3RD PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....1ST RESPONDENT

THE SENATE OF THE REPUBLIC OF KENYA.....2ND RESPONDENT

RULING

Introduction

1. By a Petition dated 16th December, 2015, the Petitioners herein, **Wycliffe Ambetsa Oparanya**, the Governor of the **County Government of Kakamega**, the 2nd Petitioner herein, and the **Council of County Governors**, the 3rd Petitioner contend that the decision of the 2nd Respondent to Summon the 1st Petitioner to answer questions on the Auditor General's report without giving the County Assembly the opportunity to examine the report and make its conclusions in the first instance undermines the legislative and oversight powers of the County Assembly under Article 185 of the Constitution. It was therefore contended that the 2nd Respondent cannot thus exercise its powers under Article 96 of the Constitution in a manner that cripples the oversight mandate of the County Assembly of Kakamega.
2. To the Petitioners, when a county assembly is considering a report of the Auditor General prepared under Article 229 of the Constitution, the 2nd Respondent cannot exercise its powers under Article 96 of the Constitution to simultaneously consider the same report. In other words, if a County Assembly is considering a financial/auditor-general's report, the Senate should not be simultaneously seized of the matter in a manner that undermines or competes with the County Assembly. In this case, it was averred that the documents that the 1st Petitioner/Governor was

- being asked by the Senate to respond to are the same documents that were then before the County Assembly of Kakamega.
3. To the Petitioners, the Senate's oversight role over nationally collected revenue to counties is not identical to the County Assembly's oversight over the executive which means that the Senate cannot scrutinize county expenditures in the same way that the committees and general assemblies of the county legislatures can but can only scrutinize county financial and other records for purposes of making a determination with regard to an impeachment, intervention in a county, suspension of a county, or for purposes of developing national legislation necessary for more prudent management of finances at the county level. Their view was that it cannot be the primary oversight body for audit reports for county governments under Article 229 of the Constitution.
 4. It was contended that it is in recognition of the primacy of the County Assembly in the oversight over financial management of county finances that the Constitution mandates the Controller of Budget to submit reports to both Houses of Parliament on implementation of both national and county budgets but subsequently grants the Auditor General the discretion of presenting its reports to Parliament or the relevant county assembly.
 5. Based on Articles 228 and 229 of the Constitution it was the Petitioners' case that the Constitution expects the relevant County Assembly to consider the Auditor General's reports in the first instance failure to which Parliament is activated thus the discretion. In their view, since the Senate has oversight roles on national revenue allocated to counties only (it has no oversight over grants, loans, and revenue generated locally by counties), the Senate must thus strive to maintain a careful balance between intruding in county governance and performing its "national-scale" oversight role in county finances. In any event, though the Governor is not the accounting officer of Kakamega County, the Senate has insisted that only a governor must appear before it in total disregard of the existing legal and constitutional structures of county public finance management and accounting and relied on sections 148 and 149 of the **Public Financial Management Act, 2012** in which it is provided that the Accounting Officers of a County Government are designated by the County Executive Member for Finance the it as opposed to the Governor. To them, the accounting officers of the various departments within Kakamega County Government that have been impugned in the Auditor General Report have always been available to answer any questions raised.
 6. However, the 2nd Respondent has refused to let members of the County Executive Committee and Chief Officers at the Counties (who are the actual accounting officers) to appear before it to answer audit questions arising from the Auditor General's report under Article 229 of the Constitution. They added that as the Chief Officer Finance is the overall accounting officer of the 2nd Petitioner, the insistence that only Governors should appear reeks of cheap politics.
 7. It was disclosed that it is public knowledge that most of the Senators in this Committee have gubernatorial ambitions that can be supercharged by a televised confrontation with their local Governor with the Senators having the upper hand of oversight thereby a "champion" for the voters back home.
 8. Whereas the Petitioners acknowledged that Article 125 (1) of the Constitution provides that either House of Parliament and any of its committees, has power to summon any person to appear before it for the purpose of giving evidence or providing information, it was their position that Article 125 of the Constitution which the Senate relied on in isolation of the other relevant portions of the Constitution, limits its summoning powers which powers can only be exercised by the Senate when it is properly seized of a matter in execution of its constitutional mandate. To the Petitioners, the 2nd Respondent is bound to exercise its powers under Article 125 of the Constitution reasonably and only when it is properly seized of a matter and also in a manner that does not violate or usurp the oversight powers of the county assemblies. In this case, the 2nd Respondent having exercised its summoning powers under Article 125 of the Constitution on a matter that it is not seized on, the 1st Petitioner cannot be said to have committed a crime under section 23 (a) of the **National Assembly (Powers and Privileges) Act**, Chapter 6 of the Laws of Kenya.
 9. It was asserted that owing to the doctrine of superiority of the Constitution over statute, summons issued in breach of the constitutional separation of powers between the two levels of government are null and void *ab initio* and cannot bestow legality on subsequent acts and therefore the Summons by the 2nd Respondent therefore does not constitute a lawful order within the meaning

