



Mwilu v Judicial Service Commission & 2 others; Director of Public Prosecutions & another (Intended Respondent) (Petition 245 of 2020) [2020] KEHC 2745 (KLR) (Constitutional and Human Rights) (7 October 2020) (Ruling)

Philomena Mbete Mwilu v Judicial Service Commission & 2 others; Director of Public Prosecutions & 4 others [2020] eKLR

Neutral citation: [2020] KEHC 2745 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION 245 OF 2020

WK KORIR, J

OCTOBER 7, 2020

BETWEEN

HONOURABLE LADY JUSTICE PHILOMENA MBETE MWILU . PETITIONER

AND

JUDICIAL SERVICE COMMISSION 1ST RESPONDENT

JUSTICE PAUL KIHARA KARIUKI 2ND RESPONDENT

MACHARIA NJERU 3RD RESPONDENT

AND

DIRECTOR OF PUBLIC PROSECUTIONS INTENDED RESPONDENT

DIRECTOR OF CRIMINAL INVESTIGATIONS INTENDED RESPONDENT

RULING

1. This ruling is in respect of two applications. The 1st application is dated 28th August, 2020 and is brought under Articles 2, 47, 48, 50, 157, 159 and 259 of the Constitution; Section 3A of the Civil Procedure Act; Order 51 Rule 3 and Order 51 Rule 1 of the Civil Procedure Rules; Rules 5(d)(ii) and 25 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013; and all other enabling provisions of the law. Through the application the Applicant/4th Intended Respondent, the Director of Public Prosecutions (DPP), seek orders as follows:



- (i) That this Honourable Court be pleased to admit and certify this matter as extremely urgent and set it down for hearing ex-parte on a priority basis at the first instance during the vacation.
 - (ii) That this Honourable Court, pending the hearing inter-partes of this application, be pleased to set aside/vary or discharge its orders granted on 17th August 2020 until this application is heard and determined.
 - (iii) That the Honourable Court, be pleased to order that the Applicant be enjoined in these proceedings as a Petitioner/Respondent to the main petition and any other accompanying application by the Respondent/Petitioner.
 - (iv) That the Honourable Court be pleased to vacate the orders of 17th August 2020 upon hearing this application inter-partes.
 - (v) That this Honourable Court be pleased to make any other order that it may deem fit and just to grant.
2. The application is supported by the grounds on its face and the affidavit sworn on the date of application by Dorcas Oduor, the Secretary to Public Prosecutions.
 3. The second application is that of the Director of Criminal Investigations (DCI) brought under Articles 2, 47, 48, 50, 159 and 259 of the Constitution; sections 1A, 1B, 3 and 3A of the Civil Procedure Act; Order 1 rules 8 and 10(2) and Order 51 of the Civil Procedure Rules; and all other enabling provisions of the law and the inherent power of the court. The Applicant through the application dated 27th August, 2019 seek orders as follows:
 - (i) That the Applicant/Intended 5th Respondent be joined as a party and as the 5th Respondent to this suit;
 - (ii) That the costs of this application be provided for.
 4. The application is supported by the grounds on its face and an affidavit sworn on 28th August, 2020 by Abdallah Komeshu Mwatsefu, a Commissioner of Police attached to the Directorate of Criminal Investigations.
 5. The 1st Respondent, the Judicial Service Commission (JSC), filed grounds dated 7th September, 2020 in support of the 4th and 5th intended respondents' applications for joinder.
 6. The Petitioner, Hon. Lady Justice Philomena Mbete Mwilu, opposed the applications for joinder through a replying affidavit sworn on 7th September, 2020.
 7. The ruling only addresses the applications for joinder. No arguments were advanced in respect of the other prayers in the application of the DPP as it was agreed that those prayers will be addressed later, if need be.
 8. A perusal of the pleadings and submissions by the DPP discloses that he seeks joinder on the grounds that he is a necessary party and has sufficient interest in the suit touching on his constitutional obligations. He additionally asserts that the issues arising in the suit cannot be effectively and completely settled unless he is enjoined as a party. It is averred that the DPP is the petitioner in Petition No. 86 of 2019 before the Judicial Service Commission (JSC) which seeks the removal of the Petitioner herein as a Judge and he is thus a necessary party to this petition which seeks to stop the proceedings before the JSC.



