



**Munyoki & 3 others v Deputy County Commissioner- Mwingi East Sub-County & 2 others & 2 others (Petition E005 of 2023) [2023] KEHC 23472 (KLR) (11 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23472 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITUI  
PETITION E005 OF 2023**

**RK LIMO, J**

**OCTOBER 11, 2023**

**IN THE MATTER OF: ARTICLE 1(1), 1(4)(A), 2(1), 3(1), 10, 19, 20,  
21(1), 22, 23, 24, 27, 44, 45, 47, 73(1), 153, 154, 174, 232(1) (D) (E),  
258 & 259(1) OF THE CONSTITUTION OF KENYA 2010**

**IN THE MATTER OF: ALLEGED CONTRAVENTION AND  
OR VIOLATION OF RIGHTS OR FUNDAMENTAL RIGHTS  
UNDER ARTICLES 22(1) OF THE CONSTITUTION OF KENYA**

**IN THE MATTER OF: SECTION 14 AND 15 OF THE NATIONAL  
GOVERNMENT CO-ORDINATION OF KENYA ACT**

**BETWEEN**

**JOSHUA MUNYOKI ..... 1<sup>ST</sup> PETITIONER  
ROBERT NGUNGU MALWE ..... 2<sup>ND</sup> PETITIONER  
DAVID KALONZO KAMENE ..... 3<sup>RD</sup> PETITIONER  
EUNICE WAMBUA ..... 4<sup>TH</sup> PETITIONER**

**AND**

**DEPUTY COUNTY COMMISSIONER- MWINGI EAST SUB-COUNTY & 2  
OTHERS ..... 1<sup>ST</sup> RESPONDENT  
CABINET SECRETARY MINISTRY OF INTERIOR &  
CORDINATION ..... 2<sup>ND</sup> RESPONDENT  
THE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**



## RULING

1. By a Notice of Motion dated 21<sup>st</sup> July 2023, Joshua Muthui Kimolo, Makutha Kisilu, Tom Thomas Ilaa and Agnes Mwetwa Munyasya moved this Court under Rule 59(d) of *the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2012 (Mutunga Rules)* seeking to be joined in this Petition as interested parties.
2. The grounds upon which this application are listed are as follows: -
  - i. That the applicant are residents of Nuu Location and in particular a new sub-location known as Matulani.
  - ii. That the Orders sought in the Petition herein shall affect their lives and rights.
  - iii. That their presence in this case is necessary to enable the court to resolve all the issues and questions with finality and completeness.
  - iv. None of the parties in this petition will be prejudiced by their joinder.
  - v. That their participation will be useful to court in adjudicating the issues effectively as the Petitioners case may not bring out the true picture and issues in the Petition.
  - vi. That should the interested parties file another case, it will lead to multiplicity of suit.
  - vii. That if the applicants are not joined as I.P. in this petition, this court may reach a finding that may affect them without being given an opportunity to be heard.
3. The application is supported by the affidavit of Joshua Muthui Kimolo sworn on 21.07.2023. The deponent has majorly reiterated the above grounds stating that the applicants are residents of Nuu Location and are interested parties in the demarcation of administrative units. He faults the petitioners on account that they hail from another location known as Muthuki Location Mui Ward which to them is not part of Nuu Location.
4. He concedes that there was no public participation in the creation of the new administrative unit but supports the action carried out through gazettment.
5. He has challenged the Petitioners to produce the copies of identity cards to prove that they are residents of Nuu Location adding that the Petitioner's action is driven by desire to deny the people of Matuani and Nuu Ward a well-deserved sub-location which he claims will deny them government services.
6. He claims that their inclusion in this petition as interested parties would assist, say and present the true facts about the status on the ground.
7. In their submissions through the learned counsel the applicants have faulted the respondents for targeting or aiming their guns on the 2<sup>nd</sup> applicants, Makutha Kisilu stating, the 2<sup>nd</sup> applicant is a former Chief well seized with facts adding that creation of an administrative unit is a political process that affects many people. They seek for a chance to present their views.
8. The petitioners, the respondents in this motion, have opposed this application and in particular in regard to the 2<sup>nd</sup> applicant. They have however not stated clearly why they are specifically opposed



only to the 2nd applicant but have no problem with the rest of the applicants. They claim that the 2nd applicant is not a resident of Matulani but a former chief of Nyaani location.

9. They have however faulted the application stating that the same is frivolous and baseless. Their claim that the applicants have no interests in this petition and particularly the 2nd applicant whom they claim is a resident of a village too far from Matulani. They however express no objection to the other applicants stating the other applicants are from Matulani.
10. They further point out that the application is frivolous for the choice of the word “enjoin” in the application pointing out that word “enjoin” is English dictionary gives a different meaning to the relief being sought by the applicants.
11. This court has considered this application and the response made. The applicants are seeking to be enjoined (the choice of word is contested here) or to come on board in this petition as interested parties. Before I delve on the application I should clear the air on the word used by the applicants which is to be enjoined in this case. The Respondents have taken issue with the word and not the intention of the applicants which I find insignificant but having been raised it is imperative, to make a finding about it.
12. The Respondents contend that the use of the word “enjoin” gives a different meaning to the intention of the applicants and the question is, does it? The word “enjoin” in the Concise Oxford English Dictionary 12th Edition defines the word as “instruct or urge to do something” and proceeds to state that to enjoin someone “from” actually means to “prohibit someone or injunction.” The Black’s Law Dictionary 10<sup>th</sup> Edition appears to be in tandem with the above definition as it defines it as (verb) to “legally prohibit or restrain by injunction,” and the second meaning is to “prescribe, mandate or strongly encourage.” The Respondent’s Learned Counsel Mr. Munyoki therefore, appears to have been well informed about the meaning of the word “enjoin” as per the definition ascribed by both Concise English Dictionary and Black’s Law Dictionary and he cannot be faulted but the word enjoin as per the online Google Dictionary goes deeper and states that the word “enjoin” is derived from the Latin Word “injungere” which means, “to attach, fasten or impose or to unite two or more things or to connect or link two or more things. The looking at the origin of the word enjoin which we are told is derived from a Latin word “injungere” it is not really difficult to understand what the applicants are seeking here. They are seeking to be enjoined or “injungered” in this petition.

