



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

JUDICIAL REVIEW APPLICATION NO. 2 OF 2019

JUSTIN KITHINJI NDERI.....1ST APPLICANT

ASHFORD MUTEMBEI MWIANDI.....2ND APPLICANT

EUNICE WANGIGE.....3RD APPLICANT

VERSUS

THE DIRECTOR OF PUBLIC PROSECUTIONS.....1ST RESPONDENT

THE INSPECTOR GENERAL OF POLICE.....2ND RESPONDENT

NJIRU MICHENI NTHIGA.....APPLICANT/INTERESTED PARTY

RULING

1. Before me is a chamber application dated 19th November 2019 brought by NJIRU MICHENI NTHIGA, the intended Interested Party who has invoked the provisions of **Section 1 A, 1B, 3, 3A** Civil Procedure Act order **53 Rule 6 Civil Procedure Rules , Article 50(1), 159(1) (2) (a) (b) (d) and e, 160(1), 165 (3) (a) and (b)** of the Constitution of Kenya 2010 in asking for the following reliefs namely:-

(i) Spent

(ii) That this Honourable court be pleased to enjoin him (Njiru Micheni Nthiga) as an Interested Party in this Judicial Review proceedings

(iii) Costs.

2. The grounds for seeking the said relief are:-

a) That the Applicant in the instant application is the complainant in Chuka CMCC or Criminal Case No.1332 of 2019 which is the subject of the Judicial Review proceedings herein.

b) That it is in the interest of justice for the Applicant herein to be included as he has material facts about the case.

c) That enjoinder would not prejudice, embarrass or delay the quick dispensation of justice in the Judicial Review pending.

d) That unless the application is allowed he stands to suffer irreparably.

3. The Applicant has supported his application with an affidavit sworn on 19th November 2019 where he has reiterated the above grounds adding that the property subject of the **Criminal Case No.1332 of 2019** belongs to his deceased father Leonard Nthiga who passed on 26th November 2017 and he is the administrator of that estate. He has exhibited copies of title deed of the property in question and a limited grant giving him capacity to sue County Government of Tharaka Nithi.

4. This application is unopposed and under **Order 53 (b)** the rule provides;

"On the hearing of any such motion as aforesaid, any person who desires to be heard in opposition to the motion and appears to the High Court to be a proper person to be heard shall be heard notwithstanding that he has not been served with the notice or summons and shall be liable to costs in the discretion of the court if the order should be made."

5. It is quite apparent that the applicant herein being the complainant in the criminal case which the exparte applicant seek to quash is a proper person to be included so that he can give his input to enable this court effectively adjudicate upon and settle matters in controversy in the Judicial Review proceedings.

6. In the case of *Communications Commission of Kenya & 4 Others -vs- Royal Media Services Ltd & 7 others, [2014] eKLR* the Supreme Court pronounced itself on the conditions to be satisfied before a party can be made an Interested Party. The court held;

“In determining whether the applicant should be admitted into these proceedings as an interested party we are guided by this Court’s decision in theMumoMatemo case where the Court (at paragraphs14 and 18) held:

“[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 questions 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 stake and relevance in the proceedings? And b) will the intended interested party suffer any prejudice if denied joinder?”

7. Similarly in *SKOV Estate Ltd & 5 Others -vs- Agricultural Development Corporation and Another* Hon Justice Sila Munyao held similar views this:

“18. In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in a suit as interested party. In other words, there needs to be a demonstration that the interest of the person goes further than “merely being affected” by the judgment or order. It must be shown that the presence of that person is necessary, so that the issues in the suit may be settled, and that if the person is not enjoined, the court may not be fully equipped to settle the questions in the suit or may be handicapped in one way or another. A joinder may also be allowed if the intended interested party has a claim of his own, which in the circumstances of the matter, needs to be tried, or is convenient to be tried alongside the claims of the incumbent plaintiff and defendant. The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to enjoin a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case.” (emphasis added)

8. In the light of the above decisions this court finds that the applicant has demonstrated that he has a legitimate interest in the matter before court and he is proper person to be made a party in this Judicial Review proceedings for the interest of justice.

In the foregoing the application dated 19th November 2019 is allowed but costs shall be in the substantive cause.

Dated, signed and delivered at Chuka this 12th day of February 2020.

R.K. LIMO

JUDGE

12/2/2020

Ruling signed, dated and delivered in the open court in presence of Momanyi for Respondent and Saluny for Interested Party.

R.K. LIMO

JUDGE