



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. 10 OF 2019

GODFREY MURITHI NJIRUPETITIONER/RESPONDENT

VERSUS

SPEAKER, COUNTY ASSEMBLY OF EMBU.....1ST RESPONDENT

COUNTY ASSEMBLY OF EMBU.....2ND RESPONDENT

AND

COUNTY GOVERNMENT OF EMBU.....APPLICANT/PROPOSED INTERESTED PARTY

RULING

1. The application before this court is a notice of motion dated 02.12.2019 wherein the applicant seeks before this court orders that:

- i. Spent.
- ii. This Honorable Court be and is hereby pleased to grant leave to Embu County Government to be enjoined in these proceedings as an interested party.
- iii. Costs be provided for.

2. The application is premised on the grounds on the face of it and the annexed affidavit sworn by Wilson Ireri. In a nutshell, it is the applicants' case that it is a creature of Article 176 of the constitution and thus exercises devolved functions of the government assigned to it under the constitution and County Government Act, on behalf of the people of Embu. It is his case that the 1st respondent is the speaker of the 2nd respondent whose role under Article 178 of the constitution inter alia, is to preside over the sitting of the 2nd respondent and whose conduct of its affairs affects the interested party. That for that reason, the proposed interested party should be enjoined in the proceedings herein.

3. The 1st and 2nd respondents filed grounds of opposition to rival the application herein. It is clear that the proposed interested party seeks to be enjoined in the proceedings herein and for that reason, the main issue that I have to determine is whether the application by the proposed interested party is merited.

4. The parties took directions that the application be canvassed by way of written submissions.

5. Rule 2 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 defines 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 be directly involved in the litigation.

6. Order 7 Rule 9 of the Civil Procedure Rule states that;

The court may even on its own motion add a party to the suit if such party is necessary for the determination of the real matter in dispute or whose presence is necessary in order to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit.

7. Order 1 Rule (10) (2) of the Civil procedure Rules empowers the court, at any stage of the proceedings, upon application by either party or *suo moto*, to order the name of a person who ought to have been joined or whose presence before the court is necessary to be enjoined for the court to effectively and completely adjudicate upon and settle all questions involved in the suit, to be added as a party.

8. The threshold for joinder was set out in the case of **Francis Kariuki Muruatetu & Another v Republic & 5 others in Petition 15 as consolidated with 16 of 2013 (2016) eKLR**. The court held that the applicant must move the court by way of a formal application. Enjoinder 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.

9. Similarly, in the case of **Trusted Society of Human Rights Alliance v Mumo Matemu (2014) eKLR**, the Supreme Court held that:

“An interested party is one who has a stake in the proceedings, though he or she was not a 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 herself appears in the proceedings, and champion his or her cause.”

10. Therefore, joinder of parties is permitted by law and can be done at any stage of the proceedings; but joinder of parties may be refused where such joinder will lead to practical problems of handling the existing cause of action together with the one of the parties being joined as necessary or will occasion unnecessary delay or costs on the parties in the suit.

11. Joinder of parties will be declined where the cause of action being proposed or the relief sought is incompatible to, or totally different from existing cause of action or relief. The determining factor in joinder of parties is that common question of fact or law would arise between the existing and the intended parties. This is the test that was applied by F. Gikonyo J. in the case of **Lucy Nungari Ngigi & 128 others v National Bank of Kenya Limited and another** in which, the court was of the view that accordingly, to determine the real issues in dispute among all the parties, the intended respondents must be enjoined.

12. In my view, in deciding an application for joinder, the court must exercise a liberal approach so as not to shut out a genuine litigant who is effectively interested or is bound by the outcome of the suit. However, the court must guard against a frivolous or vexatious litigant whose sole motivation is to complicate and confuse issues that are before court for determination.

13. As the Court held in **Judicial Service Commission v The Speaker of the National Assembly & Another Petition No. 518 of 2013**:

“The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2012, defines an interested party as “a person or entity that has an identifiable stake or legal interest in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation”.... He is a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly non-partisan as he is likely to urge the Court to make a determination favourable to his stake in the proceedings...

14. In determining whether the applicant has a legal interest in the subject matter of an action sufficient to entitle him to be joined as an interested party, the true test lies not so much in an analysis of what the constituents of the applicant’s rights are, but rather in what would be the result on the subject matter of the action if those rights could be established. In the case herein, the applicant has demonstrated a legal and identifiable interest in the subject matter of this case and further, a right to participate in the proceedings herein.

15. The proposed interested party has argued that it is a creature of Article 176 of the Constitution and thus exercises devolved functions of the government assigned to it under the constitution and County Government Act, on behalf of the people of Embu. It is their case that the role of the 1st respondent who is a speaker of the 2nd respondent under Article 178 of the Constitution *inter alia*, is to preside over the sitting of the 2nd respondent and whose conduct of its affairs affects the interested party. The applicant avers that under Section 5 of the County Governments Act, whenever the 1st respondent presides over the 2nd respondent in passing unconstitutional or irregular motions, it impedes service delivery by the applicant.

16. From the above analysis, I am satisfied that the applicant has demonstrated a “legitimate interest” in these proceedings. On the other hand, the respondents have not shown in any manner how they will be prejudiced by the orders sought. The presence and participation of the applicant/proposed interested party in these proceedings is necessary to avoid multiplicity of suits. I find that this is a proper case for the court to exercise its discretion in favour of the applicant/interested party.

17. In the circumstances aforesaid, I allow the application and order as follows; that

- i. The applicant, County Government of Embu, is hereby enjoined in these proceedings as an interested party.
- ii. The interested party be and is hereby granted Fourteen (14) days from the date of this order to file its response (if any) to the petition.
- iii. Costs of the application shall abide the outcome of the petition.

18. It is so ordered

DELIVERED, DATED AND SIGNED AT EMBU THIS 2ND DAY OF FEBRUARY, 2022

L. NJUGUNA

JUDGE

.....for the Petitioner/Respondent

.....for the Respondents

.....for the Proposed Interested Party/Applicant