of section 131 of the *Penal Code* and no penal or criminal sanctions can lawfully stem from an unconstitutional act.

10. The Petitioners therefore seek the following orders:

- a. **A declaration that the Director of Public Prosecutions abdicated his constitutional duty in allowing the prosecution of the 1st Petitioner for alleged failure to honour summons that were issued in violation of Article 226(2) of the Constitution.**
- b. **A declaration that in allowing the prosecution of the 1st Petitioner, the Director of Public Prosecutions neglected and abdicated his constitutional duty under Article 157(11) of the Constitution to prevent and avoid the abuse of the legal process and state powers of prosecution.**
- c. **A declaration that the 2nd Respondent cannot exercise its powers under Article 96 of the Constitution in a manner that cripples the oversight mandate of the County Assembly of Kakamega in violation of under of the provisions of Articles 6(2) and 189 (1) of the Constitution.**
- d. **A declaration that when a county assembly is considering a report of the Auditor General prepared under Article 229 of the Constitution, the 2nd Respondent cannot exercise its powers under Article 96 of the Constitution to simultaneously consider the same report.**
- e. **A declaration that the Senate is bound by the provisions of Article 189 (1) of the Constitution to perform its functions and exercise its powers in a manner that respects the functional and institutional integrity as well as the constitutional status and institutions at the County level.**
- f. **A declaration that there is no prosecutable case that the Director of Public Prosecution can commence premised on an alleged failure to honour summons that were issued in violation of Articles 96 and 226(2) of the Constitution of Kenya and section 148 of the Public Financial Management Act 2012.**
- g. **A declaration that section 131 of the Penal Code must be construed and interpreted in conformity with the Constitution and no offence is prosecutable under the provisions of Article 125 of the Constitution.**
- h. **A declaration that section 131 of the Penal Code is inconsistent with Article 125 (2) of the Constitution to extend that it seeks to criminalize non-attendance to witness summons issued by a legislative body.**
- i. **An order of certiorari to quash the Criminal Charge preferred against the 1st Petitioner under section 131 of the Penal Code.**
- j. **An order of prohibition directed at the Director of Public Prosecution prohibiting the prosecution of the 1st Respondent for the offence of disobedience of lawful orders under section 131 of the Penal Code.**
- k. **An order of prohibition directed at the Chief Magistrates' Court from proceeding with and conducting the trial of the 1st Petitioner premised on the complaint by the 2nd Respondent.**
- l. **There be no order as to costs.**

11. By a Notice of Motion dated 10th March, 2016, the Coalition for Reform and Democracy (CORD), which describes itself as a coalition of political parties registered under the *Political Parties Act* with its constituent political parties being Orange Democratic Movement (ODM), Wiper Democratic Party and the Forum for the Restoration of Democracy-Kenya (FORD-Kenya), seeks that it be joined to these proceedings as an interested party.

