



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**CONSTITUTIONAL & JUDICIAL REVIEW DIVISION**

**JUDICIAL REVIEW NO. 17 OF 2018**

**IN THE MATTER OF: AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW FOR ORDERS OF CERTIORARI AND PROHIBITION UNDER SECTIONS 8 AND 9 OF THE LAW REFORMS ACT CHAPTER 26 OF THE LAWS OF KENYA AND ORDER 53 OF THE CIVIL PROCEDURE RULES**

**AND**

**IN THE MATTER OF: FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2015**

**AND**

**IN THE MATTER OF: THE THREATENED/UNLAWFUL ARREST OF ABRAHAM NGUGI NJOROGE**

**BETWEEN**

**ABRAHAM NGUGI NJOROGE.....APPLICANT**

**AND**

**1. DIRECTOR OF PUBLIC PROSECUTION**

**2. THE HON. ATTORNEY GENERAL**

**3. DIRECTOR OF CRIMINAL INVESTIGATIONS.....RESPONDENTS**

**AND**

**IDHA MBARAK ALL.....INTERESTED PARTY**

**RULING**

1. The Chamber Summons before the court is dated 29/10/19, filed by the proposed Interested Party Idha Mbarak Ali who seeks orders that he be joined to these proceedings.

2. The application is supported by all the Respondents.

3. However, the Ex parte Applicant has opposed the application through a Replying Affidavit sworn by the Ex parte Applicant on 9/12/19.

4. The Ex parte Applicant's case is that the Applicant has not demonstrated what input and value he will add to the proceedings since the irregularities and procedural flaws outlined in the Ex parte Applicant's application were committed by the Respondents and not the Applicant herein; that the Applicant has not demonstrated that the orders being sought in the substantive application dated 20/3/18 will directly affect him; that the application by the Applicant is incompetent, frivolous and a waste of judicial time since the crux of the application is to determine ownership of KWALE/DIANI COMPLEX/235; that this court does not have the jurisdiction to grant/determine dispute as to ownership of the subject property; that the basis of the substantive application is to quash the charges preferred against the Applicant in Criminal Case at Kwale which are scheduled to be withdrawn under Section 87 (a) of the Criminal Procedure Code for lack of proper and thorough investigations after the directive from the 1<sup>st</sup> Respondent to the 3<sup>rd</sup> Respondent; that the proposed Interested Party has threatened, intimidated and coerced both the 1<sup>st</sup> and 3<sup>rd</sup> Respondents' officers handling the investigation file to sustain the illegal charges by bragging of his close and personal relationship with the Director of Public Prosecutions, Mr. Nordin Haji, and has on several occasions threatened

prosecution counsel handling the file and who have directed the County Criminal Investigations Officer to withdraw the charges for poor investigations with dire consequences and that the proposed Interested Party is a busy body who is avoiding being investigated by attempting to legitimize his title deed by ensuring the Applicant is charged with criminal offence.

**The Determination**

5. The jurisprudence behind the joining of a party to proceedings is firstly that the new party may help the court to arrive at a just decision due to the information that the new party may have, and which may not presently be before the court. The second reason is so that a multiplicity of proceedings maybe avoided. On the face of it therefore, a party wishing to join proceedings cannot be denied the prayer sought unless the court is satisfied that such joinder is likely to cause confusion in the proceedings.

6. I have looked at the Replying Affidavit by the Ex parte Applicant. There is no doubt from that affidavit that the Ex parte Applicant himself acknowledges that the Applicant has an interest in the suit property. That interest is enough for this court to admit the Applicant to these proceedings. Therefore, the application before the court is allowed with costs in the cause. The Ex parte Applicant shall serve the proposed Interested Party with proceedings in this matter within two (2) days.

**Dated, Signed and Delivered at Mombasa this 16<sup>th</sup> day of January, 2020.**

**E. K. OGOLA**

**JUDGE**

In the presence of:

Mr. Wangila for Interested Party

Mr. Fedha for DPP

Ms. Kisingo holding brief Mungai for Respondent

Mr. Kaunda Court Assistant