



**Grignon & another v Muli & another; Clerk to the Senate/Secretary
Parliamentary Service Commission & another (Interested Parties) (Civil Appeal
1056 of 2024) [2024] KEHC 11743 (KLR) (Civ) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11743 (KLR)

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

CIVIL

CIVIL APPEAL 1056 OF 2024

JN MULWA, J

OCTOBER 3, 2024

BETWEEN

AMB. DR. KOKI MULI GRIGNON 1ST APPLICANT

AZIMIO LA UMOJA ONE KENYA COALITION 2ND APPLICANT

AND

DR. AUGUSTUS KYALO MULI 1ST RESPONDENT

POLITICAL PARTIES LIAISON COMMITTEE 2ND RESPONDENT

AND

**CLERK TO THE SENATE/SECRETARY PARLIAMENTARY SERVICE
COMMISSION INTERESTED PARTY**

PARTY OF NATIONAL UNITY INTERESTED PARTY

RULING

Ruling on Motion Dated 20/09/2024

1. The Applicants in this Motion are Amb. Dr. Koki Muli Grignon and Azimio La Umoja One Kenya Coalition as 1st and 2nd Applicants respectfully (the Applicants). They are represented by Mr. Ochieng Advocate instructed by M/S Ochieng Oginga & Co. Advocates.

They seek three orders:-

- a. Spent



- b. That the court does issue an order allowing the joinder of the 1st Applicant as a party to this suit as an Appellant.
 - c. That the court does issue an order regularizing the joinder of the 1st Applicant as an Appellant in this appeal; and
 - d. Costs of the application.
2. The 1st Applicant swore the Supporting Affidavit on 20/09/2024 in support of the prayers sought.

The salient grounds of the application are stated as:-

1. The Political parties Dispute Tribunal, delivered its determination on the 10th of September 2024, emanating from a complaint filed by the 1st Respondents in regard to the 1st applicant's nomination as a representative of the Amizio la Umoja One Kenya Coalition in the Independent Electoral and Boundaries Commission (IEBC) Selection panel.
2. The 1st Applicant is greatly prejudiced by the said decision as she was condemned unheard and her nomination revoked without her being afforded an opportunity to be heard or to defend herself which is contrary to the rule of natural justice and a violation of Article 10, 25, 27, 28, 47, 48 and 50 of the Constitution of Kenya, 2010 as read with the provisions of the Fair Administrative Actions Act.
3. The 1st Respondent, Dr. Augustus Kyalo Muli never joined the 1st Applicant/Appellant Dr. Koki Muli, to these proceedings and neither did he serve her with any pleadings or notification on the same and wherein he sought Orders against her and made adverse inferences against her wherein the Political Parties Dispute Tribunal ultimately made findings revoking her nomination.
4. In the Notice of Motion Application and Complaint among the Orders sought included:

“[4] Pending the hearing and determination of this Application and Complaint inter-partes, this Honourable Tribunal be pleased to issue an Interim Order prohibiting the gazettment and swearing in of Amb. Dr. Koki Muli as a member to the IEBC selection panel.”

(b) An order of Certiorari to quash any list forwarded by the 1st Respondent under Section 2B of the First Schedule to the Independent Electoral and Boundaries Commission (Amendment) Act, 2024 to the President for appointment in absence of the name of the Complainant.”
5. The Tribunal made adverse findings, inferences and ultimately revoked the nomination of the 1st applicant/Appellant herein, Dr. Koki Muli, in total disregard of the rules of natural justice and the rights and entitlements of a fair hearing the trial.
6. The 1st applicant therefore files the instant Application to regularize her joinder to these proceedings as an Applicant/Appellant.
7. That Order 1 Rule (9) and (10) of the Civil Procedure Rules as read with the provisions of Articles 25, 27, 28, 47, 48, 50 and 159 of the Constitution of Kenya, 2010 as read with the Fair Administrative Actions Act grant this Court the Powers to order and direct the joinder of any such necessary and relevant party at any stage of the proceedings.