9. The DPP's averment is that he seeks to be enjoined as a Respondent in this case in order to canvass his case. He accuses the Petitioner of mischief in failing to join him as a party to the proceedings at the time of instituting this petition.
10. The DPP asserts that failure to enjoin him in these proceedings will deprive the Court of the opportunity to hear his position on the matters raised in the petition. Further, that failure to enjoin him in the petition was calculated to ensure that this Court does not get a global view of the issues raised in the matter. The DPP relies on the decision in the case of *Lucy Nungari Ngigi & 128 others v National Bank of Kenya Limited & another* (2015) eKLR in support of his application for joinder.
11. In support of his application for joinder, the DCI discloses that he is the 2nd petitioner in JSC Petition No. 86 of 2019 the Director of Public Prosecutions & the Director of Criminal Investigations v the Honourable Philomena Mbete Mwilu. It is the DCI's case that although the Petitioner has sought orders directly against him, she has failed, refused and or neglected to join him as a party to the suit.
12. It is the DCI's case that he is directly and fundamentally affected by this petition and will be seriously prejudiced by any orders issued in this matter. Further, that his presence in the proceedings will result in complete settlement of all questions involved in the proceedings.
13. Additionally, the DCI contends that his joinder will serve to provide protection of his rights and the rights of the Kenyans he swore to serve and who would be adversely affected by the failure to join him in the proceedings. Also, that his joinder to this suit is necessary to prevent a likely course of proliferated litigation and will avoid a multiplicity of suits being filed in Court.
14. The DCI avers that he has both a direct and indirect stake in these proceedings. Further, that he has great relevance in the petition and his interests will not be articulated unless he himself appears in the proceedings and champions his cause.
15. Finally, the DCI deposes that he will suffer great prejudice and shall be adversely affected by the determination of the matter unless he is given an opportunity to be heard. Additionally, that no prejudice will be suffered by any party and it is in the public interest that the DCI is made a party to the suit.
16. Counsel for the DCI supported the application by placing reliance on the decisions of the Supreme Court in the cases of *Communications Commission of Kenya & 4 others v Royal Medial Services & 7 others* [2014] eKLR; *Francis Kariuki Muruatetu & 5 others v Republic* [2016] eKLR; and *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others* [2014] eKLR.
17. The JSC supported the applications for joinder by filing the document titled '1st Respondent's Notice of Grounds in Support of the Application of the Intended 4th Respondent dated 25th August, 2020.' The relevant ground is framed as follows:

“That the Director of Public Prosecutions (DPP) is a necessary party to the present proceedings because their genesis is the intended prosecution of the Hon. Lady Justice Philomena Mbete Mwilu (the Petitioner herein). The DPP is also one of the parties that have filed a petition for removal of the Petitioner herein with the Judicial Service Commission. Accordingly, it would be in the interest of justice and for the wholesome and conclusive determination of the instant Petition for the Court to exercise its discretion by allowing the joinder as prayed.”
18. The advocates for the JSC made oral highlights in support of their position.



