



**Hilo Artisanary Miners Cooperative Society Limited v Cabinet Secretary for Interior & National Government & 2 others; Marsabit Sakuye Community Council of Elders (Interested Party) (Constitutional Petition E004 of 2024) [2025] KEHC 1351 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1351 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MARSABIT  
CONSTITUTIONAL PETITION E004 OF 2024  
FR OLEL, J  
FEBRUARY 6, 2025**

**BETWEEN**

**HILO ARTISENARY MINERS COOPERATIVE SOCIETY LIMITED ..... PETITIONER**

**AND**

**CABINET SECRETARY FOR INTERIOR & NATIONAL GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY POLICE COMMANDER, MARSABIT COUNTY .. 2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**MARSABIT SAKUYE COMMUNITY COUNCIL OF ELDERS .... INTERESTED PARTY**

**RULING**

**A. Introduction.**

1. Before court for determination is the Notice of Motion Application dated 8<sup>th</sup> November 2024 filed pursuant to provisions of Article 40, 42, 70 and 159 of the *Constitution* of Kenya 2010, Sections 3 and 108 of the Environmental Management and Coordination Act (EMCA), 1999, Order 40 and 51 of the *Civil procedure Act*, Section 152B and 152E of the *Land Act* and Section 36 of the *community land Act*, 2016. The applicant seeks for orders that;

- a. Spent



- b. That this Honourable court be pleased to enjoin the Marsabit Sakuye Community Council of Elders as an interested party in this suit.
  - c. Spent.
  - d. That costs of this Application be provided for.
2. The application is supported by the grounds made on the face of the said Application and the supporting affidavit of Adan Mamo Elema, who deponed that they had a legitimate and vested interest in the subject matter, given that the gold mining activities were being undertaken within their community land/ancestral land and resources extracted therefrom to the detriment of the local community.
  3. They were parties, who would be directly affected by orders issued by this court, and their involvement was necessary to ensure that the communities rights to administrative action, protection of community land were done in a manner that safeguarded their interest. It was also to be noted that the Applicant herein, had also filed NAIROBI ELC JR CASE NO E007 OF 2023, concerning the same parcel of land and raised similar issues as raised in this petition. This second petition thus had been file din bad faith and initiated to frustrate the Applicants suit initially filed.
  4. The applicant therefore urged the court to find that they had a legitimate cause of action to protect and were person, who would be directly affected by any decision arrived at, thus were necessary parties to this suit and their presence would enable the court effectually and completely adjudicate upon the matters raised.
  5. This application was supported by the 1<sup>st</sup> to 3<sup>rd</sup> respondents, who filed their replying affidavit dated 22<sup>nd</sup> January 2025 sworn by one CPC Leonard Kimaiyo, the county police commander. He deponed that joinder of the interested party was essential and crucial, since they represented the area's indigenous community, who had an interest concerning use of their community land. Their presence before court was therefore crucial and their participation herewith would enable the court to effectually and completely adjudicate upon and settle all question involved in this petition.
  6. The Ex parte Applicant did oppose this application through their grounds of opposition dated 3<sup>rd</sup> December 2024, where they pointed out that the said application was unmeritorious and untenable in law as it offends provisions of Article 22, 40, 48, 50, 159 and 160 of the Constitution of Kenya 2010 and that the applicants had not demonstrated what prejudice or loss they would suffer, should the court proceed to deliver judgment of the merits of their petition.
  7. The applicant's agents and other illegal miners had taken over the "mining sites" and proceeded to commit atrocities and procedural improprieties against the petitioner, thereby frustrating their legitimate right to property as enshrined under Article 40 of the Constitution. The other suit cited NARIOBI ELC JR NO E007 OF 2023, also had no bearing in this suit nor were the issues raised in the said suit, similar to issues raised herein.
  8. The Ex parte Applicant urged the court to find that the application under consideration lacked merit and urged this court to dismiss the same.

## **B. Determination.**

9. The only issue for determination is whether the interested party had made out a proper case, for their joinder in this petition.



10. Rule 5 of “the *Constitution* of Kenya (protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013” provides as follows:-

The following procedure shall apply with respect to addition, joinder, substitution and striking out of parties—

- (a) Where the petitioner is in doubt as to the persons from whom redress should be sought, the petitioner may join two or more respondents in order that the question as to which of the respondent is liable, and to what extent, may be determined as between all parties.
- (b) A petition shall not be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every proceeding deal with the matter in dispute.
- (c) Where proceedings have been instituted in the name of the wrong person as petitioner, or where it is doubtful whether it has been instituted in the name of the right petitioner, the Court may at any stage of the proceedings, if satisfied that the proceedings have been instituted through a mistake made in good faith, and that it is necessary for the determination of the matter in dispute, order any other person to be substituted or added as petitioner upon such terms as it thinks fit.
- (d) The Court may at any stage of the proceedings, either upon or without the application of either party and on such terms as may appear just—
  - (i) order that the name of any party improperly joined, be struck out; and
  - (ii) that 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.
- (e) Where a respondent is added or substituted, the petition shall unless the court otherwise directs, be amended in such a manner as may be necessary, and amended copies of the petition shall be served on the new respondent and, if the court thinks, fit on the original respondents.

11. The law on joinder of interested parties to suits has been settled by the Supreme Court of Kenya in the case of Francis K Muruatetu and another versus Republic & 5 others (2016)eKLR, the court set out identifiable key elements for consideration in an application for joinder as an interested party. The elements are as follows; -

- a. The personal interest or stake that the party has in the matter be set out in the application. The interested must be clearly identifiable and must be proximate enough to stand apart from anything that is merely peripheral.
- b. 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.
- c. Lastly, a party must, in its application, set out the case and/or submission 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.



12. Further, the Supreme Court of Kenya in Communications Commission of Kenya and 3 others versus Royal Media Services Limited & 7 others petition no 15 of 2014 eKLR relied on its earlier decision in the Mumo Matemo case where the court in defining who an interested party is and held the follows;

“ An interested party is one who has as stake in the proceedings, though he/she was not party to the cause ab initio. He or she is one how 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.

12. The interested party has demonstrated that as “Sakuye community”, who occupy the “locus in quo”, where gold mining activities are being carried out, they have a legitimate/identifiable interest to protect, and therefore have a right to participate in these proceedings before any final decision is arrived at.

### **C. Disposition**

14. The upshot is that the application dated 8<sup>th</sup> November 2024 has merit and is allowed in terms of prayer (2).

15. It is so ordered.

**READ, SIGNED AND DELIVERED VIRTUALLY AT MARSABIT ON THIS 6<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**FRANCIS RAYOLA OLEL**

**JUDGE**

In the presence of:-

Mr. Mugambi Petitioner

Mr. Jumma 1<sup>st</sup> -3<sup>rd</sup> Respondent

Mr. Yusto Interested Party

Mr. Jarso Court Assistant

