



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC PETITION NO. E053 OF 2021

JAPHETH KITHI CHEGAPETITIONER

VERSUS

KENYA FOREST SERVICE1ST RESPONDENT

KENYA FOREST BOARD 2ND RESPONDENT

AND

KIAMBU SAWMILLERS INTERESTED PARTY

RULING

1. This ruling is in respect of the Petitioner's application dated 21st January 2022 seeking to enjoin the following county governments as interested parties to the Petition; *County Government of Baringo, County Government of Elgeyo -Marakwet, County Government of Kericho, County Government of Embu, County Government of Kiambu, County Government of Meru, County Government of Nakuru, County Government of Nyandarua, County Government of Nyeri and County Government of Uasin Gishu.*
2. The grounds advanced in support of the Application are that the proposed interested parties have a constitutional duty in the implementation of specific national government policies and environmental conservation including forestry and that the intended interested parties were not included to the cause *ab initio* but they have a recognizable stake in the case and a standing in the matter which will be affected by whatever decision that would be made in respect to the whatever outcome of this Petition.
3. Pursuant to the directions of this Court issued on **26th January 2022**, it was directed that the said application be served upon the Respondents, the Interested party and the other intended Interested parties for inter parties hearing on **1st February 2022**.
4. The Respondent and the Interested party together with the other intended Interested Parties did not file any response but during the hearing of the Application, **Learned Counsel Mr. Eredi** appeared and made oral submissions on behalf of the Respondent while **Learned Counsel Ms. Kinyua** made submissions on behalf of the Interested Party and **Learned Counsel Mr. Ogonji** made oral submissions for the Petitioner.
5. **Mr. Eredi** opposed the Application for joinder of the intended Interested Parties on the grounds that those counties have no role to play in the instant Petition and further that forest management is a function of the national government and has not been devolved. He further submitted that enjoining the said counties would lead to a delay in the determination and disposal of the Petition which was commenced under certificate of urgency.
6. **Ms. Kinyua** equally opposed the Application and submitted that it does not make any sense to enjoin the said counties and no reasons have been given for their joinder.
7. Upon considering the application and the parties' oral submissions, I note that the main issue for determination is whether the Petitioner has sufficiently demonstrated that there is need to enjoin the listed counties as interested parties to these proceedings.
8. On the issue of joinder of parties to Constitutional Petitions, **Rule 7 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 (The Mutunga Rules)** provides as follows:

“Interested party

i) *A person with leave of the court make an oral or written application to be joined as an interested party.*

ii) *A court may on its own motion join any interested party to the proceedings before it.”*

9. In the case of *Trusted Society of Human Rights Alliance v Mumo Matemu [2014] eKLR*, the Supreme Court held that:

“An interested party is one who has a stake in the proceedings, though he or she was not a 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 herself appears in the proceedings, and champions his or her cause....”

10. In *Esther Awuor Adero Ang'awa v Cabinet Secretary Responsible for Matters Relating to Basic Education & 7 others; John Diro & 6 others (Intended Interested Parties) [2021] eKLR*, the Court highlighted that enjoinder is not simply a right but subject to the discretion of the Court based on the grounds laid before the Court. The Court further relied on the Supreme Court's guiding principles in *Francis Kariuki Muruatetu & Another v Republic & 5 others Petition 15 as consolidated with 16 of 2013 [2016] eKLR* that include: -

(i) *The personal interest or stake that the party has in the 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 it 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 case, the Petitioner maintained that pursuant to **Article 187 as read with schedule 4 of the Constitution**, the proposed Interested Parties have a role to play in forest management in the Country since the forests are in the counties.

12. Under the **Forest Conservation and Management Act, 2016** the forestry functions of county governments are enumerated under **Section 21** as follows:

(1) Each County Government —

(a) shall implement national policies on forest management and conservation;

(b) shall manage all forests on public land defined under Article 62(2) of the Constitution;

(c) shall prepare an annual report, with the approval of the County Assembly, for the Service on the activities of the county government in relation to this Act and any national policies on forest management and conservation;

(d) shall promote afforestation activities in the county;

(e) shall advice and assist communities and individuals in the management of community forests or private forests;

(f) may enter into joint management agreements with communities or individuals for the management of community forests or private forests.

(2) A county assembly may enact legislation for the better carrying into effect of the provisions of this section.

(3) The Service may if requested, collaborate, partner or offer assistance to the County Government for the better carry out the provisions of this Act.

13. Further, I take note that the *Kenya State of Environment Report 2019-2021* lists the above-mentioned counties as having a significant percentage of forest covers: **Baringo – 25.12%; Elgeyo- Marakwet- 37.49%; Kericho- 23.55%; Embu- 9.3%; Kiambu-16.55%; Meru- 18.31%; Nakuru- 9.29%; Nyandarua- 18.44%; Nyeri-38.03% Uasin Gishu- 7.55%.**

14. Joinder of a party to proceedings as an interested party is at the discretion of the court and in the instant case, I find that the applicant has demonstrated the stake of the proposed interested party to these proceedings.

15. It is the Court's finding that having perused the Petition, the supporting affidavits as well as the other affidavits on record, there is a compelling need to grant the order of joinder of the proposed parties as this will lead the court in effectively adjudicating on the issues raised in the Petition.

16. I find merit in the Application dated 21st January 2022 and hereby make the following disposal orders: -

i) County governments of Baringo, Elgeyo- Marakwet, Kericho, Embu, Kiambu, Meru, Nakuru, Nyandarua, Nyeri and Uasin Gishu are hereby joined to this Petition as 2nd to 11th Interested Parties respectively.

ii) The Petitioner shall amend and serve the amended Petition to all parties which includes the added Interested Parties within 10 days from today.

iii) The Interested Parties shall file their responses in respect to the Petition within 15 days from the date of service.

iv) Mention on 28th February 2022 for further directions on how to proceed with the Petition.

v) Interim orders in force are extended until then.

vi) Each party to bear its own costs of the Application.

17. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 1ST DAY OF FEBRUARY 2022.

E. K. WABWOTO

JUDGE

In the presence of: -

Mr. Ogonji for the Petitioner.

Mr. Eredi for the Respondents.

Ms. Kinyua for Interested Party.

Court Assistant; Caroline Nafuna.