



**Wambola v Inspector General, National Police Service & another; Zakhem International Construction Limited (Intended Interested Party) (Petition E021 of 2024) [2025] KEHC 8323 (KLR) (Constitutional and Human Rights) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8323 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS**

**PETITION E021 OF 2024**

**LN MUGAMBI, J**

**JUNE 12, 2025**

**BETWEEN**

**DISMAS WAMBOLA ..... PETITIONER**

**AND**

**INSPECTOR GENERAL, NATIONAL POLICE SERVICE ..... 1<sup>ST</sup> RESPONDENT  
DIRECTOR, DIRECTORATE OF CRIMINAL INVESTIGATIONS .... 2<sup>ND</sup>  
RESPONDENT**

**AND**

**ZAKHEM INTERNATIONAL CONSTRUCTION LIMITED .... INTENDED  
INTERESTED PARTY**

**RULING**

**Introduction**

1. By a Notice of Motion application dated 12<sup>th</sup> March 2024, the Applicant seeks orders that:
  - i. Spent.
  - ii. Pending the hearing and determination of this Application, this Court be pleased to grant leave to the Intended Interested Party herein to join into the instant proceedings as an Interested Party.
  - iii. Pending the hearing and determination of this suit, this Court be pleased to grant leave to the Intended Interested Party herein to join into the instant proceedings as an Interested Party.



- iv Pending the hearing and determination of this application inter partes, this Court be pleased to issue an order of stay in respect of enforcement of the Final Award published on 29<sup>th</sup> June 2021.
- v Pending the hearing and determination of this suit inter partes, this Court be pleased to issue an order of stay in respect of enforcement of the Final Award published on 29<sup>th</sup> June 2021.
- vi. Costs of the Application be provided for.

### **The Applicant's Case**

2. The Application is supported by the Applicant's Director, Jadd Najjar's supporting affidavit of even date and a supplementary affidavit sworn on 4<sup>th</sup> October 2024.
3. He depones that the Applicant was contracted by Kenya Pipeline Corporation (KPC) to carry out a project. The Applicant in that regard sub-contracted Oilfields Engineering Supplies Limited, in the sub-contract dated 17<sup>th</sup> November 2015. The Contract set down arbitration as the dispute resolution mechanism that would be utilized in case of a dispute.
4. He informs that subsequently, Oilfields Engineering Supplies Limited ran into irreconcilable differences with KPC. KPC was dissatisfied with the slow progress in the project. As a result, the Applicant on 20<sup>th</sup> June 2017 terminated the sub-contract. This led the sub-contractor to instigate arbitral proceedings against the Applicant in Arbitration No. 4 of 995: Oilfields Engineering & Supplies Limited v. Zakhem International Construction Limited, claiming that it had not received the payment that had been issued at the termination of the contract.
5. He asserts that the Arbitral Tribunal in total disregard of Section 328 of the *Arbitration Act*, allowed the sub-contractor to pay all the arbitral fees without notifying the Applicant herein. An attempt to reach out to the Tribunal by the Applicant is said to have been futile. In addition, the Applicant only found out later that an arbitral award had been issued.
6. In protest, the Applicant filed an application dated 29<sup>th</sup> October 2021 seeking to set aside the Arbitral award. Moreover, he avers that there were certain components of events in the proceedings that led to the publishing of an irregular Award and required the intervention of the Respondents herein. Particularly, he depones the blatant forgery of documents, stamps, bribery, corruption, collusion and fraud.
7. As a result, the Applicant vide a letter dated 12<sup>th</sup> October 2023 addressed to the Respondents, raised these complaints. On this premise, the Respondents proceeded to summon the Petitioner and the other implicated employees, to aid in their investigations.
8. In view of the foregoing, he asserts that the participation of the Applicant in these proceedings is necessary because it has a stake in these proceedings and that the decision of this Court will have a direct effect on it. Equally, he argues that the Applicant has a direct interest in this matter which will not be articulated if it is not a party to this proceeding.
9. Lastly, he avers that the issues raised in the instant Application, do not touch on issues that are the subject of litigation in High Court Commercial Arbitration Application No. E042 of 2021; Zakhem International Construction Ltd versus Oil Fields Engineering and Supplies Limited and in High Court Commercial Arbitration Application No. E036 of 2021; Oil Fields Engineering and Supplies Limited v Zakhem International Construction Limited. According to him, these two suits deal with setting aside of the Arbitral Award not the events that led to the irregular publishing of the award.



