



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CONSTITUTIONAL PETITION NO. 12 OF 2013

**FORMERLY HIGH COURT OF KENYA AT NAIROBI CONSTITUTIONAL PETITION NO.
503 OF 2013**

IN THE MATTER OF THE BREACH OF RIGHTS AND FUNDAMENTAL FREEDOMS ARTICLES
21, 25 AND 28 OF THE CONSTITUTION

BETWEEN

WARAGA HUSSEIN JIDHAYE AND 6 OTHERS.....
PETITIONERS

AND

THE HONOURABLE ATTORNEY GENERAL.....1ST
RESPONDENT

THE MINISTRY OF STATE DEFENCE.....2ND
RESPONDENT

THE MINISTRY OF INTERIOUR & NATIONAL

COORDINATION.....3RD
RESPONDENT

AND

HAKI NA SHERIA INITIATIVE.....INTENDED INTERESTED
PARTY

RULING

1. Haki na Sheria Initiative, the intended interested party whom I will refer to as the applicant in this ruling, describes itself as a registered non-religious, non-political Community Based Organization (CBO) located in Garissa and working on human rights related issues in the Garissa County. The applicant seeks to be enjoined in this Petition as an interested party. The application is supported by an affidavit sworn by one Bare Adan Kerow who says he works as a programme coordinator with the applicant (the coordinator). The deponent claims that the applicant is seized with information and has collected data in respect to issues related to this case and that this information will be valuable to this case.
2. In his brief oral submissions in court Mr. Karera told the court that the applicant is instrumental in

giving legal aid to the petitioners and has proper understanding of the facts of this case; that the applicant feels that the subject matter is important to the community and that the applicant will add value to the court in determining this matter.

3. Ms Jalale who was holding brief for Mr. Mwangi for the petitioners was not opposed to the application. However, Mr. Opondo holding brief for Mr. Ojwang for the respondents opposed the application. Learned counsel submitted that the application does not disclose plausible interest in the petition; that no material has been placed before this court to enable it enjoin the applicant and the applicant can only join this petition as either a witness or a co-petitioner. Learned counsel further submitted that the applicant has not attached any documents in support of alleged violations as claimed. Counsel asked the court to dismiss the application.
4. **Rule 2 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, (the Rules) define “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 not be directly involved in the litigation.**
5. **Rule 7 and of the Rules provides as follows:**
 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 an interested party to the proceedings before it.**
6. It is clear under **Rule 2** of the Rules that the applicant must:
 - i. show an identifiable stake, legal interest or duty in the proceedings
 - ii. show she/he/it is not a party to the proceedings or is not directly involved in the litigation
7. And under **Rule 7** of the Rules, to allow the applicant to be joined as an interested party or not to allow is left to the discretion of the court.
8. It therefore becomes necessary to understand the nature of the case and the application to join an interested party in order for the court to determine whether the above requirements have been met. The petitioners came before this court seeking the following orders:
 - a. A declaration that the Kenya Defence Forces is bound by the Constitution and is under a duty to respect, uphold and defend the Constitution.
 - b. A declaration that the decision to send the Kenya Defence Forces was illegal and contrary to Article 241(3) of the Constitution so as to prevent any other future violations of this provision and protect the sanctity of the Constitution.
 - c. A declaration that the petitioners have been treated or punished in a cruel, inhuman and degrading manner in contravention of Article 29.
 - d. A declaration that the petitioners’ inherent rights to dignity have been infringed contrary to Article 28 of the Constitution.
 - e. An order for general and exemplary damages to each of the petitioner for the violations by the state officers of their rights.
 - f. An order for compensation for each of the petitioners for the specific injury, pain, suffering and anguish of the petitioners at a rate to be determined by the court.
 - g. An order for loss of earnings for each of the petitioners as a result of injuries sustained.
 - h. The costs of and incidental to this petition be awarded to the petitioners.
 - i. Such other orders that this honourable court deems fit.
9. Save for prayers (a) and (b), which if granted, are of a general nature, the rest of the prayers are specific and of a personal nature to each individual petitioner. It is a requirement of the law that each petitioner claiming any of the prayers must individually proof how she/he is entitled to the orders sought.
10. What stake, legal interest or duty does the applicant have in this case? The applicant states that its programme coordinator, played the role of collecting data of the petitioners and helping them with legal aid. It is stated that the coordinator played this role as an agent of the applicant and is better placed to **“guide the court to traverse the issues that will be arising in the above petition.”**

11. In the attached supporting affidavit, the coordinator claims that he visited the victims of the alleged torture both in hospital and at the market place and collected data in respect of the alleged violations.
12. I have considered this application and the supporting affidavit. I have noted the opposition by the Respondent. Firstly, I note that the applicant did not attach any documentation to support its existence as a registered CBO. Secondly, this court has nothing to go by to show that Bare Adan Kerow is the applicant's programme coordinator. Thirdly, the documentation on the data said to have been collected on the alleged violations is not attached to this application. Fourthly and as stated above, the claim by the petitioners is to a big extent specific and personal to each petitioner.
13. With these reasons, it is the view of this court while exercising its discretion under Rule 7 of the Rules that the applicant has not demonstrated an identifiable stake or legal interest in this petition to persuade this court to rule in its favour. While arriving at this decision, I have taken into account that the petitioners will not be prejudiced in any manner. It is my view that they have on record legal representation that is equal to the task ahead of placing all the necessary materials in support of this petition before the court for fair and just determination of this matter. The application dated 24th January 2014 is hereby denied. It is so ordered.

Dated, signed and delivered this 9th day of June 2014.

S.N.MUTUKU

JDUGE