19. In opposition to the applications, the Petitioner asserts that neither the DPP nor the DCI has made out a case for joinder to these proceedings either as respondent or interested party. Her averment is that she has named the JSC, Honourable Mr. Justice Paul Kihara Kariuki and Macharia Njeru as respondents to the cause herein, pleaded and particularized the pleas against each and every one of them and there is therefore no basis for enjoining any other respondent.
20. The Petitioner points to Rule 2 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013* (hereinafter simply referred to as the Mutunga Rules) as defining the term ‘respondent’ to mean a person who is alleged to have denied or violated or infringed, or threatened to deny, violate or infringe a right or fundamental freedom. Her averment is that from the issues she has identified for determination and the grievances she has particularized in her pleadings, the DPP and the DCI cannot be named respondents to the petition as they are not alleged to have denied or violated or infringed, or threatened to deny, violate or infringe her rights or fundamental freedoms in so far as they relate to the issues raised in the petition.
21. It is additionally the Petitioner’s case that the issues touching directly on the office of the DPP and the DCI, wherein the two are alleged to have denied, violated, infringed upon, threatened to deny, violate or infringe upon her rights and fundamental freedoms are the subject matter of Civil Appeal No. 298 of 2019, Honourable Philomena Mbete Mwilu v DPP & 6 others and Civil Appeal No. 314 of 2019, the Director of Public Prosecutions & the Director of Criminal Investigations v Honourable Philomena Mbete Mwilu. Her case is that the issues in the stated appeals are clearly distinct and separate from the questions arising in this petition. Further, that the respondents in this petition are not parties to the said appeals.
22. The Petitioner also bases her opposition to the applications for joinder on Rule 5(d)(ii) of the *Mutunga Rules*. Her case is that an application for joinder can only be initiated by a petitioner or a respondent and a third party cannot apply for joinder as a party to the proceedings. The Petitioner concedes that a third party may, however, apply for joinder or may be joined by the court on its own motion as an interested party under Rule 7(1) and (2) of the *Mutunga Rules*. She therefore urges for the dismissal of the applications for joinder for being incompetent.
23. It is additionally the Petitioner’s case that the applications for joinder should fail for the reasons that she has no cause of action against either the DPP or the DCI in this petition; that her petition is targeted at the decisions of the JSC; that the DPP and the DCI are not necessary parties and proper parties to the petition nor is there a relief flowing from them to her; that this is not a case in which the ultimate order or decree contemplated in the petition cannot be enforced without the participation of the applicants in these proceedings; and, that the choice of the respondents in the petition lawfully belongs to her and not to the DPP and the DCI.
24. The Petitioner further deposes that the joinder of the DPP and the DCI as respondents or interested parties in this petition is not desirable for the reasons that any claim by herself against the DPP and the DCI is res judicata in view of the judgement made by the High Court on 31st May, 2019 in H. C. Petition No. 295 of 2018, Honourable Philomena Mbete Mwilu v DPP & 4 others; that any claim by herself against the DPP and the DCI will be an abuse of the process of Court in view of the pendency of Civil Appeal No. 298 of 2019, Honourable Philomena Mbete Mwilu v DPP & 6 others and Civil Appeal No. 314 of 2019, The Director of Public Prosecutions & the Director of Criminal Investigations v Honourable Philomena Mbete Mwilu; and, that a party who has filed a petition before the JSC seeking the removal of a judge from office cannot be permitted to espouse the response otherwise reserved for the JSC when the JSC’s administrative action is challenged in court by the Judge.



25. It is also the Petitioner's case that the DPP and the DCI are busybodies whose intention is to embarrass and prejudice the fair hearing and determination of this petition; that it will be embarrassing for the DPP, the DCI and the JSC to appear together and take the same position in this petition and for the JSC to be expected to be impartial in the petitions pending before it should they be allowed to proceed; that as disclosed in the applications, the joinder of the DPP and the DCI will only be for the purposes of vexing the Petitioner or convoluting the proceedings; and, that the ulterior motive on the part of the DPP and the DCI is disclosed by the fact that they obtained the petition and filed their applications on 28th August, 2020 even before the respondents could respond to the petition.
26. Turning to the JSC's grounds dated 7th September, 2020 in support of the request for joinder, the Petitioner asserts that the JSC which is required to be an impartial and independent arbiter had entered the fray of litigation to gang up and join hands with her accusers. Her case is that the conduct of the JSC and the DPP should be frowned upon by this Court as was done by the Court of Appeal in respect of the conduct of the assisting counsel and the Ntutu brothers in *Moiyo Matayia Ole Keiwua v Chief Justice of Kenya & 6 others* [2006] eKLR and *Moiyo Mataiya Ole Keiwua v Chief Justice of Kenya & 6 others* [2008] eKLR.
27. The Petitioner supported her averments and submissions by reference to the decisions in the cases of *Francis Kariuki Muruatetu & another v Republic & 5 others* [2016] eKLR; *Kenya National Union of Nurses v County Public Service Board Uasin Gishu County Government & another* [2018] eKLR; *Joseph Njau Kingori v Robert Maina Chege & 3 others* [2002]; *Talewa Road Contractors v Kenya National Highways Authority & another* [2019] eKLR; *Kensalt Limited v Water Resources Management Authority* [2018] eKLR; *Moiyo Matayia Ole Keiwua v Chief Justice of Kenya & 6 others* [2006] eKLR; *Attorney General v Kenya Bureau of Standards and another* [2018] eKLR; *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others* [2015] eKLR; *Judicial Service Commission v Speaker of the National Assembly and others* [2014] eKLR; and *Raila Amolo Odinga & another v IEBC & 3 others* [2017] eKLR.
28. The law on joinder of a party either as a petitioner, respondent or interested party is now well established. In constitutional petitions, the applicable law on joinder of parties is found at Rule 5 of the *Mutunga Rules* which states:

“ 5. Addition, joinder, substitution and striking out of parties

The following procedure shall apply with respect to addition, joinder, substitution and striking out of parties-

- (a) Where the petitioner is in doubt as to the persons from whom redress should be sought, the petitioner may join two or more respondents in order that the question as to which of the respondent is liable, and to what extent, may be determined as between all parties.
- (b) A petition shall not be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every proceeding deal with the matter in dispute.
- (c) Where proceedings have been instituted in the name of the wrong person as petitioner, or where it is doubtful whether it has been instituted in the name of the right petitioner, the Court may at any stage of the proceedings, if satisfied that the proceedings have



been instituted through a mistake made in good faith, and that it is necessary for the determination of the matter in dispute, order any other person to be substituted or added as petitioner upon such terms as it thinks fit.

- (d) 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.
- (e) Where a respondent is added or substituted, the petition shall unless the court otherwise directs, be amended in such a manner as may be necessary, and amended copies of the petition shall be served on the new respondent and, if the court thinks, fit on the original respondents.”

29. In regard to joinder as an interested party, Rule 7 provides as follows:

“7. Interested party

- (1) A person, with leave of the Court, may make an oral or written application to be joined as an interested party.
- (2) A court may on its own motion join any interested party to the proceedings before it.”

30. The Petitioner submits that the application is incompetent on two grounds namely that the applications are brought under the wrong provisions of the law and that an application for joinder as a respondent can only be made the parties to the suit and not a third party.

31. In support of the claim that constitutional provisions cannot be the basis upon which an application for joinder is made, counsel for the Petitioner cites *Francis Kariuki Muruatetu* (*supra*) where the Supreme Court held that:

“(45) Parties, particularly Katiba Institute, cited Article 22 of the Constitution as allowing them to join this matter so as to protect the public interest. Article 22 provides:

“(1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.

“(2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by –

- (a) a person acting on behalf of another person who cannot act in their own name;



- (b) a person acting as a member of, or in the interest of a group or class of persons;
- (c) a person acting in the public interest; or
- (d) an association acting in the interest of one or more of its members”.

(46) Clearly, this Article cannot be a basis for admission of an interested party to any existing proceedings, where such a party has not shown a personal stake/interest in the matter, and only seeks to champion the public interest. The said article allows a party acting on behalf of another, or of the public, to ‘commence or institute’ a matter before a Court of law. Article 22 is not a formula for the admission of interested parties to any and all Court proceedings.”

31. In support of the submission that a third party cannot move the court for joinder as a respondent, reliance is placed on Rule 5(d) of the Mutungu Rules and the holding in Kenya National Union of Nurses (supra) that:

“20. This definition is important as where a claimant has filed a claim with the court and failed to include the correct ‘respondent’ and the person/party/entity against who should give a reply, the orders sought against such party would not apply. It is therefore the duty of a claimant to include the ‘respondent’ or ‘respondents’ against whom the orders sought from the court should issue.