8. The question of joinder as raised in the instant proceedings is an afterthought and curable as the 1st Respondent deliberately failed to join the Applicant to the proceedings and yet she sought orders affecting her directly.
9. It is just and fair that this application be heard as a matter of urgency and the orders prayed granted to protect the Constitution, enable the Honorable Court to determine on merits the issues arising in this Appeal; and to vindicate the Appellant's fundamental right to a fair hearing and trial and the right to equal protection of the law as guaranteed under Article 27 (1); 48 and 50 of the Constitution of Kenya 2010 as further provided under the Universal Declaration of Human Rights, 1948, the International Covenant on Civil and Political Rights; and the International Covenant on Social and Economic Rights on the right to equality before the law and the right to a fair trial.
3. The 1st Applicant therefore prays that the application be allowed to enable the court determine on the merits and issues arising in the appeal including vindicating her fundamental right to a fair hearing and trial as guaranteed under Article 27, 48 and 50 of the Constitution of Kenya, 2010.
4. The 2nd Interested Party, Party of National Unity filed a Replying Affidavit by its advocate Mr. Frank Ochieng Walukwe sworn on 27/09/2024 and also filed submissions, urging the court to strike out the application for being in violation of procedure as the 1st applicant was not a party to the proceedings of the PPDT whose decision delivered on 10/09/2024 is being challenged in this appeal and in HCA No E1081/2024.
5. The 1st Applicant also filed submissions to the application urging the court to allow the application.
6. Other than the 4th Respondent who opposes the application, the respondents and interested parties by their Advocates on record expressed their wish not to oppose the motion as long as the 1st Applicant, Dr. Koki Muli is enjoined in the two appeals as the 1st Appellant.
7. For good Order the 1st Respondent Dr. Augustus Kyalo Muli is represented by Mr. Chimei Advocate. The 2nd Respondent, Political Parties Liaison Committee is represented by Mr. Njoroge Advocates. The 1st Interested Party Clerk to the Senate/Secretary Parliamentary Service Commission is represented by Mr. Wambulwa with Ms. Shalon, Advocates. The 2nd Interested Party of National Unity is represented by Mr. Frank Walukwewe Advocate in this application, wrongly cited as the 4th Respondent.

Applicants Case and Submissions.

8. The 1st Applicants complaint arose from the decision of the PPDT in Complaint No E008 of 2024 filed by the 1st Respondent against her nomination as a representative of the 2nd applicant (Azimio) herein in the Independent Electoral and Boundaries Commission (IEBC) Selection panel.
9. It is her case that she was not accorded a hearing when her nomination was revoked in favour of the 1st Respondent contrary to Article 10, 25, 27, 28, 47 and 48 of the Constitution of Kenya as read with the Fair Administrative Actions Act; which is contrary to and in total disregard to rules of natural justice and rights to fair hearing and trial.
10. It is her further case that the court is empowered under Order 1 Rule 9 and 10 of the Civil Procedure Rules (CPR) to order her joinder as a necessary party in the appeal as an appellant at any stage of the proceedings.



11. In her submissions dated 01/10/2024 she submits that she has been greatly prejudiced for failure by the PDDT to serve her with any pleadings or notification on the hearing of the complaint yet she was a party at the center of the complaint resulting to the revocation of her nomination to the IEBC's selection panel and replacing her with the 1st Respondent through a flawed procedure.
12. Additionally, it is submitted that the PDDT disregarded clear provisions under the 1st schedule of the IEBC's (Amendment) Act, 2024 to the effect that neither the Respondents or Interested parties can change or alter the name of the complainant as a nominee.
13. Further it is submitted that the 1st Respondent being aware of the revocation of the Applicant as a nominee he deliberately failed to join her in the appeals and further failed to serve her with any pleadings resulting to the impugned PPDT decision contrary to rules of natural justice.
14. The applicants have cited the following superior Courts decisions in support of her case:-
 - a. [*Susan Nyathira v Commissioner of Police & 2 others*](#) [2015] eKLR.
 - b. [*Donne Akula v APA Insurance Company Ltd*](#) [2016]eKLR
 - c. [*Onyango Oloo v Attorney General*](#) [1986-1989]EA 456
 - d. [*William Kiprono Towet & 1597 others v Farmland Aviation Ltd & 2 others*](#) [2016]eKLR

The 2nd Interested Party (Cited as the 4th Respondent's Case and Submissions.

