



**IN THE REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO.1370 OF 2002**

**COUNCILLOR MUMBI NG`ARU .....1ST PLAINTIFF**  
**COUNCILLOR S. G. NJUGUNA .....2ND PLAINTIFF**  
**COUNCILLOR ALI MOHAMOUD .....3RD PLAINTIFF**  
**COUNCILLOR PATRICK MIDEGA .....4TH PLAINTIFF**  
**COUNCILLOR ROBINSON NDEGWA .....5TH PLAINTIFF**  
**COUNCILLOR CHARLES CHEGE .....6TH PLAINTIFF**  
**COUNCILLOR JAMES GIKARIA .....7TH PLAINTIFF**  
**COUNCILLOR PHILIP MIONKI .....8TH PLAINTIFF**  
**COUNCILLOR ELIZABETH M. HUSSEIN....9TH PLAINTIFF**  
**MUNICIPAL COUNCIL OF THIKA .....10TH PLAINTIFF**

**V E R S U S**

**J. W. KANGETHE, THE TOWN**

**CLERK THIKA MUNICIPAL COUNCIL.....DEFENDANT**

**R U L I N G**

This is an application under Order 1 r10(2) and 13 of the Civil Procedure Rules asking inter alia that one DAVID NGUGI NJEHIA be joined as an interested party. In his supporting affidavit sworn on 22nd August 2002 the applicant says that he is an elected Councillor representing Chania Ward of the Municipal Council of Thika and therefore he is entitled to participate in all the affairs of the Council but the suit leaves him out yet the orders sought affect him and that there is pending a High Court Civil Case No.1659 of 2000 in which plaintiffs lost an application for injunction against the applicant.

The respondents oppose the application through the affidavit of Councillor Mumbi Ngaru sworn on 27th August 2002 saying that the applicant is not a Councillor since he was disqualified to hold office because he was surcharged and has not appealed against the surcharge as he should have done under Section 238 of Cap.265 and that since the forgiveness given under Section 239 of the Act by the Minister for Local Government was stayed by the court the applicant still stands debarred and so he is no longer a Councillor. That the applicant should have taken steps to prosecute High Court Civil Case No.1659 of 2000 or the intended appeal against the ruling of Hon. Kuloba J. dated 21st June 2002.

It was argued that the applicant was not candid and did not say that he was still suffering from disqualification.

I have heard the keen arguments rendered in this case by both counsel. I go by the old principle that in a case the plaintiff is usually the dominus litis and cannot be forced to sue someone against whom he has no claim and more a person should not be added as a party or defendant merely because he would be remotely affected but where a party ought to have been joined as a defendant but is left out or when without his presence the questions in the suit cannot be completely decided then such a person ought to be a party. I see that the orders asked for in the plaint here will if obtained affect the applicant yet the respondent seeks to bar him because he has been barred from being a Councilor, but this barring of the applicant from being a Councillor has not been adjudicated and in any case the Minister for Local Government has sought to pardon him which only as yet stays the question of his status without depriving him of it completely .

Prayers in the Chamber Summons dated 14th August 2002 names the applicant under the equivalent rule in the Indian Civil Procedure Order 1 Rule 10. Mulla on Code of Civil Procedure Vol.2 quotes Judgment in SAMPAT BAI vs MADHU SINGH [1960] A.M.P. 84 saying:-

***“The test in an application like this is not whether the joinder of the person purported to be added as a defendant would be according to court against the wishes of the plaintiff or whether the joinder would involve a question not arising on the cause of action averred by the plaintiff. It is whether the relief claimed by the plaintiff will directly affect the intervenor in the enjoyment of his right. It is not enough that the plaintiff’s rights and the rights which the person desiring to be made a defendant wishes to assert should be connected with the subject matter. The intervenor must be directly and legally interested in the answers to the questions involved in the case. A person is legally interested in the answer only if he can say that it may lead to a result that will affect him legally that is by curtailing his rights. That is the test which has been applied.”***

I think that this is a good test which is persuasive and can be followed and I so do.

On these arguments I find that the applicant is a necessary or proper party and I would exercise my discretion to join him as defendant. Let it be so ordered.

**Dated this 1st day of November 2002**

**A. I. HAYANGA**

**J U D G E**

Read to G. B. M. Kariuki for respondent

Mr. Kimani for applicant

**A. I. HAYANGA**

**J U D G E**