21. In essence, where a respondent has been sued and is required to reply to the claims made and notes that liability lies elsewhere, and then it becomes imperative on such a respondent to seek the enjoinder of the correct and or proper respondent through third party proceedings and at the cost of the claimant. Such would ensure that the claimant is put into task and the court is appraised of the proper party/parties against whom liability lies....

25. To this extent, the applicant by moving the court thus to be enjoined as a respondent and not interested party is not proper. The claimant must choose who the respondent in proceedings is or are. Where such a respondent or respondents find another party as necessary, then the court must be moved appropriately. The applicant has the chance to be enjoined as an interested party by stating its interest(s).”

32. In response to the submissions that the applications for joinder are incompetent, counsel for the DCI submitted that the claim by the Petitioner that only a party to a suit can apply for joinder of another party is an erroneous interpretation of the Rule 5(d) of the Mutungu Rules. Counsel contended that the court is at liberty to enjoin any party that may be affected by the proceedings and the only way that the court can determine if a party is likely to be affected by the proceedings is by considering an application by a third party.

33. Counsel urged that the court can also fall back on Rule 3(8) of the Mutungu Rules which reserves the inherent power of the court to issue orders necessary for the purpose of upholding justice. It was additionally submitted by counsel for the DCI that Order 53 of the Civil Procedure Rules, 2010 which deals with applications for judicial review is a good reference point as it provides for service



of the application for judicial review orders on any person who ought to have been served with the application.

34. I have read the decision of Mbaru, J in *Kenya National Union of Nurses (supra)* and my understanding of that decision is that a claimant, plaintiff or petitioner decides who the respondent or defendant to his or her case is. Failure to bring the proper respondent or defendant before the court will be to the disadvantage of the claimant, plaintiff or petitioner as no enforceable orders can issue against a party not before the court.
35. A reading of Rule 5 of the *Mutunga Rules* in its entirety appear to support the Petitioner's argument that it is only the parties before the court who can move the court for the addition, joinder, substitution and striking out of parties. Any case filed before the court is between the parties before court. A petitioner identifies and sues the person or persons who, in his or her view, has or have denied, violated or infringed, or threatened to deny or infringe his or her rights or fundamental freedoms. If the respondent or respondents are of the view that other persons not before court should be enjoined as co-violators of rights and fundamental freedoms, then they can apply to the court for addition of those persons as co-respondents.
36. There is, however, the possibility that there could be another person or other persons whose rights and fundamental freedoms have been violated or threatened by the same respondents in similar circumstances to those of the petitioner. Such a person, in my view, may seek to be enjoined as a co-petitioner. That would require the petition to be amended in order to state the particulars of the claim of the new petitioner against the respondents. The other and neater alternative, in my view, is for the new petitioner to file a fresh petition so that the petitions can be consolidated or heard contemporaneously. I do not wish to explore this issue further since the Petitioner has also raised substantive arguments as to why the applications for joinder should not succeed.
37. The DPP and DCI have stepped forward asking to be enjoined as respondents. The Petitioner says she has no claim against them in so far as this petition is concerned. The principles of joinder have been stated in various decisions of this Court and higher Courts.
38. The Petitioner's case is that the DPP and the DCI have not established that any relief flows from the intended respondents to her. The applicants claim that some of the reliefs sought by Petitioner are against them. In the case of *Joseph Njau Kingori (supra)* it was stated that:

“When the above principles are applied to the facts of these applications it is clear that the guiding principles when an intending party is to be joined are as follows:

1. He must be a necessary party
2. He must be a proper party.
3. In the case of a defendant there must be a relief flowing from that defendant to the plaintiff.
4. The ultimate order or decree cannot be enforced without his presence in the matter.
5. His presence is necessary to enable the Court to effectively and completely to adjudicate upon and settle all questions involved in the suit.”