### **The Petitioner's Case**

10. In opposition to the Application, the Petitioner filed his Replying Affidavit sworn on 11<sup>th</sup> June 2024.
11. On the onset, he avers that the Application is misconceived and bad in law as seeks to introduce new issues which are subject of an active suit being Application No. E042 of 2021 dated 29<sup>th</sup> October 2021 before a Court of equal status.
12. For context, he informs that the Arbitral Award was published in favour of its former client, Oilfields Engineering and Supplies Limited on 30<sup>th</sup> June 2021 which proceeded to publish recognition of the Award vide *Application No.E036 of 2021* dated 13<sup>th</sup> October, 2024. Both Applications were consolidated and are pending determination.
13. Considering this, the Petitioner stresses that this Court should refrain from considering those issues particularly in light of Prayers 4 and 5 in the instant Application as the same are already being canvassed before the other Court.
14. The Petitioner on the issue of joinder submits that the Petition solely focusses on the decision of the Respondents to seek information relating to their former client from his employees. He contends that the questions of corruption and irregularity of the award are already being determined by the other Court.

### **Respondents' Case**

15. These parties' responses and submissions in view of the instant application are not in the Court file or Court Online Portal (CTS).

### **Applicant's Submissions**

16. In support of its application, the Applicant through Ahmednasir Abdullahi Advocates LLP, filed submissions dated 4<sup>th</sup> October 2024. Counsel, identified the issues as: whether the Applicant should be joined to these proceedings as an Interested Party and whether the Arbitral Award published on 29<sup>th</sup> October 2021 ought to be set aside.
17. Counsel on the first issue submitted that the participation of the Applicant is necessary as it has a direct interest in this matter. This is because the Applicant has firsthand information concerning the foundation of this suit in relation to the impugned Arbitral Award and thus can aid the Court obtain the clear facts. Moreover, the decision of this Court will directly affect the interests of the Applicant. As such, thus its right to be heard will be affected if joinder is not allowed.
18. Reliance was placed in *Trusted Society of Human Rights Alliance v Mumo Matemu*[2014]eKLR where the Supreme Court held that:

“ An interested party is one who has a stake/interest 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...”
19. Further was placed in *Meme v Republic* [2004]1 EA 124 and *Skov Estate Limited & 5 others v Agricultural Development Corporation & another* [2015] eKLR.



20. On the second issue, counsel reiterating the Applicant’s averments concerning the irregular Arbitral Award and Tribunal proceedings, submitted that this Court should issue an order of stay in respect of the enforcement of the final award. This is since certain aspects leading to publishing of the irregular award require the Respondents intervention.
21. Reliance was placed in *Jambo Biscuits (K) Limited & 3 others v Jambo East Africa Limited & 3 others* [2021] eKLR where the Court observed as follows:

“On this, I agree with the Respondents that the arbitrator had no powers to order the Respondents to pay the arbitration costs because this issue had been agreed on by the parties in their agreement. To this end, the Final agreement dated 27<sup>th</sup> February, 2020 which specifically dealt with costs cannot be recognized and enforced in this court because the issue of costs was not contemplated for reference to arbitration.”

### **Petitioner’s Submissions**

22. In rebuttal, the Petitioner filed submissions dated 10<sup>th</sup> February 2025 through their Counsel Ongoya and Wambola Advocates. Counsel identified the key issue as whether the Applicant has an identifiable stake or legal interest or duty in the proceedings.
23. Counsel submitted that the Supreme Court in *Francis Kariuki Muruatetu & another v Republic & 5 others* Petition No. 15 as consolidated with No 16 of 2013 [2016] eKLR issued the guiding principles as follows:

“Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:

- 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 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.”

24. Similar reliance was placed in *Trusted Society of Human Rights Alliance*(supra).
25. Counsel submitted that the Applicant does not have an identifiable stake or legal interest in these proceedings for reasons that it submits on issues that are before another competent Court hence covered by sub-judice. Accordingly, its application is said to be misconceived, bad in law and so ought to be dismissed.
26. Counsel added that if this Court adjudicates on the issues of irregularity of publication of the Arbitral Award, there is a risk of arriving at conflicting findings with those of the other Court which is properly seized of the facts relating to the said award.
27. Likewise, Counsel submitted that the Petitioner herein seeks reliefs to protect himself and his servants from harassment by the Respondents with a view of compelling him to divulge privileged information,



not the impugned Arbitral award as advanced by the Applicant. Similarly, Counsel submitted that the Applicant had failed to demonstrate the prejudice it stands to suffer if its application is disallowed. As such, Counsel, concluded that application ought to be dismissed as lacks merit.

### **Analysis and Determination**

28. Following a perusal of the pleadings and submissions of the parties, it is my view that the single issue raised for determination is:

#### **Whether or not this Court should allow the Applicant's application for joinder.**

29. *The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (Mutunga Rules). Rule 2 defines an 'interested party' as follows:

'a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation'.

30. The addition of an interested party is provided for under Rule 5 (d) (ii) of the Mutunga Rules. The Rule states as follows:

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—

(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.

