



Rashid & 2 others v Principal Secretary State Department Asal & Regional Development & 3 others; Mohamed (Proposed Interested Party) (Judicial Review Application E001 of 2024) [2024] KEHC 7256 (KLR) (14 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7256 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
JUDICIAL REVIEW APPLICATION E001 OF 2024**

JN ONYIEGO, J

JUNE 14, 2024

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR
JUDICIAL REVIEW ORDERS OF CERTIORARI AND MANDAMUS**

AND

**IN THE MATTER OF SECTION 8 & 9 OF THE LAW
REFORM ACT (CAP 26 OF THE LAWS OF KENYA)**

BETWEEN

**MOHAMED HUSSEIN RASHID 1ST APPLICANT
ABDI MAQMAN ABDULLAHI 2ND APPLICANT
ALI MOHAMED OSMAN 3RD APPLICANT**

AND

**PRINCIPAL SECRETARY STATE DEPARTMENT ASAL & REGIONAL
DEVELOPMENT 1ST RESPONDENT
DIRECTOR FOR SOCIAL DEVELOPMENT 2ND RESPONDENT
COUNTY PROJECT COORDINATOR, KENYA DEVELOPMENT RESPONSE
TO DISPLACEMENT IMPACTS PROJECT (KDRDIP) GARISSA
COUNTY 3RD RESPONDENT
NATIONAL COORDINATOR (KDRDIP) GARISSA 4TH RESPONDENT**

AND

ABDIKADIR HUSEIN MOHAMED PROPOSED INTERESTED PARTY



RULING

1. The application before this court is a notice of motion dated 29.02.2024 filed by the proposed interested party (hereafter the applicant) seeking orders that:
 - i. Spent.
 - ii. This Honorable Court be and is hereby pleased to grant leave to Abdikadir Hussein Mohamed to be joined in this case as an interested party.
 - iii. Costs be provided for.
2. The application is premised on the grounds on the face of it and the annexed affidavit sworn by Abdikadir Hussein Mohamed on 24th February 2024. In a nutshell, it is the applicants' case that he is the duly elected member of parliament for Lagdera Constituency within Garissa County. That his role is to oversight, legislate and represent his constituents in the national assembly and therefore, the suit herein relates and touches on his constitutional duties.
3. It was averred that the Kenya Development Response to Development Impacts Project (hereinafter KDRDIP) is central to his constituents and therefore his involvement in the project is critical in ensuring that the residents of Lagdera constituency are represented in all decisions made. That for that reason, the proposed interested party should be enjoined in the proceedings herein.
4. Despite being served, the respondents herein did not oppose the application. The court gave directions that the application be canvassed by way of written submissions wherein the applicant submitted that in determining the question of joinder, the court is invited to interrogate two questions to wit: what is the intended interested party's state and relevance in the proceedings and; whether the intended interested party will suffer any prejudice if denied the orders sought.
5. It was submitted that article 95 of the constitution stipulates the role of the national assembly which essentially extends to the role of the members of parliament. That the applicant is well within his rights to seek to be joined as an interested party so as to provide oversight on the matters affecting his constituents.
6. That the applicant as an elected member of parliament of the suit constituency, has an inherent duty to defend and be involved in all affairs pertaining to the said constituency. To buttress this position, reliance was placed in the case of Kenya Medical Laboratory Technicians and Technologists & 6 others vs attorney General & 4 Others [2017] eKLR where it was held that the key determining factor in deciding whether to allow a joinder application is whether the intended interested party has an identifiable stake or a legal interest or duty in the proceedings.
7. That the suit herein raises issues of public interest and as the applicant is vested with the duty of providing oversight on the utilization of national revenue and expenditure as well as the appropriation of funds within the constituency, he stood to suffer prejudice if denied joinder.
8. The court has considered the application herein and notes that the main issue for determination is whether the intended interested party has met the threshold for joinder.
9. Clearly, the application is not opposed but the same does not mean that the court should automatically grant the orders sought. The application must be determined on its merits. [See Gideon Sitelu Konchellah vs Julius Lekakeny Ole Sunkuli & 2 others [2018] eKLR].



10. 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.
11. Order 7 Rule 9 of the *Civil Procedure Rules* 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.
12. 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.
13. The threshold for joinder was set out in the case of *Trusted Society of Human Rights Alliance vs Mumo Matemu* (2014) eKLR, where 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 champion his or her cause.”
14. Therefore, joinder of parties is permitted by law and can be done at any stage of the proceedings; However, an application for joinder may be refused where such joinder 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.
15. In determining whether the applicant has a legal interest in the subject matter of an action sufficient to entitle him to be joined as an interested party, the true test lies not so much in the analysis of what the constituents of the applicant’s rights are, but rather what would be the result on the subject matter if those rights could be established.
16. The proposed interested party has argued that he is the duly elected member of parliament for Lagdera Constituency within Garissa County. That his role is to oversight, legislate and represent his constituents in the national assembly and given the nature of the suit herein, the same relates and touches his constitutional duties to the constituency of Lagdera. That the project herein is central to the applicant’s constituents and therefore his involvement in the project is critical in ensuring that views of the constituents of Lagdera constituency are represented.
17. From the above analysis, I am satisfied that the applicant has demonstrated a “legitimate interest” in these proceedings. On the other hand, the respondents did not oppose the said application to show how they will be prejudiced by the orders sought. 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.
18. In the circumstances therefore, I do hold that the application is merited hence allowed with orders that;



- i. The applicant, member of parliament of Lagdera, 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 his response (if any) to the petition.
- iii. Costs of the application shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 14TH DAY OF JUNE 2024

J. N. ONYIEGO

JUDGE

