



**Wanjigi & others v Inspector General of the National Police Service & others;  
Musembi (Intended Interested Party) (Constitutional Petition E020 of 2022)  
[2023] KEHC 1612 (KLR) (Constitutional and Human Rights) (10 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1612 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS  
CONSTITUTIONAL PETITION E020 OF 2022**

**AC MRIMA, J**

**MARCH 10, 2023**

**BETWEEN**

**JIMI WANJIGI & OTHERS ..... PETITIONER**

**AND**

**INSPECTOR GENERAL OF THE NATIONAL POLICE SERVICE &  
OTHERS ..... RESPONDENT**

**AND**

**CISSY KALUNDE MUSEMBI ..... INTENDED INTERESTED PARTY**

**RULING**

**Introduction:**

1. At the heart of the consolidated Petitions herein are the allegations that the Petitioners variously committed offences in respect to the property known as LR No 1870/11/200 comprised in Grant No 65800/1 (hereinafter referred to as ‘the property’).
2. The consolidated Petitions were, therefore, instituted by persons whom the Respondents herein, the Inspector General of the National Police Service, the Director of Criminal Investigations and the Director of Public Prosecutions strongly believed were culpable in commission of various offences relating to the property.
3. The Petitions, hence, seek orders to stop the Respondents from instituting and/or sustaining any criminal charges against any of them.
4. This ruling, however, relates to an interlocutory application. It is a Notice of Motion dated January 31, 2022. The application seeks the joinder of one Cissy Kalunde Musembi as an interested party.



## The Application:

5. The application was supported by the Respondents and vehemently opposed by the Petitioners.
6. Parties filed affidavits, written submissions and Lists of Authorities for and against the applications.

## Analysis:

7. I have carefully perused the documents in respect of the application filed in this matter. They include extensive and comprehensive written submissions.
8. Given the nature of this matter, this Court will not, at this point, necessarily reproduce verbatim the respective parties' dispositions and submissions. However, the Court shall take the contents thereof into account in the course of this discussion.
9. The starting point is a look at the law on joinder of interested parties. As said, the parties have already properly captured the correct legal position on the subject of joinder of interested parties.
10. In this ruling, I will reiterate what I stated in Nairobi High Court Constitutional Petition No E371 of 2021 Esther Awuor Adero Ang'awa v Cabinet Secretary responsible for matters relating to Basic Education & Others (unreported) on the subject. This is what I rendered: -
  12. The starting point is the Constitution. Rule 2 of The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (hereinafter referred to as 'the Mutunga Rules') define an 'interested party' to mean: -

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;
13. The Supreme Court in *Trusted Society of Human Rights v Mumo Matemu & 5 others* [2014] eKLR observed as follows: -

... 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.
14. Later, the Supreme Court further delimited the legal principles applicable in joinder applications. That was in Petition No 1 of 2017 *Raila Amolo Odinga & another v Independent Electoral and Boundaries Commission & 2 others & Michael Wainaina Mwaura (as Amicus Curiae)* [2017] eKLR and in Petition No 15 as consolidated with Petition No 16 of 2013 Francis Kariuki Muruatetu & Another v Republic & 5 others [2016] eKLR.
15. In *Francis Kariuki Muruatetu & Another v Republic & 5 others* Petition 15 as consolidated with 16 of 2013 [2016] eKLR the Supreme Court identified the following applicable conditions, and, stated as follows: -