39. The Court proceeded to dismiss the application for joinder holding that:
- “There is nothing to show that the ultimate order or final decree cannot be enforced against the defendants without the intended party’s participation in the proceedings.”
40. That there must be a claim against the intended respondent which the intended respondent should answer was also stated in *Talewa Road Contractors (supra)* as follows:
- “Thirdly, the intended 2nd Respondent cannot be joined as Respondent in these proceedings because the Applicant has no claim or interest or right against the 2nd intended Respondent. In fact, from facts deposed by the intended 2nd Respondent it is the other way round that the intended 2nd Respondent has a claim against the Applicant. To grant/allow joinder to these proceedings as Respondent would be a misjoinder. From the above evidence, this Court finds that the intended 2nd Respondent is not a necessary party and a proper party to the proceedings, there is no relief flowing from the Respondent to the Applicant. The ultimate order or decree in this case the Arbitral award can be enforced without the intended 2nd Respondent as party to instant proceedings. The intended 2nd Respondent’s presence is not necessary to enable the Court to effectively and completely to adjudicate upon and settle all questions involved in these proceedings”.
41. The DCI’s counsel pointed to prayers (h), (i) and (l) in the petition and submitted that the said prayers directly affect him. It is necessary to reproduce those prayers:
- “ (h) A declaration be and is hereby issued that the Director of Public Prosecutions and the Director of Criminal Investigations are not any person entitled to petition the 1st Respondent to initiate the removal of the Petitioner from office of judge under Article 168 of the Constitution of Kenya.
- (i) A declaration be and is hereby issued that an independent constitutional office holder and/or State agency and/or State Officer cannot initiate the process for removal of a judge as doing (so) is inconsistent with and in violation of the tripartite framework and designation of sovereign power under Article 1(3) of the Constitution of Kenya; it impairs and undermines the performance and functioning of the three arms of government; and interferes with the independence of the judiciary ...
- (l) Any other relief and/or order(s) the Honourable court deems appropriate, just and/or fit to grant.”
42. A perusal of the cited prayers will show that the Petitioner seeks an interpretation of the meaning of the phrase ‘any person’ in Article 168(2) of the Constitution. The interpretation the Petitioner seeks is not limited to the DPP and the DCI but extends to other independent constitutional office holders, State agencies and State officers. If the petition is successful in the terms of the highlighted prayers, a judgment in rem shall issue. The DPP and the DCI have no special interest to protect in respect of the reliefs sought. If orders are issued as sought by the Petitioner, the agency expected to implement the judgment is the JSC and not the DPP and the DCI. None of the reliefs sought by the Petitioner will therefore directly affect the DPP or the DCI to the extent that they should be made respondents.



43. I therefore agree with the Petitioner that the applications by the DPP and the DCI to be made respondents in this petition have no merit. The applications by the DPP and the DCI to join these proceedings as respondents are therefore dismissed.
44. Although the Petitioner strongly opposed the joinder of the DPP and the DCI as interested parties, I note that the DPP and the DCI did not specifically ask to be enjoined as interested parties.
45. The principles governing the joinder of interested parties in proceedings were expressed by the Supreme Court in *Francis Kariuki Muruatetu* (*supra*) as follows:

“(37) From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party: One must move the Court by way of a formal application. Enjoinment 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.”

46. The role of an interested party in proceedings is peripheral as was expressed by the Supreme Court in the just cited case as follows:

“(42) Therefore, in every case, whether some parties are enjoined as interested parties or not, the issues to be determined by the Court will always remain the issues as presented by the principal parties, or as framed by the Court from the pleadings and submissions of the principal parties. An interested party may not frame its own fresh issues, or introduce new issues for determination by the Court. One of the principles for admission of an interested party is that such a party must demonstrate that he/she has a stake in the matter before the Court. That stake cannot take the form of an altogether a new issue to be introduced before the Court.”

47. It is observed that the DPP and the DCI have a stake in the matter before this Court for the simple reason that they are the complainants before the JSC. They should be admitted as interested parties in these proceedings so that they can enjoy their rights under Article 50 of the *Constitution*. In exercise of the power granted to this Court under Rule 7(2) of the Mutunga Rules, I admit the DPP and the



DCI into these proceedings as the respective 1st Interested Party and 2nd Interested Party. Costs for the application shall abide the outcome of the petition.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7TH DAY OF OCTOBER, 2020.

W. KORIR,

JUDGE OF THE HIGH COURT

