



**Law Society of Kenya v Attorney General & 4 others (Petition  
E307 of 2024) [2024] KEHC 8256 (KLR) (Civ) (5 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8256 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**PETITION E307 OF 2024**

**LN MUGAMBI, J**

**JULY 5, 2024**

**BETWEEN**

**LAW SOCIETY OF KENYA ..... PETITIONER**

**AND**

**ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT**

**CABINET SECRETARY FOR DEFENCE ..... 2<sup>ND</sup> RESPONDENT**

**KENYA DEFENCE COUNCIL ..... 3<sup>RD</sup> RESPONDENT**

**CHIEF OF THE KENYA DEFENCE FORCES ..... 4<sup>TH</sup> RESPONDENT**

**INSPECTOR-GENERAL OF THE NATIONAL POLICE SERVICE .... 5<sup>TH</sup>  
RESPONDENT**

**RULING**

1. When this matter came up for hearing on 27<sup>th</sup> June, 2024, several proposed interested parties applied to join. They made their application orally pursuant to Rule 7 of *Kenya (Protection of Rights and Fundamental Freedoms)*.
2. The proposed interested parties were/are: -
  - i. Kenya National Commission on Human Rights
  - ii. Kituo Cha Sheria
  - iii. Members of Parliament who include: -
    - a. Hon. John Mbandi



- b. Dr. James Nyakal
  - c. Hon. Wilberforce Ojandiso Oundo.
3. The petitioner did not oppose the proposed joinder but the Respondents voiced their opposition to the inclusion of the said parties in the petition.
  4. Mr. Abdikadir Osman for Kenya National Commission on Human Rights submitted that the Commission is a national *Human Rights Commission on Human Rights* Cap. 7 with the broad mandate of protection of human rights.
  5. It was submitted that the Kenya National Commission on Human Rights (KNHCR) is mandated to advise the Government on human Rights and this includes security agencies. Other duties are promotion of constitutionalism and securing the adherence by all state organs to the democratic values.
  6. The Petitioner argued that the deployment of Military to assist the police may have ramifications on the observance of Human Rights particularly on the right to demonstrate.
  7. KNHCR submitted that considering its mandate extends to advising the government on observance of human rights, the KNHCR as the national commission has demonstrated sufficient legal interest to participate in the petition.
  8. Dr. Khaminwa appearing for Kituo Cha Sheria adopted the submissions of KNHCR submitting that Kituo Cha Sheria stands for supremacy of the *Constitution*.
  9. Mr. Kevin Wakwanya who held brief for Otiende Amollo for Hon. John Mbandi, Hon. Dr. James Nyakal and Hon. Dr. Wilberforce Ojandiso Oundo, Members of Parliament for Suba town, Seme and Funyula Constituencies respectively explained that they were seeking join the proceedings in order to address the court on the manner Article 241(3) is operationalized through Parliamentary Standing orders in relation to Section 31, 32, 22 and 34 of *Kenya Defence Force Act*, Cap 199 a procedure that was not followed at the time when the approval was supposedly sought.
  10. The Petitioner did not oppose the three applications.
  11. Mr. Emmanuel Bitu for the 1<sup>st</sup> respondent submitted that the proposed interested parties had not satisfied the criteria set out by the Supreme Court in respect of proposed interested party in the case of *Francis Muruatetu* in which it was held that formal application should be made and that the party seeking to be joined as an interested party must demonstrate the prejudice it would suffer if the application for joinder is not allowed. He argued that this Court is bound in view of Article 163 (4) by the decisions of the Supreme Court.
  12. Mr. Mugiira for 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondent adopted the submissions by the 1<sup>st</sup> Respondent and urged this court to dismiss the three applications.
  13. In a brief rejoinder, Mr. Abdikadir reiterated rule 7 (1) of {the *Constitution of Kenya (Protection of Fundamental Freedoms) Practice and Procedure Rules*, 2013 that allows an application for joinder to be made orally and the rationale is that it aids the court in dealing with such applications faster. He also reaffirmed that KNHCR had a specific national mandate to promote human rights which was not given to any other party in the Petition.
  14. In brief reply, Mr. Wakwanya submitted that the members of parliament had close knowledge on what transpired Parliamentary on the issue of deployment and would be able to demonstrate to the Court that it was not in line with the standing orders.



