



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUNGOMA.

JUDICIAL REVIEW CAUSE NO. 2 OF 2018.

PATRICK WANYONYI MUNIALO.....APPLICANT

AND.

COUNTY EXECUTIVE COMMITTEE (CEC) MEMBER

FOR WATER & NATURAL RESOURCES

BUNGOMA COUNTY.....1ST RESPONDENT

COUNTY EXECUTIVE COMMITTEE (CEC) MEMBER

FOR WATER & NATURAL RESOURCES

TRANS-NZOIA COUNTY.....2ND RESPONDENT

COUNTY GOVERNMENT OF BUNGOMA.....3RD RESPONDENT

COUNTY GOVERNMENT OF TRANSNZOIA.....4TH RESPONDENT

AND.

NZOIA WATER SERVICES CO. LTD.....INTERESTED PARTY

AND.

KENNEDY KILALI WEKESA.....1ST RESPONDENT/CONTEMNOR

LUSWETI FURAHA B.K.....2ND RESPONDENT/CONTEMNOR

DICKSON K. KIRUI.....3RD RESPONDENT/CONTEMNOR

RULING.

By application dated 12th January 2018 the Exparte applicant Patrick Wanyonyi Munialo applied to this court plus for leave to apply for an order of Certiorari to remove to the High Court to quash the decision of Respondents suspending the exparte applicant as Managing Director of Nzoia Water Services Company Ltd the Interested Party. By order dated 25th January 2018 the Hon. Aroni J granted the requested leave which was to operate as a stay of the implementation of the impugned decision and all steps arising therefrom and directed the exparte applicant to remain in his position pending the hearing and determination of the substantive motion.

On 23.4.2018 Water Services Regulatory Board the proposed 2nd Interested Party filed this application brought under Order 1 rule 10 (2) and (4) C.P. Rules and Section 3A of the Civil Procedure Act seeking orders;

1) Leave be granted by the Honourable Court for the Water Services Regulatory Board to be joined as an interested party to the proceedings before this court.

2) The cost of this Application be provided for.

The application was premised upon the following GROUNDS:

- a) **THAT** the proposed interested party is the national regulator of water services in the Republic of Kenya.
- b) **THAT** the decision made by the Honourable court and the outcome of the judicial review cause will directly affect the proposed interested party.
- c) **THAT** it is in the interest of justice and for the determination of all issues on merit that the orders sought herein be granted.

The application is supported by the supporting affidavit of Eng. Robert Gakubia the Chief Executive Officer of Water Services Regulatory Board who depones that the Interested Party is the National Regulator for Water Services in Kenya whose mandate is to oversee the implementation of water policies and licenses to all water service providers. He further depones that they have developed Corporate Governance guidelines which they implement and that the Notice of Motion by the Exparte Applicant touches on Governance and Regulatory framework for Water Services which is the mandate of the proposed 2nd Interested Party. For those reasons the proposed 2nd Interested Party should be allowed to be enjoined in this proceedings.

By consent the application was to be disposed of by written submissions. Mr. Muruka for the proposed 2nd Interested Party submitted that in an application like this, the applicant only need to show that he has a recognizable stake in the matter or to demonstrate to the satisfaction of the court that he has an identifiable stake or legal interest or duty in the proceedings before court. Counsel for the proposed interested party submitted that the proposed 2nd Interested Party licensed the 1st Interested Party Nzoia Water and Sanitation Company and that it has a statutory duty under Section 72(a) of the Water Act 2016 to Monitor and regulate the licensees and enforce license conditions. This, Counsel submits makes the proposed 2nd Interested Party to have an identifiable stake in these proceedings.

M/s Mumalasi for the Exparte applicant submitted that the proposed 2nd Interested Party has not demonstrated that it stands to suffer prejudice if it is not enjoined in these proceedings. For the Proposed 2nd Interested Party to succeed in this application it must show that it has a right to the litigation and to the outcome. Counsel for Exparte applicant submits the proposed 2nd Interested Party has not shown the nature of the prejudice it will suffer if the application is not granted.

The principles upon which a court will exercise its discretion to grant leave for a party to be enjoined in proceedings were well stated by the Supreme Court in *Francis Kariuki Muruatetu & Another [2015] eKLR*; where the court stated;

“Enjoinment is not as of right, but it 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 part 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.”***

At paragraph 41, the Supreme Court stated as follows;

“Having carefully considered all arguments, we are of the opinion that any party seeking to join proceedings in any capacity, must come to terms with the fact that the overriding interest or stake in any matter is that of the Primary/Principal parties before the court. The determination of any matter will always have a direct effect on the Primary/Principal parties. Third parties admitted as Interested Parties may only be remotely or indirectly affected, but the primary impact is on the party that first moved the Court.”

What is the proposed 2nd Interested Party recognizable stake or interest in these proceedings? The proposed 2nd Interested Party is the licensor which licenses and regulates all water service providers in the country. They license, regulate and enforce standards, including governance standards within the water sector. This is a mandate conferred on them under the Water Act. The issue in this petition touches on the 1st interested party, which is a licensee of the proposed 2nd Interested party. The exparte applicant's petition revolves around the suspension of the exparte applicant by the 1st Interested Party on governance grounds. Being the Regulator and enforcer of standards in the water Section, and being so mandated by the Water Act, I find that the proposed 2nd Interested Party, Water Services Board has a recognizable stake in these proceedings. No prejudice will be suffered by the exparte applicant by allowing this application.

I therefore allow the application dated 23.4. 2018 and order the proposed 2nd Interested Party to be enjoined in the proceedings as the 2nd Interested Party. Each party to bear its costs.

Dated and Signed at Bungoma this 4th day of February, 2019.

S.N. RIECHI

JUDGE