12. The application, which is the subject of this ruling was based on the following grounds:

1. **THAT the intended Interested Party as a coalition of political parties is registered under the Political Parties Act the constituent political parties being the Orange Democratic Movement (ODM), the Wiper Democratic Party and the Forum for the Restoration of Democracy-Kenya(FORD-Kenya).**
2. **THAT under Article 4(2) of the Constitution of Kenya the Republic of Kenya is a multi-party democratic state.**
3. **THAT under Article 91(1)(g) of the Constitution of Kenya, political parties are required to promote the objects and principles of the Constitution of Kenya and the rule of law.**

4. **THAT twenty four county governments in Kenya, which are headed and presided over by governors as chief executives, belong to or subscribe to CORD or are led by governors who are members of CORD through constituent political parties.**
 5. **THAT devolution is one of the national values and principles of governance under Article 10(2) of the Constitution of Kenya and is a major pillar in the structure, architecture and framework of government.**
 6. **THAT the First Petitioner is a member of CORD and one of the two Deputy Party leaders of ODM.**
 7. **THAT the County Government of Kakamega, the second petitioner, is a CORD county government by virtue of the fact that the Governor and the Deputy Governor were sponsored by ODM and CORD in the general elections and the majority of the members of the Kakamega County Assembly are members of ODM and CORD.**
 8. **THAT the leadership of CORD and its constituent parties campaigned for the enactment of the Constitution of Kenya 2010 and supported vigorously the principle and structures of devolved government.**
 9. **THAT the petition raises important questions regarding devolution, separation and distribution of power, the extent or limit of legislative oversight and the exercise of powers by either houses of parliament under Article 125 of the Constitution of Kenya as read with section 23 of the National Assembly (Powers and Privileges) Act.**
 10. **THAT the Petition considers the constitutionality and legality of the application of section 131 of the Penal Code as a criminal sanction against the violation or disobedience of summons issued under Article 125 of the Constitution of Kenya and section 23 of the National Assembly (Powers and Privileges) Act.**
 11. **THAT the intended interested party qualifies to be joined as such as a majority of the governors in the country belong to the CORD coalition.**
 12. **THAT CORD normally holds meetings, seminars, workshops and conferences to engage with its governors and advises them on how to exercise and discharge their power, functions, duties and responsibilities under the Constitution and the law.**
 13. **THAT CORD is opposed to any decision or legislation or exercise of authority that dilutes, compromises or interferes with the devolved system of government.**
 14. **THAT CORD, within the Constitution and the law, defends and safeguards devolution as a system of government and takes an interest in protecting county governments where it deems it appropriate.**
 15. **THAT it is in the best interest of justice, consideration and disposition of the petition that the Interested Party is joined as such in the petition.**
13. Apart from the foregoing grounds, it was contended by CORD that the petition raises important questions regarding devolution, distribution of power, the extent and limit of legislative oversight and the exercise by either Houses of Parliament the powers under Article 125 of the Constitution of Kenya as read with section 23 of the *National Assembly (Powers and Privileges) Act*. To CORD, the Petition questions the legality of the application of section 131 of the *Penal Code* as a criminal sanction against the violation or disobedience of summons issued under Article 125 of the Constitution of Kenya and section 23 of the *National Assembly (Powers and Privileges) Act*.
14. CORD therefore desired to be joined in the petition and the proceedings thereof as Interested Party and in its view qualified to be an Interested Party by the nature of its duties and functions under the Constitution, Kenya being a multi-party democratic state.
15. In his address to the Court in support of the application, **Hon James Orengo, SC** submitted that the issues in this petition are so fundamental that CORD has an interest in some of them such as Articles 6 and 189 of the Constitution with respect to the powers to summon a person taking into account the nature of both levels of government which are distinct but interdependent and the need to respect the dignity of the other Government. Learned Counsel was of the view that there is a need to determine the extent of the mandate and remit of each of the two Houses of Parliament and that the petition raises the whole issue of devolution and the boundaries of oversight.
16. The Application was supported by the Petitioners who through their Learned Counsel, **Hon Paul Muite, SC** submitted that CORD is a constitutional legal entity which sponsored the 1st Petitioner and for that reason has legitimate interest in the issues being raised in this petition which are

weighty constitutional issues. Learned Counsel urged the Court in determining this application to take into account the provisions of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure, Rules, 2013* also known as the *Mutunga Rules* made pursuant to Article 22(3) of the Constitution as read with Article 22(1) which provides that every person has the right to institute proceedings described thereunder. In his view the said provision was meant to do away with requirements of *locus standi* espoused in the old jurisprudence.