## Analysis and Determination

15. The only issue that arises for determination in this application is whether the proposed interested parties have satisfied the legal threshold for the proposed joinder as interested parties in this petition.
16. The starting point in answering this question is to consider the meaning of an interested party.
17. Under the *Constitution of Kenya (Protection of Rights of Fundamental Freedoms) Practice and Procedure Rules*, 2013 – Rule 2 – Interested Party means “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 in the proceedings or may not be directly involved in the litigation.

18. The issue of joinder as an interested party was judicially considered by the Supreme Court in the case of *Francis Kariuki Muruatetu & Another Vs Republic & 5 Others* (2016) eKLR, where the Court held as follows:

“From the foregoing and the case law, the following elements emerge where a party seeks to be enjoined in proceedings as an interested party:

One must move the Court by way of a formal application. Enjoinment is not as a 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 the submissions are not merely a replication of what the other parties will be making before the Court”

19. Simply put, an ‘interested party’ is the one whose interest might not be properly voiced unless he is allowed to participate in the proceedings. A key requirement is the demonstration by the applicant of the identifiable stake by the applicant in those proceedings that he wants to join.
20. As for the 1<sup>st</sup> proposed interested party – it asserted that the petition challenges the government’s action of deploying the military to assist the police under Article 241(3) of *the Constitution* and this could have an implication on the observance of Human Rights especially, the right to demonstrate.
21. I have closely examined the relevant constitutional provisions in regard to the mandate of the KNHCR, the proposed 1<sup>st</sup> Interested Party. Under Article 59(2) (a) and (c), the functions of KNHCR include the following among others:

- “ 59 to promote respect for human rights and develop a culture of human rights  
(2) in the Republic;  
(a) to promote the protection, and observance of human rights in public and  
(2) private institutions;  
(c)



- 22. The Kenya National Commission on Human Rights Act reiterates this mandate at Section 8 of the Act.
- 23. In my view, the 1<sup>st</sup> proposed interested party as an Independent national human rights commission charged with the responsibility to “promote respect for Human right and develop a Culture of Human Rights in the Republic’ has demonstrated an identifiable legal stake in these proceedings in regard to possible violations of human rights.
- 24. In respect of the 2<sup>nd</sup> proposed interested party, it is public knowledge that this is a long standing Civil Society organization of many years known for standing up stood for the rights of vulnerable citizens in the society hence in a Petition of this nature, I believe it should be given a chance to represent their interests.
- 25. Finally, the three members of Parliament. They contended that their desire is to let the court get full facts of what transpired inside Parliament as the laid down requirements were not followed.
- 26. That in my view is neither an identifiable stake, legal interest or duty in the proceedings. They do need to become a Party to attest to an evidential matter. They can file affidavits to boost the Petitioners evidence. I find no merit in their application. They will add no value as Interested Parties in the Petition.
- 27. I am thus satisfied that the only successful applicants for joinder as Interested Parties in this Petition are the Kenya National Commission on Human Rights and Kituo Cha Sheria.
- 28. The objection raised on the failure to file a not a formal application for joinder is untenable rules. Rule 7 (1) of the Constitution of Kenya provides thus: “A person may, with leave of the Court, make an oral or written application to be joined as an Interested Party”. The Supreme Court decision does not invalidate that requirement.
- 29. Consequently, I allow the application by the Kenya National Commission on Human Rights and Kituo Cha Sheria. The application by the three members of parliament is dismissed. Costs shall be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT THIS 5<sup>TH</sup> DAY OF JULY, 2024.**

.....

**L N MUGAMBI**  
**JUDGE**