At this point, the court notes that all the Respondents and Interested Parties, save for the 2nd Interested Party, Party of National Unity, do not oppose the application for joinder of the 1st Applicant as an Appellant in the Appeal.

15. The 2nd Interested Party by its Replying Affidavit sworn on 27/09/2024 by its Advocate Frank Walukwe supports the 1st Applicants application for joinder as an appellant in the appeals on the basis of having been condemned unheard but avers that such a pleading for joinder ought to have been filed prior to the appeal and that such omission cannot be regularized as prayed in the motion under review.
16. It is its further deposition that a party who was not a party in the lower court proceedings has no basis to be joined as an appellant in a bid to conjure legal issues as grounds of appeal.

Additionally, the 4th Respondent avers that the motion is an attempt to metamorphosize the appeal by adding new issues and therefore an abuse of court process asserting that contrary to allegations that she was not afforded an opportunity to be heard she attended all the PPDT proceedings in complaint No E008/2024 (subject of the appeals) virtually and did not request to be joined as a participant in the proceedings.

17. Cited in support of the above, the 4th Respondent is the Supreme Court decision of [*Communications Commission of Kenya & 4 others v Royal Media Services Limited*](#) SC. Pet. 14, 14A, 14B and 14C consolidated) of 2014 for the holding that:

“a proposed interested party cannot use ongoing proceedings to instate a fresh suit. In such an instant, the court shall not exercise its discretion to join a party that disguises itself as an interested party while in actual fact merely seeking to institute a fresh case”.

18. On joinder as an appellant, the 2nd Interested Party submits that having failed to request to be joined in the PPDT's proceedings to be joined at the appeal stage is a kin to instituting a fresh suit.



19. In its submissions dated 27/09/2024 the 2nd Interested Party states that the proposed 1st applicant has no legal identifiable or demonstratable duty in the proceedings as she is not a necessary or proper party nor does she have an interest in the proceedings having failed to request to be joined at the proceeding at the PPDT.
20. To support its submissions the 4th Respondent cited the following decisions:-
- a. [Communications commission of Kenya and 5 others v Royal Media Services Limited & 5 others](#) S.C. [2014] eKLR.
 - b. [Kenya Medical laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others](#) [2017] eKLR.
 - c. [Ibrahim Mungara Mwangi v Francis Ndegwa Mwangi](#) [2014] eKLR
 - d. [Joseph Njau Kingori v Robert Maina Chege & 3 others](#) [2002] eKLR.

Issues for Determination

- a. Whether the 1st Applicant has met the Legal threshold for joinder as an appellant in HCCA. No E1056 of 2024 (Consolidated with HCCA No E 1081/2024).
- b. Who bears cost of the application?

Analysis and Determination

21. Order 1 Rule 9 of the [Civil Procedure Rules 2010](#) (CPR) provides:-
- No suit shall be defeated by reason of the misjoinder or non-joinder of parties and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it”
22. The Court of Appeal in the case of [William Kiprono Towett & 1597 others v Farmland Aviation Ltd & 2 others](#) [2016] eKLR re-emphasized the impact of the provisions under Order 1 Rule 9. Nambuye J. (as she then was) in the case of [Kingori v Chege & 3 others](#) [2002] eKLR (*supra*) stated the guiding principles in the matter of joinder of parties;-
- i. He must be a necessary party.
 - ii. He must be a proper party.
 - iii. There must be a relief flowing from that party to the opposite party.
 - iv. His presence is necessary to enable the court to effectively and completely to adjudicate upon and settle all questions involved in the suit.
23. Additionally, in the [Kenya Medical laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others](#) [2017] eKLR (*supra*), the above principles were re-emphasized, and added thus:
- a. The intended interested party must have an identifiable stake in the proceedings; or
 - b. A legal interest; or
 - c. Duty in the proceedings.