One must move the Court by way of a formal application. Enjoinment is not as of 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 these submissions are not merely a replication of what the other parties will be making before the Court.
16. Apart from the three principles developed by the Supreme Court, Rule 2 of the Mutunga Rules clarifies that a party seeking to be enjoined as an interested party ought to demonstrate that he/she/it has an identifiable stake or legal interest or duty in the proceedings before the Court.
11. Deriving from the foregoing, the following conditions are relevant in the consideration of joinder applications: -
  - (i) The party intending to be enjoined has an identifiable stake which is proximate enough and not merely peripheral.
  - (ii) The party has a clear legal interest in the matter.
  - (iii) The party has a defined duty in the proceedings.
  - (iv) The party is not directly involved in the litigation. In other words, the party is not one of the main parties in the proceedings that is either as a Petitioner or a Respondent.
  - (v) The party will be affected by the decision of the Court when it is made, either way.
  - (vi) The party demonstrates that his or her or its interest will not be well articulated unless he himself or she herself or itself appears in the proceedings, and champions the cause. Differently put, the party must demonstrate that it stands to be prejudiced if it does not take part in the proceedings.
  - (vii) The party should not expand the prevailing cause of action or introduce a new cause of action.
12. I will now apply the foregoing considerations to the applications at hand.
13. The genesis of the consolidated Petitions were the decisions by the Director of Public Prosecutions to charge the Petitioners herein in relation to the property.
14. In the current proceedings, the Petitioners inter alia challenge the constitutionality of the charges preferred against them.
15. The intended interested party deposed that he has an identifiable interest in the consolidated Petitions since he lawfully purchased the property and that he is actively involved in litigations thereof before the Environment and Land Court at Nairobi in ELC No 100 of 2019 Kenroid Limited v Aureum Limited & 8 Others.



16. In dealing with joinder applications, a Court ought to consider the totality of all issues before it as well as the legal principles involved in such applications. The Court must not lose sight of the gist of the Petition. It must also zealously guard against any attempts to expand the Petition by parties who are not the main parties.
17. In this case, the intended interested party alleges to be a purchaser of the property. The issue of the ownership of the property is not one of the issues herein. What is in stake in the consolidated Petitions is whether the intended charges against the Petitioners herein meet the expected constitutional threshold.
18. Given the nature of the consolidated Petitions, this Court is not satisfied that the intended interested party will add any value in these proceedings. The contest in this matter is between the police, the public prosecutor and the Petitioners. It is the police who conducted investigations and recommended that the Petitioners be charged. The Prosecutor approved of the charges. And, the Petitioners are contesting the charges.
19. Whereas high are chances that the intended interested party took part in those investigations, this Court is at a loss as to how the intended interested party will aid in these Petitions. The issues herein are clear cut. It is for the Respondents to demonstrate that they acted within the Constitution and the law in coming up with the decisions to charge the Petitioners. In the event this Court agrees with the Respondents and disallows the Petition, then the criminal cases will proceed and the intended interested party will adduce evidence on the ownership, if such will be needed before the trial Court.
20. The much the intended interested party will do if allowed in these Petitions is to introduce the new issue of the ownership of the property. Such is not within the ambit of the consolidated Petitions and should not be allowed to rare its head in the instant proceedings.(See theSupreme Court of Kenya in *Raila Amolo Odinga & Another v Independent Electoral and Boundaries Commission & 3 Others* [2017] eKLR). In fact, the ownership of the property is still pending determination before the Environment and Land Court.
21. Flowing from the above, it is this Court finding and holding that the application for joinder is unmerited.

**Disposition:**

22. In the end, the following final orders do hereby issue: -
  - a. The Notice of Motion dated January 31, 2022 by the intended interested party is hereby dismissed with costs.
  - b. This matter shall be placed before the Presiding Judge for further directions.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT KITALE THIS 10<sup>TH</sup> DAY OF MARCH, 2023**

**A. C. MRIMA**

**JUDGE**

Ruling delivered virtually in presence of:

Mr. Baraza for the 4<sup>th</sup> Respondent

Miss Leah Ezekiel & Miss Limo for the 1<sup>st</sup>, & 2<sup>nd</sup> Petitioners,

Ms. Swaleh for 3<sup>rd</sup> & 5<sup>th</sup> Petitioners



Miss. Mwangi for 1<sup>st</sup> & 2<sup>nd</sup> Respondents

Mr. Shadrack Wambui for Interested Party

Mr. Achochi for 3<sup>rd</sup> Respondent

