



Okoiti v National Assembly & 3 others; Senate (Interested Party); Leader of Minority Party, National Assembly (Applicant) (Petition E469 of 2022) [2023] KEHC 795 (KLR) (Constitutional and Human Rights) (13 February 2023) (Ruling)

Neutral citation: [2023] KEHC 795 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION E469 OF 2022

HI ONG'UDI, J

FEBRUARY 13, 2023

BETWEEN

OKIYA OMTATA OKOITI PETITIONER

AND

NATIONAL ASSEMBLY 1ST RESPONDENT

PARLIAMENTARY SERVICE COMMISSION 2ND RESPONDENT

DIRECTOR GENERAL, PARLIAMENTARY JOINT SERVICES 3RD RESPONDENT

ATTORNEY GENERAL 4TH RESPONDENT

AND

SENATE INTERESTED PARTY

AND

LEADER OF MINORITY PARTY, NATIONAL ASSEMBLY APPLICANT

RULING

1. In the petition dated 6th October, 2022 the petitioner is challenging the constitutionality of the [Parliamentary Service Act](#) (No 22 of 2019), among other prayers on the same.
2. Before this Court are four (4) applications of parties seeking enjoinder as interested parties. The said applications are by:
 - i. Leader of Minority Party National Assembly dated 30th November 2022.



- ii. Chairperson Liaison Committee National Assembly dated 2nd December 2022
 - iii. Hon. Samuel Chepkonga (M.P) dated 30th November 2022
 - iv. Leader of Majority Party National Assembly dated 30th November 2022.
3. Submissions dated 19th January 2022 (sic) by Mr. Cheboryot for Hon. Samuel Chepkonga and those dated 23rd January 2023 by M/s Khadambi for the Leader of Minority were filed. When the matter came for mention on 9th February 2023, none of the parties present opposed the applications. Though not opposing the application the petitioner wondered whether it was really necessary for the applicants be enjoined since their interests were well taken care of by the respondents and interested party.
 4. The guiding principles upon which courts make findings on an application for joinder of interested parties are now fully settled.
 5. The law for joinder of interested parties for Constitutional petitions is set forth in the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013* referred to as the Mutunga Rules. The Mutunga Rules under Section 2 define 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 not be directly involved in the litigation’.
 6. The Supreme Court in the case of *Trusted Society of Human Rights Alliance* (supra) echoed this principle by stating as follows:

“ 18. Consequently, an interested party is one who has a stake in the proceedings, though he or she was not 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 she herself appears in the proceedings, and champions his or her cause...”
 7. The addition of a joinder such as an interested party is provided for under Rule 5 (d) (ii) of the *Mutunga Rules*. It states that:

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 just—

 - (ii) that the name of any person who ought to have been joined, or whose presence before the court may be necessary in order to enable the court adjudicate upon and settle the matter, be added.
 8. The applicable principles in an application for joinder as an interested party were set out in the Supreme Court decision of *Francis Kariuki Muruatetu Ltd & Another V Republic & 5 others* (2016) eKLR where it underscored the principles as follows:
 - 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.
9. Furthermore, at Paragraph 41, the Supreme Court noted as follows:
- “(41) Having carefully considered all arguments, we are of the opinion that any party seeking to join proceedings in any capacity, must come to terms with the fact that the overriding interest or stake in any matter is that of the primary/principal parties’ before the Court. The determination of any matter will always have a direct effect on the primary/principal parties. Third parties admitted as interested parties may only be remotely or indirectly affected, but the primary impact is on the parties that first moved the Court. This is true, more so, in proceedings that were not commenced as Public Interest Litigation (PIL), like the proceedings now before us.”
10. To be joined as an interested party is therefore not a matter of right and neither is it automatic. Any joinder to, or appearance in proceedings is discretionary and each case must be examined on its own merits and circumstances as against the set principles. In every application for joinder the paramount consideration by the Court will be the interest of the primary parties.
 11. The question that begs an answer is whether the applicants have satisfied the set principles for enjoyment in these proceedings as interested parties. All the applicants are members of the National Assembly. What is being challenged is a statute that was enacted ([Parliamentary Service Act](#) – No 22 of 2019), and various sections of statutes which were allegedly enacted without the participation of the Senate.
 12. The National Assembly which comprises of all the Members of Parliament is the body that enacts legislation. Any special role that may have been performed by the applicants in the enactment of the law that is being challenged will be well highlighted through the 1st respondent. No individual Member of Parliament will be personally affected by the outcome of these proceedings, to make them participate in the suit, as parties.
 13. Will this Court be able to reach a definitive determination in the petition without the intended interested parties? The answer is yes, the reason being that the 1st respondent will bring on board all the material that the applicants have. This will avoid unnecessary repetition of facts.
 14. The above being my finding I conclude that the applications for joinder dated 30th November 2022 and 2nd December 2022 have not satisfied the set principles. They are dismissed with no order for costs.
 15. Orders accordingly.

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 13TH DAY OF FEBRUARY, 2023 IN OPEN COURT AT MILIMANI, NAIROBI.

H. I. ONG’UDI

JUDGE OF THE HIGH COURT