17. According to **Hon. Muite**, this Court stands to benefit from the views of the Petitioner, the DPP, the Senate and CORD as represented by a person who participated in fighting for the Constitution.

Respondent's Case

18. The application was opposed by the Respondents who filed the following grounds of opposition:

1. **No sufficient grounds have been advanced to warrant the grant of the orders sought by the applicant.**
2. **The issues herein is prosecution of a criminal offence committed by the 1st Petitioner and matters of evidence to be adduced in the trial court and not issues of devolution, separation and distribution of power, the extent or limit of legislative oversight as alleged by the intended interested party. Indeed these are matters of evidence and not constitutional interpretation.**
3. **That application of Section 131 of the Penal Code and Section 23 of the National Assembly (Powers and Privileges) Act is a matter of evidence and it is not the function of the court to prefer charges against accused person but to exercise its judicial power in relation to charges brought by the 1st Respondent.**
4. **The application is abuse of court process and is intended to delay the hearing if the Petition which is scheduled for hearing today the 15th March 2016.**
5. **That application is without merit and should be dismissed with cost to the 1st Respondent.**

19. According to **Miss Obwo**, learned counsel for the 1st Respondent, the instant application is merely a delaying tactic as it was not demonstrated that there was any need for CORD to join these proceedings. It was submitted that this petition was filed on 18th December, 2015 and was mentioned on 4th January, 2016 during which time **Hon. Orengo** was acting for the petitioners. On the said date hearing was scheduled for 9th February, 2016 on which date the Respondents were ready only to be served with an application dated 5th February, 2016 and based thereon conservatory orders were granted and the matter fixed for 15th March, 2016. On the eve of the hearing the instant application was filed.

20. It was contended that the present application ought to have been made much earlier and therefore the same is merely meant to delay the disposal of this petition and the taking of the plea.

21. The Court was invited to consider what is sought in this petition which seeks orders against the DPP as opposed to determination of how the Senate discussed the Auditor's Report. Further the petition is not about devolution but about the Commission of an offence. To learned counsel the issues before the Court are purely evidential in nature and not constitutional and CORD has not demonstrated why it should be joined to these proceedings. If CORD wants to address the issues of devolution, it was contended, it ought to do so in a different forum.

22. On his part **Mr Mwendwa** for the 2nd respondent submitted that the criminal matter the subject of these proceedings are against an individual based on his failure to honour summons. The question that the Court ought to ask itself, it was contended is whether CORD can be joined to the criminal proceedings. In learned counsel's view CORD has not met the criteria for joinder in adjudicating the matters herein.

23. According to him the only purpose of the joinder is to delay the petition and embarrass the trial.

24. In his rejoinder, **Hon Orengo** submitted that the Petitioner has always been ready to proceed with the petition. He submitted that the delay in determining the petition has been occasioned by the late filing of documents by the Respondents. To him, the matters raised herein are not limited to

the criminal proceedings but also relate to interpretation of the Constitution.

Determination

25. I have considered the issues raised in this application.

26. The role of an interested party was the subject of the decision of the Supreme Court in **Trusted Society of Human Rights Alliance vs. Mumo Matemo & 5 Others [2014] eKLR** in which the said Court expressed itself 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”.

Suffice it to say that while an interested party has a ‘stake/interest’ directly in the case, an *amicus*’s interest is its ‘fidelity’ to the law: that an informed decision is reached by the Court having taken into account all relevant laws, and entertained legal arguments and principles brought to light in the Courtroom. 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. On the other hand, an *amicus* is only interested in the Court making a decision of professional integrity. An *amicus* has no interest in the decision being made either way, but seeks that it be legal, well informed, and in the interest of justice and the public expectation. As a ‘friend’ of the Court, his cause is to ensure that a legal and legitimate decision is achieved.”