The court proceeded to render that a person is legally interested in the proceedings only if he can say that it may lead to a result that will affect him legally that is by curtailing his legal rights.

24. The test for joinder thus lies in the analysis in what would be the result on the subject matter if the right could be established and his interest in the pending litigation.
25. The Supreme Court of Kenya in the matter of *Communications Authority Commission of Kenya* 2014 (*supra*) rendered on the subject with finality that:-

“We cannot exercise one discretion to enjoin a party that disguises itself as an interested party while in actual fact merely seeking to institute fresh cause. On this point, we are guided by the principle which we had pronounced in the Mumo Matemo case (at paragraph 24).”

26. Further, while invoking the provisions of the *CPR* on joinder of parties; the Supreme Court proceeded to render that:-

“a suit in court is a solemn process ‘owned’ solely by the parties. This is the reason why there are laws and rules under the civil procedure code, regarding parties to suit and on who can be a party to a suit. A suit can be struck out if a wrong party is enjoined in it. Consequently. Where a person to initially a party to a suit is enjoined as an interested party, this new party cannot be heard to seek to strike out the suit on grounds of defective pleadings”

There are a myriad of decisions on the subject under review readily available.

27. What therefore emerges from the above case law and principles is that a party seeking to be enjoined in a suit and for purposes of this appeal as an appellant must demonstrate their legal identifiable interest and stake in the proceedings, and that the proceedings may lead to a result that will affect it legally by curtailing its legal rights in the pending litigation.
28. The court while interrogating the 1st Applicants case, will be careful in the exercise of its discretion to be guided by the aforesaid principles the rules of natural justice and fair hearing as provided under Articles 10, 25, 27, 28, 47, 48 and 50 of the Kenya *Constitution* 2010.
29. The PPDT in complaint No E008/2024 was between the 1st Respondent Dr. Augustus Kyalo Muli as complainant v Azimio La Umoja Coalition Party - 1st Respondent, Political Parties Liaison Committee (2nd Respondent) and clerk to the Senate/Secretary Parliamentary Service Commission as an Interested Party.

The Applicant herein Dr. Koki Muli lost her election to the complainant Dr. Augustus Kyalo Muli. He lodged the complaint but failed deliberately and or otherwise to include the applicant who without a doubt had an identifiable interest and stake in the proceedings at the PPDT.

30. I have read at Paragraph 13 of the complainants statement of complaint before the PPDT. It is stated that at the election date, 26/07/2024, the 1st Respondent wrote to the Interested Party purporting to change the name of complainant (Dr. Augustus Muli) and replace it with the name of Amb. Dr. Koki Muli that on 27/07/2024 the 2nd Respondent forwarded the names of the nominees to the Interested Party for onward transmission to the President for appointment (including Dr. Augustus Muli’s name); that on 29/07/2024 the Interested Party wrote back requiring the 2nd Respondent to change the forwarded name of (Dr. Augustus Muli) on grounds that it did not comply with the gender parity requirement. These events triggered the complaint No E008/2024.