The word “enjoin” is used here therefore, is correct and proper and no one can be misdirected on what a person seeks when he says he desires to be enjoined in an action. The Respondents objection on the use of the word “enjoin” therefore, is overruled (though this court at first instance as stated as much when this application was being canvassed).

13. Having dealt with the word used in the application, this court will now consider the merit or substance of the application. The applicants seek to be enjoined as interested parties. So who is an interested party? An interested party going by Section of the Mutunga Rules 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.”

14. The above definition means an interested party is one who has a demonstrable stake in the proceedings pending in court though he or she is not a party. He/she is required to demonstrate that he/she will not only be affected by a decision made in the proceedings but show or demonstrate that his/her issues can only be articulated well by himself/herself and unless he is allowed to come in, no one else will bring out the issue(s).



15. The applicants have moved this court under Rule 5(d) of the Mutunga Rules which state as follows: -  
Rule 5(d) Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules commonly referred to as Mutunga Rules provide 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 just,

- i. Order that the name of any party improperly joined be struck out and
- 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.”

The above rule shows that the court is granted a discretion to enjoin any party necessary so long as the party seeking to be enjoined demonstrates to the satisfaction of the court that his/her presence is necessary owing to unique or special information/facts held or known to him/her.

16. The main issue for determination in this application therefore is whether the applicants have demonstrated that they have an identifiable stake or legal interests in the proceedings herein.
17. To determine the above issue, this court takes guidance from sentiments expressed by the Supreme Court’s decision in the case of Francis Karioko Muruatetu & Another versus Republic and 5 Others [2016]eKLR, when that court was called upon to determine, the question of joinder brought by parties seeking to have a say in the petition filed by Francis Kariokor Muruatetu and 5 Others. On the specific question of enjoyment, the Supreme Court stated that where a party seeks to be enjoined in the proceedings as Interested Party, he must demonstrate the following: -
- 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 be proximate enough to stand apart from anything that is merely peripheral.
  - ii. The prejudice to be suffered by the Interested Party in case of non-joinder must be demonstrated to the satisfaction of the court. It must 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 relevance of those submissions. It should also demonstrate that these submissions are not a replica of what other parties will be making before court” (Emphasis added).
18. In the case of Meme versus Republic [2004]/EA 124, the Court observed joinder of person is necessary where it is shown that his presence or presentation will result in the complete settlement of all questions involved in the proceedings. That observation is also made in the case of Kenya Medical Laboratory Technician & Technologies Board and 6 Others versus A.G. & 4 Others [2017] eKLR.
19. It is true that a petition touching on public interests invariably affects people in a given area but to include all persons affected as interested parties is both impractical and can certainly delay conclusion of a case. A person applying to be enjoined must therefore, show or demonstrate that his/her presence will assist the court in the settlement of the issues before it. The burden of demonstrating this is on the applicant.



20. In this instance, the applicants have stated that they come from Matulani where the Respondents are said to have gazette establishment of a sub-location. Apart from the claims, there is nothing much laid before me that demonstrates that they have special stake or information not available to the named respondents herein and which facts or evidence/issues will assist this court to determine this petition with finality.
21. As a matter of fact, the Respondents are yet to file any response and one of the allegations is that the Respondents never took the sentiments of the local people during the public participation exercise. The applicants have stated that there was no public participation and therefore, one of the issues to be determined if there will be opposition filed to the petition is one, whether there was public participation and two, if the same was meaningful and took views given by the public into consideration as stipulated in the Constitution. This court finds that the applicants have really not demonstrated any special identifiable interest/stake apart from showing that they are residents of the area.
22. I am however inclined to enjoin the first applicant Joshua Muthui Kimolo because the Respondents have expressed no objection to the same. The other applicants can have their views ventilated by Joshua Muthui to save on judicial time and resources because the applicants have one ground in common that of being residents of Matulani Location. The former Chief and the 2<sup>nd</sup> applicant can have his view ventilated via the 1st Respondent who represents the local administrator and all the affected administrators. His knowledge to the facts in issue is not unique and he has not demonstrated that his views or facts to be presented and which he has not showed cannot be presented by the current Area Chief.
23. In sum this application is allowed only in respect to the 1st applicant Joshua Muthui Kimolo. Costs shall be in cause. The 1<sup>st</sup> applicant henceforth, shall be described in the proceedings to be filed as Interested Party and is given liberty to file response to the Petition and the application pending.

**DATED, SIGNED AND DELIVERED AT KITUI THIS 11<sup>TH</sup> DAY OF OCTOBER, 2023.**

**HON. JUSTICE R. LIMO**

**JUDGE**

