



Wainaina v Independent Electoral & Boundaries Commission & another; Kihara (Proposed Interested Party) (Petition 17 of 2022) [2023] KEHC 21934 (KLR) (1 August 2023) (Ruling)

Neutral citation: [2023] KEHC 21934 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
PETITION 17 OF 2022
DO CHEPKWONY, J
AUGUST 1, 2023**

BETWEEN

LAWRENCE MBURU WAINAINA PETITIONER

AND

**INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION 1ST
RESPONDENT**

THE CLERK OF THE COUNTY ASSEMBLY OF KIAMBU ... 2ND RESPONDENT

AND

EZRA KABUGA KIHARA PROPOSED INTERESTED PARTY

RULING

1. Before this court for determination me is a Notice of Motion dated March 2, 2023 filed by the proposed Interested Party pursuant to Order 1 Rule 10, Rule 2 and 7 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, Section 1, 1A, 3A and 63E of the Civil Procedure Act and Article 159 (2) (d) of the Constitution of Kenya.
2. The Applicant avers that he is a registered member of United Democratic Alliance Party who was validly nominated as a Member of County Assembly vide Gazette Notice No 101712 Vol CXXIV-NO 186 dated September 9, 2022.
3. According to the Applicant, the Petition filed herein has a direct bearing on him as it seeks to expunge his name from the list set out for nomination of the County Assembly of Kiambu. He therefore seeks to be enjoined in the proceedings so that he can participate in the Petition and the application so that it does not impede on his rights to access to justice and fair hearing under Articles 48 and 50 of the Constitution of Kenya.



4. The Applicant further states that he has an identifiable stake on the proceedings in this suit and his application should be allowed.
5. The Application was served upon the parties on March 14, 2023 and an Affidavit of Service sworn by Andrew Muli Philip sworn on March 14, 2023 duly filed.

Analysis and Determination

6. In considering this application, the first port of call on the issue of joinder of parties is underpinned under Order 1 Rule 10(2) of the *Civil Procedure Rules* states as follows:

' 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 to the court to be just, order that the name of any party improperly joined, whether as Plaintiff or Defendant be struck out, and that the name of any person who ought to have been joined, whether as Plaintiff or Defendant or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon or settle all questions involved in the suit, be added.'

7. Under Rule 2 of the *Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, an Interested Party is defined as follows:-

' 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 to the proceedings or may not be directly involved in the litigation'

8. The Supreme Court of Kenya in the case of *Communications Commission of Kenya and 4 Others Vs Royal Media Services Limited & 7 Others Petition No 15 OF [2014] eKLR* relied on its earlier decision in the Mumo Matemo case where the Court in defining who an Interested Party is, had the following to say:

' 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. Similarly, in the case of Meme v. Republic, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- (i) Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings;
- (ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- (iii) Joinder to prevent a likely course of proliferated litigation.

We ask ourselves the following questions:

- a) what is the intended party's state and relevance in the proceedings and
- b) will the intended interested party suffer any prejudice if denied joinder.?'

9. In this case, this court having read through the grounds upon which the application is premised is satisfied that the Applicant has a stake or interest in the proceedings by virtue of the fact that he has been



mentioned in the Petition and the application as a nominee whose name was published in the Kenya Gazette as one of nominated members of the County Assembly of Kiambu. Therefore, any orders issued in this Petition will adversely affect the Applicant. In view of this, he is entitled to participate in the Petition herein.

10. Therefore, this court allows the Notice of Motion Application dated March 2, 2023 in the following terms:-

- a. The Proposed Interested Party be and is hereby enjoined in the suit as an Interested Party.
- b. The Plaintiff and the Respondents to serve the Interested Party with all the pleadings filed within seven (7) days from the date hereof.
- c. The Interested Party is hereby granted leave to file and serve any responses to the pleadings of the Plaintiff and Respondents within 21 days from the date of being served with all pleading by the other parties.
- d. The other parties be at liberty to file and serve further pleadings within seven (7) days of being served with responses by the Interested Party.
- e. The costs of the application shall be in the cause.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 1ST DAY OF AUGUST, 2023.

D. O. CHEPKWONY

JUDGE

In the presence of:

No appearance for Plaintiff and Respondent

Mr. Mwenda holding brief for Mr. Waithaka for proposed interested party