31. Upon the above, the PPDT in its decision dated 10/09/2024 held that Dr. Augustus Kyalo Muli was duly elected on July 26, 2024 to represent the minority Party coalition on IEBC selection panel and; and order of certiorari was issued quashing any list forwarded by the 1st Respondent under Section 2B of the First Schedule to the Independent Electoral and Boundaries Commission (Amendment) Act, 2024 to the President for appointment that does not include the name of Dr. Augustus Kyalo Muli, and further that the 1st Respondent is restrained from replacing or attempting to replace Dr. Augustine Kyalo Muli as the duly elected representative of the Minority party/Coalition of parties at IEBC selection panel.
32. Without any doubt the 1st Applicant Dr. Koki Muli was aggrieved by the PPDT's decision as by the same, her interest and stake in the election was shuttered without being accorded a chance to be heard before the impugned determination that directly affected her under Article 27, 28, 47, 48 and 50 of the Constitution of Kenya as read with the Fair Administrative Action Act.
33. The Tribunal made adverse findings inferences and ultimately revoked the Applicant's nomination in disregard of rules of natural justice and the rights and entitlement of a fair hearing and trial contrary to the 4th Respondent's submissions that the Applicant participated in the PPDT's proceedings . The court having made a finding that no evidence was tendered that in deed she participated in the proceedings the mere fact which has not been established that the applicant logged into the virtual hearings before the PPDT proceedings cannot suffice as the virtual hearings are open to all and sundry those with interests and those without interest.
34. On identifiable stake in the proceedings, this court finds that the Applicant Dr. Koki Muli has a legal interest in the appeal before this court as the PPDT's judgment completely blocked her nomination by the 2nd Appellant by dint of Section 2B of the First Schedule to the IEBC (Amendment) Act 2024.
35. The attention by the Parliamentary Service Commission communicated by its letter dated 29/07/2024 to the 2nd Respondent to change the forwarded names (including that of Dr. Augustus Muli) for want of compliance with requirement with the gender parity requirement under the IEBC Amended Act with a view to replace his nomination with Dr. Koki Muli cannot be ignored for what it is without involvement of both Dr. Augustus Muli and Dr. Koki Muli who both had undisputed legal interest in the nomination to eventually serve in the IEBC's selection panel.
36. It is on record that upon the said advice, and upon determination of the dispute by the judgment of the PPDT, Dr, Koki Muli lost her chance for her name to be forwarded to the president for election to the IEBC selection panel. It is therefore clear that the 1st Applicant has a genuine real and identifiable interest in the Appeal herein. She has approached the court not only as an interested party but also a necessary and proper party whose presence in the appeal will be necessary to enable the court effectively and completely to adjudicate upon and settle all questions involved in the matter as rendered in the case of Joseph Njau Kingori (supra).
37. It is apparent that the 1st applicant is legally interested in the proceedings and outcome of the appeal as the determination will legally affect her as a nominated party for selection to represent the Minority Party or coalition of parties for nomination pursuant to Section 2B of the First Schedule to the IEBC (Amendment) Act, 2024.
38. The 2nd Interested Party argued that the 1st Applicant/1st appellant in this appeal is merely perfunctory because the decision challenged before the tribunal was the 2nd Appellants decision citing the Supreme Court decision in Communications Commission of Kenya case (supra) for the proposition that the 1st Appellant's joinder to the appeal will introduce fresh issues of law and fact.



39. In the above decision the supreme Court was categorical that if a party is wrongly enjoined into ongoing proceedings, the suit may be struck out if the joinder was wrong and seeks to introduce new and fresh issues of both fact and law.
40. That is so, but it is upon the joinder and hearing of the suit or appeal that if the court finds the party enjoined was wrongly enjoined then the proceedings may be struck out, not at the joinder stage. It is for the above reason that the court finds that application for joinder is not misplaced or misnomer.
41. Finally, it is instructive that all the Respondents and interested parties in this appeal and in the consolidated appeal No E1081/2024 only the Party of National Unity objected to the 1st Applicant's application for joinder to the proceedings.
42. In conclusion;
- a. The court is persuaded that the 1st Applicant/Intended 1st Appellant has not only demonstrated a legal interest in the pending litigation but also demonstrated an identifiable stake and duty to the said proceedings where outcome will legally affect it.
 - b. The application dated 20/09/2024 is allowed interms of prayer Numbers 2 and 3 thereof.
 - c. Dr. Koki Muli Grignon is directed to regularize the joinder to this appeal and in effect to the consolidated appeal No E1081/2024 within 7 days of this ruling.
 - d. Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 3RD DAY OF OCTOBER, 2024.

JANET MULWA

JUDGE