27. **CORD in support of its application relied on Article 91(1)(g) of the Constitution which provides that every political party shall promote the objects and principles of the Constitution and the rule of law. It is not in doubt that one of the key pillars of the current Constitution and a marked departure from the retired Constitution is the principle of devolution. This was appreciated by the Supreme Court in Speaker of The Senate & Another vs. Hon. Attorney-General & Another & 3 Others Advisory Opinion Reference No. 2 of 2013 [2013] eKLR in which Mutunga, CJ expressed himself as follows:**

“The current devolution provisions in Chapter 11 of the new Constitution are a major shift from the fiscal and administrative decentralisation initiatives that preceded it. It encompasses elements of political, administrative and fiscal devolution. There is a vertical and horizontal dispersal of power that puts the exercise of State power in check... Devolution is the core promise of the new Constitution. It reverses the system of control and authority established by the colonial powers and continued by successive Presidents. The large panoply of institutions that play a role in devolution-matters, evidences the central place of devolution in the deconstruction-reconstruction of the Kenyan state...”

28. The learned President of the Supreme Court continued:

“Given Kenya’s history, which shows the central government to have previously starved decentralized units of resources, the extent to which the Constitution endeavours to guarantee a financial lifeline for the devolved units is a reflection of this experience and, more specifically, an insurance against recurrence. Indeed, in practically all its eighteen Chapters, only in Chapter Twelve (on public finance with respect to devolution) does the Constitution express itself in the most precise mathematical language. This is not in vain. It

affirms the “constitutional commitment to protect”; and it acknowledges an inherent need to assure sufficient resources for the devolved units... Article 96 of the Constitution represents the *raison d’être* of the Senate as “to protect” devolution. Therefore, when there is even a scintilla of a threat to devolution, and the Senate approaches the Court to exercise its advisory jurisdiction under Article 163 (6) of the Constitution, the Court has a duty to ward off the threat. The Court’s inclination would not be any different if some other State organ approached it. Thus, if the process of devolution is threatened, whether by Parliamentary or other institutional acts, a basis emerges for remedial action by the Courts in general, and by the Supreme Court in particular... It is relevant to consider the range of responsibilities shouldered by these nascent county governments. The Bill of Rights (Chapter 4 of the Constitution) is one of the most progressive and most modern in the world. It not only contains political and civil rights, but also expands the canvas of rights to include cultural, social, and economic rights. Significantly, some of these second-generation rights, such as food, health, environment, and education, fall under the mandate of the county governments, and will thus have to be realized at that level. This means that county governments will require substantial resources, to enable them to deliver on these rights, and fulfil their own constitutional responsibilities.....National values and principles are important anchors of interpretive frameworks of the Constitution, under Article 259 (a). *Devolution* is a fundamental principle of the Constitution. It is pivotal to the facilitation of Kenya’s social, economic and political growth, as the historical account clearly indicates. In my view, the constitutional duty imposed on the Supreme Court to promote devolution is not in doubt. The basis of *developing rich jurisprudence on devolution* could not have been more clearly reflected than in the provisions of the Constitution and the *Supreme Court Act*.”

29. It is CORD’s position that the matters raised herein are weighty constitutional matters which and taking into account the fact that the 1st Petitioner is a member of CORD and that there are several Governors who fly the “CORD flag” by virtue of their sponsorship CORD ought to be joined to these proceedings.
30. However the crux of the matter for consideration is the substratum of this petition. According to the petitioners:

“the Petition questions the legality of the application of section 131 of the *Penal Code* as a criminal sanction against the violation or disobedience of summons issued under Article 125 of the Constitution of Kenya and section 23 of the National Assembly (Powers and Privileges) Act.”

31. Apart from the prayers which are directed against the DPP, the petitioners also seek the following prayers:

1. A declaration that the 2nd Respondent cannot exercise its powers under Article 96 of the Constitution in a manner that cripples the oversight mandate of the County Assembly of Kakamega in violation of the provisions of Articles 6(2) and 189 (1) of the Constitution.
2. A declaration that when a county assembly is considering a report of the Auditor General prepared under Article 229 of the Constitution, the 2nd Respondent cannot exercise its powers under Article 96 of the Constitution to simultaneously consider the same report.
3. A declaration that the Senate is bound by the provisions of Article 189 (1) of the Constitution to perform its functions and exercise its powers in a manner that respects the functional and institutional integrity as well as the constitutional status and institutions at the County level.

