



**Chairman Extra Ordinary Meeting of Michimikuru Factory Ltd & 2
others v Dickson & another; Kingori (Exparte Applicant) (Judicial Review
E002 of 2021) [2023] KEHC 2385 (KLR) (23 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2385 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
JUDICIAL REVIEW E002 OF 2021
TW CHERERE, J
MARCH 23, 2023**

BETWEEN

**CHAIRMAN EXTRA ORDINARY MEETING OF MICHIMIKURU FACTORY
LTD 1ST RESPONDENT
REGISTRAR OF COMPANIES 2ND RESPONDENT
ATTORNEY GENERAL 3RD RESPONDENT**

AND

**MAURICE KOBIA DICKSON 1ST INTERESTED PARTY
LILIAN MATHERI-RETURNING OFFICER 2ND INTERESTED PARTY**

AND

JAMES WILLY KINGORI EXPARTE APPLICANT

JUDGMENT

Background

1. By judgment dated March 17, 2022, this court made the following orders:
 - a. A declaration be and is hereby issued that the decision by the registrar of companies substituting the name of James Willy Kingori with the name of Maurice Kobia Dickson as Director of Michimikuru Tea Factory Company Limited violated the applicant's fundamental right to fair administrative action enshrined in article 47 of the [Constitution](#).
 - b. An order of judicial review of *certiorari* is hereby issued quashing decision by the registrar of companies to register the name of Maurice Kobia Dickson as director of Michimikuru Tea Factory Company Limited



- c. Costs of the application to the application shall be borne by the 2nd respondent.

Notice of Motion

2. By notice of motion amended on July 22, 2022, applicant has introduced a new party, Lilian Matheri who is described as a returning officer and seeks orders that election of director Chiuriu electoral area be declared to be null and void for being in contravention of the court order dated March 17, 2022.
3. By his replying affidavit sworn on November 7, 2022, the 1st interested party opposes the application first on the ground that applicant has not sought leave to join the 2nd interested party and secondly that that application introduces a new cause of action that was not pleaded.
4. The 3rd respondent opposed the application on the grounds that no reasonable cause of action has been disclosed against the 3rd respondent and urged that the 3rd respondent's name be struck out with costs.
5. I have considered the application in the light of the affidavits and grounds of opposition on record and submissions filed on behalf of the applicant and the 1st interested party.
6. From the pleadings, it is apparent as rightly argued for the 3rd respondent that no cause of action, reasonable or otherwise has been disclosed against the 3rd respondent.
7. Concerning the 2nd interested party, there is no doubt that that party has been joined to the suit without leave. I find that the joining of the 2nd interested party to this application without leave is a nullity. (See *Francis Karioko Muruatetu & another v Republic* [2017] eKLR and *Republic of Kenya v Director of Public Prosecution & 2 others ex-parte Azim Jiwa Rajwani & another* [2022] eKLR).
8. Applicant seeks a declaration that the election of director Chiuriu electoral area are null and void for being in contravention of the court order dated March 17, 2022.
9. The orders dated March 17, 2022 related to elections held on April 21, 2021. The matters concerning elections held on July 7, 2022 raise a new cause of action that was not pleaded.
10. Consequently, this court finds that an attempt by the applicant to sneak in a new cause of action to these proceedings long after the determination of the suit is not only vexatious but also an abuse of the court process.
11. Consequently, the notice of motion amended on July 22, 2022 is struck out with costs to the 1st interested party and the 3rd respondent.

DATED AT MERU THIS 23RD DAY OF MARCH 2023

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For the Applicant - Mr. Kimathi for L. Kimathi Kiara & Co. Advocates

For the 1st Respondent - N/A

For the 2nd Respondent - N/A

For the 3rd Respondent - N/A

For 1st Interested Party - Mr. Alovi for Wambugu & Muriuki Advocates



For 2nd Interested Party - N/A

