



**Initiative & 2 others v Cabinet Secretary Ministry of Interior and Co-ordination
of National Government & 3 others; Katiba Institute (Interested Party);
Kenya National Commission on Human Rights (Proposed Interested Party)
(Petition E001 of 2023) [2024] KEHC 5284 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5284 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
PETITION E001 OF 2023**

JN ONYIEGO, J

MAY 17, 2024

**IN THE MATTER OF: ARTICLES (1) & (3) (B),2(1), (2), (5)
& (6), 10 ,12,15(1) (4) & (5),18,19,20,21,22(1) & 2(C),23 (1) &
(3),27,28,45,47,56,73(1) (A) (I),129 & 153 OF THE CONSTITUTION**

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION
OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND
PROCEDURE RULES, 2013 AND IN THE MATTER OF SECTION 11
OF THE KENYA CITIZENSHIP AND IMMIGRATION (NO. 12 OF 2011)**

BETWEEN

**HAKI NA SHERIA INITIATIVE 1ST PETITIONER
FATUMA YUSSUF OMAR 2ND PETITIONER
FOZIA MOHAMED ABDILLE 3RD PETITIONER**

AND

**CABINET SECRETARY MINISTRY OF INTERIOR AND CO-ORDINATION
OF NATIONAL GOVERNMENT 1ST RESPONDENT
DIRECTOR GENERAL OF CITIZENSHIP AND IMMIGRATION
SERVICES 2ND RESPONDENT
PRINCIPAL REGISTRAR OF PERSONS 3RD RESPONDENT
THE HONOURABLE ATTORNEY GENERAL 4TH RESPONDENT**

AND

KATIBA INSTITUTE INTERESTED PARTY



AND

**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS PROPOSED
INTERESTED PARTY**

RULING

1. The application before this court is a notice of motion dated 07.02.2024 seeking orders that:
 - i. Spent.
 - ii. The Kenya National Commission on Human Rights, an independent constitutional commission be admitted to the instant proceedings as an interested party.
 - iii. That the applicant upon admission as per prayer (ii) above, be allowed or be at liberty to file any such pleadings that it may desire to propagate its case herein in order to enable the court reach a fair and just determination of the matters in controversy.
 - iv. Costs be provided for.
2. The application is premised on the grounds particularized on the face of it and further amplified by the annexed affidavit sworn on 07.02.2024 by Dr. Benard Mogesa. The deponent urged that he was the secretary/C.E.O. of the applicant and that the applicant is established under article 59 (1) of *the constitution* with the core mandate of furthering the promotion and protection of human rights in Kenya.
3. It was stated that the applicant has previously instituted and/or participated in proceedings that primarily address the rights of refugees and as a result gained enormous wealth of expertise and experience in refugee matters which are similar to the issues currently before this court.
4. It was further deposed that the applicant herein, is constitutionally mandated to protect and promote the rights of all persons including refugees. That given its vast experience on refugee matters as espoused above, it is concerned that it will suffer irreparable harm if not enjoined and accorded an opportunity to represent its stake in the instant matter.
5. It was averred that the applicant entertains complaints touching on human rights violations including complaints regarding refugees and therefore properly placed to participate in the instant petition for the benefit of the court and the parties concerned. The applicant stated that the application herein ought to be allowed because it has an identifiable stake and legal interest in the dispute and that no party would be prejudiced if the application is allowed.
6. The respondent in opposing the application filed grounds of opposition dated 14.02.2024 wherein it was stated that the application is meant to re-open pleadings and introduce new evidence in support of the petitioners' case when the pleadings had closed. That the applicant's presence in the suit is of no judicial or jurisprudential value and further, it did not demonstrate any exceptional circumstances that would render non-joinder prejudicial to the cause of justice. It was contended that the applicant did not show any identifiable interest in the matter and further, it did not demonstrate how its purported interest will not be properly and accurately articulated unless it is admitted into the proceedings.
7. The respondent urged that the application is an afterthought the same having been made way after substantive directions had been issued on the hearing of the petition including delivery of rulings on



interlocutory applications made in the course of the proceedings. This court was therefore urged to dismiss the application for the same was in want of merit.

8. Parties took directions that the application be canvassed by way of written submissions.
9. The applicant via its submissions dated 22.04.2024 submitted on the issue whether the proposed interested party had met the threshold for joinder. It was submitted that principles upon which joinder of a party can be allowed was settled by the Supreme Court in the case of *Trusted Society of Human Rights Alliance vs Mumo Matemu & 5 others*, Supreme Court Petition No. 12 of 2013 where it was held that an interested party is one who has a stake in proceedings, though he or she was not a party to the cause ab initio....
10. That from the foregoing, it is clear that the applicant has a legal duty or legal interest to take part in the instant proceedings given its constitutional standing and obligations. Further, that the applicant is the custodian of public interest as far as protection and promotion of human rights is concerned and therefore, the outcome of the suit will directly touch on its mandate which it seeks to represent. That none of the parties in the suit have a legal and constitutional mandate similar to the one bestowed on the applicant.
11. This court was thus urged to allow the application noting that the applicant is a public protector on matters touching on human rights which lends credence to the need for its participation in the suit.
12. The respondent via submissions dated 13.03.2024 also identified one issue for determination to wit; whether the applicant should be admitted in this petition as an interested party. That it is important to remember that joining parties primarily serves to prevent several law suits and allow the court to address the topic presented before it. That the requirement demands that a party demonstrates its interest in the case before it can be joined as a party.
13. That the applicant did not demonstrate its judicial value to the case herein in as much as it was involved in Petition No. E046 of 2023 at Nairobi. Reliance to that end was placed on the case of *Kenya Medical Laboratory Technicians and Technologists Board & 6 Others vs attorney General & 4 Others* [2017] eKLR where it was held that the purpose of joinder is to avoid multiplicity of suits. That the application herein was meant to delay justice since it was filed late in the day and therefore, ought to be dismissed.
14. I have carefully considered the application herein, the response thereof and rival submissions by counsel. The only issue which crystalizes for determination is whether the applicant has met the threshold for joinder as an interested party. The question then begging an answer is; who is an interested party in a suit?
15. Rule 2 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 defines an interested party as:

“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 be directly involved in the litigation”.
16. Order 7 Rule 9 of the Civil Procedure Rule states that;

“The court may even on its own motion add a party to the suit if such party is necessary for the determination of the real matter in dispute or whose presence is necessary in order to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit”.



17. Order 1 Rule (10) (2) of the Civil Procedure Rules empowers the court, at any stage of the proceedings, upon application by either party or suo moto, to order the name of a person who ought to have been joined or whose presence before the court is necessary to be enjoined for the court to effectively and completely adjudicate upon and settle all questions involved in the suit, to be added as a party.
18. The threshold for joinder was set out in the case of Francis Kariuki Muruatetu & Another v Republic & 5 others in Petition 15 as consolidated with 16 of 2013 (2016) eKLR where the court held that in an application for joinder, the applicant must move the court by way of a formal application. That 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 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.
19. Therefore, joinder of parties is permitted by law and can be done at any stage of the proceedings; However, joinder of parties may be refused where it will lead to practical problems of handling the existing cause of action together with the one of the parties being joined as necessary or will occasion unnecessary delay or costs on the parties in the suit.
20. On the other hand, Joinder of parties will be declined where the cause of action being proposed or the relief sought is incompatible to, or totally different from existing cause of action or relief. The determining factor in joinder of parties is that a common question of fact or law would arise between the existing and the intended parties. This is the test that was applied by F. Gikonyo J. in the case of Lucy Nungari Ngigi & 128 others vs National Bank of Kenya Limited and another in which, the court was of the view that, to determine the real issues in dispute among all the parties, the intended respondents must be enjoined.
21. In my view, when deciding an application for joinder, the court must exercise a liberal approach so as not to shut out a genuine litigant who is effectively interested or is bound by the outcome of the suit. However, the court must guard against a frivolous or vexatious litigant whose sole motivation is to complicate and confuse issues that are before court for determination.
22. In the case of *Judicial Service Commission vs The Speaker of the National Assembly & Another Petition No. 518 of 2013* the court had this to say:

“*The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2012, defines an interested party as “a person or entity that has an identifiable stake or legal interest in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation” He is a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly non-



partisan as he is likely to urge the Court to make a determination favourable to his stake in the proceedings...

23. In determining whether the applicant has a legal interest in the subject matter or an action sufficient to entitle it to be joined as an interested party, the true test lies not so much in an analysis of what the constituents of the applicant's rights are, but rather in what would be the result on the subject matter of the action if those rights could be established.
24. In the instant case, the applicant urged that the matters presented before the court are of public interest in nature with the likely outcome to have serious legal and administrative ramifications. That the applicant is a public protector on matters of human rights which lends credence to the need for its participation in the suit. In the foregoing, I am convinced that the applicant has demonstrated a legal and identifiable interest in the subject matter of this suit and further, a right to participate in the proceedings herein.
25. The proposed interested party has argued that it is a creature of Article 59(4) of *the constitution* with the core mandate of furthering the promotion and protection of human rights in Kenya. That it is operationalized under the Kenya National Commission of Human Rights Act. The commission is mandated under article 59(2) of *the constitution* to, inter alia, promote and protect human rights for all in the republic of Kenya., develop a culture of human rights in the republic and to act as the principal organ of the state in ensuring compliance with obligations under treaties and conventions relating to human rights among others.
26. From the above analysis, I am satisfied that the applicant has demonstrated a "legitimate interest" in these proceedings. It is the applicant's solemn duty to stand and protect any citizen or organ of state when issues touching on breach or threat to violation of any constitutional provision whether breach of fundamental or bill of rights.
27. There cannot be any better institution to protect enforcement of human rights' interests than the applicant herein. The issues in controversy in this petition are bordering on enforcement of human rights interest which fall under the purview of the applicant's mandate. On the other hand, the respondents have not shown in any manner how they will be prejudiced if the orders sought are granted. The presence and participation of the applicant/proposed interested party in these proceedings is necessary to avoid multiplicity of suits. I find that this is a proper case for the court to exercise its discretion in favour of the applicant/interested party.
28. In the circumstances aforesaid, I allow the application and orders that;
 - i. The applicant, Kenya National Commission on Human Rights, is hereby enjoined in these proceedings as an interested party.
 - ii. The interested party be and is hereby granted Fourteen (14) days from the date of this order to file its pleadings (if any) in response to the petition.
 - iii. The respondent be and is hereby granted Fourteen (14) days from the date of service by the interested party to file its response (if any).
 - iv. Costs of the application shall abide the outcome of the petition.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 17TH DAY OF MAY 2024.

J. N. ONYIEGO

JUDGE

