



**REPUBLIC OF KENYA**

**High Court at Nyeri**

**Judicial Review 43 of 2011**

**PATRICK MBOGO WAHOME.....APPLICANT**

**versus**

**MATHIRA WEST DISTRICT ALCOHOLIC**

**DRINKS REGULATORY COMMITTEE.....RESPONDENT**

**RULING**

1. By a notice of motion dated 29th February 2012 the applicant National Campaign Against Drug Abuse Authority (NACADA) (hereinafter referred to as the applicant) moved the court under section 2 and 4 of the Alcoholic Drinks Control Act and order 1 rule 10 of the Civil Procedure to be added as a party to these proceedings.
2. The application was supported by the affidavit of FLORINA MWIKALI MUTUA in which she deponed that it is in the interest of justice that the applicant be enjoined into the ongoing proceedings as an interested party to enable it avail its response to the application in so far as the implementation of the Act by the relevant implementing agency is concerned.
3. That participation of the applicant in the ongoing proceedings will enrich the courts appreciation of all the statutory matter as raised in the application.
4. The application was opposed by the exparte applicant on the basis that order 1 rule 10 is not applicable in judicial review application.
5. That the application is an abuse of the court process since the applicant can only be represented by the Hon. Attorney General

**SUBMISSIONS**

6. Mr. Chege for the applicant submitted that there is no prejudice that will be suffered by the exparte applicant and that the court should take judicial notice of the fact that there are many cases where the applicant has been enjoined as an interested party.
7. Mr. Wahome for the exparte applicant submitted that the applicant is already a party to the proceedings since he is a member of the District Committee and the secretary of the said committee.

**ISSUE**

8. There is only one issue for determination in this application and that is the conditions upon which the

court can enjoin an interested party to a suit.

9. Order 1 rule 10 (2) provides as follow

The court may at any stage in the proceeding either upon or within the application of either party and on such terms as may appear to the court to be just order that the name of any party improperly joined whether as plaintiff or defendant be struck out and that the name of any person who ought to have been joined whether as plaintiff or defendant on whose presence before the court may be necessary in the order to enable the court effectively and completely to adjudicate upon and settle all questions involved in the suit be added.

10. I have also taken note that Article 159 (d) of the Constitution states that justice shall be administered without undue regard to procedural technicalities.

11. At this stage of the proceedings I see no prejudice the exparte applicant will suffer if the applicant is enjoined as a party.

12. I therefore allow the application herein by adding the applicant as an interested party to this suit with no order as to cost.

Dated at Nyeri this 18th day of April 2013.

**J. WAKIAGA**

**JUDGE**

Mr. Njue for Miss Gathangu for the Respondent

Mr. Kimunya for Mr. Wahome Gikonyo for the applicant and Mr. Chege for the interested party.

Court: The ruling is delivered in open court in the presence of the above name.

**J. WAKIAGA**

**JUDGE**