32. It is therefore clear that the parameters of the petition are wide and are not limited to the prosecution of the 1st Petitioner. The Court however must proceed further and consider the criteria laid down by the Supreme Court which include:

1. Whether the Applicant has a ‘stake/interest’ directly in the case, in the sense that he or she is one who will be affected by the decision of the Court when it is made, either way.
2. Whether the applicant’s interest will not be well articulated unless he himself or she

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

33. The word “direct” is defined by *Black’s Law Dictionary*, 9th Edn. page 525 as “straight; undeviating, a direct line, straightforward, immediate.”
34. It is CORD’s position that the 1st Petitioner is a County Governor on its ticket and moreover is one of the two party leaders of ODM, a constituent party of CORD. The said petitioner is the Governor of Kakamega County, a county which CORD claims that its majority residents are members of CORD and ODM.
35. The question that arises then whether it is not possible for the interests of CORD be articulated through the petitioners or some of them. The issue was dealt with by **Majanja, J in Evans Odhiambo Kidero vs. Director of Public Prosecutions & 3 Others [2014] eKLR** where he expressed himself *inter alia* as follows:

“As to the issues of the inter play between the County Government, National Government and the Office of the DPP, the Attorney General who represents parties to these proceedings is able to articulate the same should they arise. The same issues can also be dealt with by the petitioner in the event they are the basis for him to impugn the DPP’s decision. I also note that in any event, the court is at liberty to call upon *amicus curiae* to assist the court should elucidation of specialized issues be required. Furthermore, the court may, at any stage of the proceedings order the name of any person who ought to have been joined, or whose presence before the court may be necessary in order to enable the court adjudicate upon and settle the matter, be added in accordance with *Rule 5(d) of the Rules*... I also find that both ODM and CORD have not established any interest that would fall within the purview of *Rule 7 of the Rules*. Their interest as political parties or coalitions cannot be over and above that of any political party in the affairs of any of its elected officials charged and prosecuted for an offence. I also find that if there is any abuse of process or improper motives on the part of any person, then this is an issue of evidence that can be presented by the petitioner himself.”

36. Whereas I am satisfied that this petition as opposed to the one above does not restrict itself to personal matters and that CORD has an interest in the outcome of these proceedings, it is my view that CORD has failed, in light of the symbiotic relationship between itself and the first two petitioners, in the other test set out by the Supreme Court in **Trusted Society of Human Rights Alliance vs. Mumo Matemo & 5 Others** (supra) that its interests cannot be canvassed within the petition as currently constituted. Therefore where no substantial purpose or benefit will be gained by the joinder of a person to the proceedings and where the said joinder will militate against the expeditious disposal of the said proceedings which by their nature ought to be heard and determined speedily, the Court will be reluctant to join the intended party to the proceedings.
37. Accordingly, whereas it is true that any Kenyan has a right to institute legal proceedings where the Constitution has been contravened or threatened with contravention, where proceedings have been commenced, any person who seeks to be joined to the proceedings must satisfy the Court that the issues he intends to address cannot be adequately addressed by or through the already existing parties to the proceedings.
38. Article 159(2)(b) dictates that the Court ought to be guided by *inter alia* the principle that justice shall not be delayed. In other words legal proceedings ought to be disposed of speedily and this is critical where the Court is dealing public law disputes such as constitutional petitions. Such proceedings, in my view cannot be determined speedily, if the Court readily permits person whose participation will not add any value to the proceedings or whose contribution can be made without necessarily joining them to the proceedings to participate therein. These being public law proceedings, dealing with the process rather than the merits of the case, it is the issues to be canvassed that determine whether parties ought to be joined as opposed to mere personal aggrandisement.

Order

39. In the premises I decline to join CORD to these proceedings. Consequently, the Notice of Motion dated 10th March, 2016 fails and is dismissed but with no order as to costs.
40. Orders accordingly.

Dated at Nairobi this 20th day of April, 2016

G V ODUNGA

JUDGE

Delivered in the presence of:

Mr Ashitiva for the 1st and 2nd Petitioners

Ms Obwo for the 1st Respondent

Mr Mwendwa for the 2nd Respondent

Hon. Orengo, SC for the interested party

Cc Mutisya