31. The Supreme Court in *Communications Commission of Kenya & 3 others v Royal Media Services Limited & 7 others; Nature Foundation Limited (Proposed Interested Party)* [2014] KESC 52 (KLR) discussed joinder of an interested party as follows:

“(22) In determining whether the applicant should be admitted into these proceedings as an Interested Party we are guided by this Court's Ruling in the *Mumo Matemo* case where the Court (at paragraphs 14 and 18) held:

“[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...”

(23) Similarly, in the case of *Meme v Republic*, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

“(i) Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;

(ii) joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;

(iii) joinder to prevent a likely course of proliferated litigation.”

(24) We ask ourselves the following questions: (a) what is the intended interested party's stake and relevance in the proceedings? and (b) will the intended interested party suffer any prejudice if denied joinder?”



18. 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...”
32. The principles in an application for joinder of an interested party were set by the Supreme Court in *Muruatetu & another (supra)* where it was underscored as follows:
- 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.
33. Furthermore, the Superior Court went on to note as follows:
- “(41) Having carefully considered all arguments, we are of the opinion that any party seeking to join proceedings in any capacity, must come to terms with the fact that the overriding interest or stake in any matter is that of the primary/principal parties’ before the Court. The determination of any matter will always have a direct effect on the primary/principal parties. Third parties admitted as interested parties may only be remotely or indirectly affected, but the primary impact is on the parties that first moved the Court. This is true, more so, in proceedings that were not commenced as Public Interest Litigation (PIL), like the proceedings now before us.”
34. Principally, as confirmed by the foregoing authorities, joinder of a party as an interested party is not a matter of right, but a matter of Court’s discretion exercised judiciously by examining the relevant facts of each case on its merits.
35. In the instant case, the Petitioner’s claims that the Respondents’ are seeking information from the Petitioner and his employees in connection with a dispute that involves Oilfields Supplies and Engineering Ltd (its former client) and Zhakem International Construction Ltd (the intended Interested Party) whereby an Arbitral award issued following a dispute that was determined through arbitration. There were allegations/ complaint of bribery, forgery and perjury against the arbitral proceedings.
36. The Applicant in its Application asserted that it is necessary that it be joined in this suit because it is a primary party in the impugned arbitral proceedings hence the outcome and determination of this matter will have a direct bearing on its interests.
37. In my humble view, the proposed interested party has demonstrated its interest in relation to the impugned arbitral proceedings that the Respondents have commenced investigations on. It is apparent that Applicant has a direct, identifiable and proximate interest in the outcome of this Petition.



38. Being a key party in the arbitral award that is subject to an ongoing investigation, it will be prejudicial to conclude this Petition without giving the applicant a chance to be heard on the issues being raised in the Petition as it was an integral party in the impugned proceedings. I am persuaded that joinder of the Applicant will enable the Court to conclusively and fully determine the contentious issue in this matter whilst averting a comparable contention in future litigation.
39. On this premise, it is my considered opinion that the Applicant has met the established principles for joinder of an interested party. I am further of the view that the Petitioner will not suffer any prejudice if the Applicant is joined in this suit. It is worthy to note that this determination is exclusively based on the discernible Applicant's identifiable stake and not the merit of the case.
40. On the other hand, it is my considered view that the Intended Interested Party attempt to introduce a new issue that is not a concern in this Petition must fail. I am guided by the Supreme Court's holding in *Muruatetu* (*Supra*) where it held as follows:
- “Therefore, in every case, whether some parties are enjoined as interested parties or not, the issues to be determined by the Court will always remain the issues as presented by the principal parties, or as framed by the Court from the pleadings and submissions of the principal parties. An interested party may not frame its own fresh issues, or introduce new issues for determination by the Court. One of the principles for admission of an interested party is that such a party must demonstrate that he/she has a stake in the matter before the Court. That stake cannot take the form of an altogether a new issue to be introduced before the Court.”
41. This Court therefore, cannot be invited to grant a stay in respect of the enforcement of the final award published on 29<sup>th</sup> June, 2021 which is the subject of separate judicial process at the High Court.
42. This Petition hinges on the constitutionality of the 2<sup>nd</sup> Respondent's action; that is, the allegation that the purported investigation is vexatious and only meant to intimidate and harass the Petitioner and his employees as there is reasonable factual basis to warrant the limiting of the Petitioner's client right to privilege of information that is protected by law, and further, that the intention is to abuse the criminal process to influence the outcome of commercial dispute that is already pending before Court. These are the key issues in this Petition hence the Court cannot be invited to get into merits of the arbitral award that is pending elsewhere.
43. The Application is thus allowed only to the extent permitting the interested party to join the proceedings.
44. Costs shall be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 12TH DAY OF JUNE, 2025.**

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**L N MUGAMBI**

**JUDGE**

