



Ngigi v Republic; Ngigi (Intended Interested Party) (Miscellaneous Criminal Application E018 of 2025) [2025] KEHC 12600 (KLR) (10 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12600 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CRIMINAL APPLICATION E018 OF 2025
FN MUCHEMI, J
SEPTEMBER 10, 2025**

BETWEEN

NANCY MURIGI NGIGI INTENDED APPELLANT

AND

REPUBLIC RESPONDENT

AND

MOSES KAMORI NGIGI INTENDED INTERESTED PARTY

RULING

Brief Facts

1. The application for determination dated 27th March 2025 seeks for orders of enjoining the applicant as an interested party and that he be allowed to respond to the application dated 5th March 2025 unconditionally.
2. The applicant states that he was the complainant in Thika CM Criminal Case No. 8255 of 2018 which is the subject matter in the application dated 5th March 2025. The applicant further states that the intended appellant filed the application dated 5th March 2025 after realizing that he filed an application in the Court of Appeal Nairobi Civil Appeal No. 20 of 2020 seeking to introduce the proceedings and judgment of the lower court in Criminal Case No. 8255 of 2018 as additional evidence. Thus, the applicant prays that the court enjoin him in the matter so that he can participate in the proceedings and file his response to the application dated 5th March 2025. The applicant further states that he will be affected by the outcome of the said application and thus he should be enjoined in the same to enable the court adjudicate and settle all the issues raised in the case. Furthermore, no prejudice shall be occasioned if the applicant is enjoined in the case.
3. The application is not opposed by the respondent.



4. Parties put in written submissions.

The interested Party/Applicant's Submissions

5. The applicant submits that he has demonstrated his direct connection to the subject matter as he was the complainant in Thika Chief Magistrate Criminal Case No. 8255 of 2018. The applicant further submits that his right to be heard and to participate in proceedings that directly impact his interests is grounded in Article 50 of the Constitution. He further submits that he does not seek to usurp the role of the prosecution but rather safeguard his personal interest as the original complainant who initiated the criminal complaint and is directly affected by efforts to undermine its outcome.
6. The applicant relies on Order 1 Rule 10(2) of the Civil Procedure Rules and the case of Mohan Galot v Walter Omosa Nyakundi & 21 Others; Pravin Galot & 2 Others (proposed Interested party) [2020] eKLR and submits that the decision by the court on the application dated 5th February 2025 affects his rights and thus his inclusion will safeguard his interests and also assist the court to have full context and benefit from all material facts necessary to render a just and informed decision. The applicant further submits that his participation will not derail or complicate the proceedings but will serve to clarify issues, promote fairness and help the court reach a just outcome.

The Intended Appellant/Respondent's Submissions

7. The respondent refers to Order 1 Rule 10(2) of the Civil Procedure Rules and the case of Trusted Society of Human Rights v Mumo Matemo & 5 Others [2014] eKLR and submits that whilst there is a personal interest by the applicant in the matter, the ODPP is able to represent those interests. The respondent further submits that while the addition of an interested party is at the discretion of the court, the applicant has not laid down sufficient grounds to support the same. Furthermore, the applicant has not demonstrated what rights if any would be affected if the orders sought are not granted.

The Law

8. The instant application is anchored on Order 1 Rule 10(2) of the Civil Procedure Rules which provides:-

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 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 joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.

9. The applicant seeks to be enjoined as an interested party in the intended appeal on the basis that he was the complainant in Thika Chief Magistrate Criminal Case No. 8255 of 2018 *Republic v Nancy Munjiri Ngigi*.
10. It is trite law that the proper complainant in criminal proceedings is the Republic. This principle was enunciated in Roy Richard Elirema & Another v Republic [2003] KECA 165(KLR) the Court of Appeal reasoned that the complainant in this context has been interpreted to mean the republic in whose name all criminal prosecutions are brought, and not the victim of the crime who is merely a chief witness on behalf of the Republic.
11. Further, in Republic v Ethics & Anti-Corruption Commission, Director of Public Prosecution & Chief Magistrates' Anti-Corruption Court Malindi Law Court ex parte Stephen Sanga Barawa [2017] KEHC



7049 (KLR) the court reasoned that the DPP is the representative and mouthpiece of the complainant. The court explained as follows:-

Article 157 of the *Constitution* gives powers to the DPP to institute and undertake criminal proceedings against any person before any court other than a court martial in respect of any offence alleged to have been committed. The DPP also has powers to take over and continue criminal proceedings commenced in any court other than a court martial that have been instituted or undertaken by another person or authority with the authority of the person or authority. The gist of the provisions of the *Constitution* and the statuses in relation to the matter before this court is that the DPP is the complainant and not the applicant. Precedents too have given expressions to this school of thought.

The prosecutor represents the republic who is the complainant in whose name all criminal proceedings are brought. A person who reports a crime may seek to withdraw his complaint but the DPP, in whose name the criminal proceedings began are to be sustained, must be a part of the withdrawal process.

12. It is imperative to note that the complainant gave his evidence in the trial court as the key witness. This is a court of record and it will consider the entire proceedings of the trial court. Even if the applicant was to be enjoined in this appeal as a party, his presence will not add any value to the appeal because he has no place to play. The appeal will most likely be heard by way of submissions from both the appellant and the respondent who is the Republic.
13. The foregoing decision clearly explains that the ODPP is the mouthpiece of the applicant and the same shall continue in the event the matter goes to appeal: in that regard, the applicant need not be enjoined as an interested party as his interests will be advocated for by the ODPP.
14. I find no merit in this application dated 27/03/2025 and I dismiss it accordingly with no orders as to costs.
15. It is hereby so ordered.

RULING DELIVERED VIRTUALLY DATED AND SIGNED AT THIKA THIS 10TH DAY OF SEPTEMBER 2025.

F. MUCHEMI

JUDGE

