



**Kenya Legal & Ethical Network on Hiv Aids v County Government of Kilifi
& another; Kenya Christian Professionals Forum (Proposed Interested Party)
(Petition E002 of 2022) [2025] KEHC 16133 (KLR) (7 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16133 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
PETITION E002 OF 2022
M THANDE, J
NOVEMBER 7, 2025**

BETWEEN

KENYA LEGAL & ETHICAL NETWORK ON HIV AIDS PETITIONER

AND

COUNTY GOVERNMENT OF KILIFI 1ST RESPONDENT

COUNTY ASSEMBLY OF KILIFI 2ND RESPONDENT

AND

**KENYA CHRISTIAN PROFESSIONALS FORUM PROPOSED INTERESTED
PARTY**

RULING

1. By an Application dated 26.11.24, the proposed interested party (the Applicant) seeks to be admitted in these proceedings as an interested party. The Applicant further seeks that upon being so admitted, the Petitioner be directed to serve it with all pleadings and supporting documents filed herein and that it be given time to file its response and any other relevant documentation.
2. The proceedings herein were initiated by the Petitioner vide a Petition dated 3.6.22 seeking the following orders:
 - a. A declaration that the Kilifi Maternal, Newborn and Child *Health Act* is unconstitutional as it was passed without meaningful public participation contrary to Articles 10,174 (c), 196(1) of *the Constitution* as read with Section 10 and 87 of the *County Governments Act*, and Section 10 of the *Health Act*.
 - b. A declaration that section 7 (1) of the Kilifi Maternal, Newborn and Child *Health Act* is unconstitutional to the extent that is unjustifiably limits the right to health and the right to



access reproductive health care including abortion as provided for under Articles 43 (1) (a) and 26 (4) of the Constitution.

- c. A declaration that Section 22 (1)(b)(i) of the Kilifi Maternal, Newborn and Child Health Act is unconstitutional for violating the rights of children under Article 28, 29, 31, 43 (1) (a) and Article 53 (1) (d) and (2) of the Constitution as read with Section 14 (1) (b) of the HIV Prevention and Control Act and section 9 of the Health Act to the extent that it allows testing of children for HIV without informed consent.
 - d. A declaration that the provisions of Section 22 (1) (b) (i) of the Kilifi Maternal, Newborn and Child Health Act is unconstitutional as it violates the right to privacy enshrined in Article 31 (c) of the Constitution as read with Section 8 and 9 of the Health Act and to the extent of that inconsistency is unconstitutional, null and void.
 - e. Costs of this Petition.
 - f. Such further or other orders as this Honourable Court may deem just and expedient for the ends of justice.
3. The Applicant is described as a duly registered association that brings together Christian Professionals from various denominations sharing common values on life, family, religion, value-based education & governance and engages in research, advocacy and public interest litigation for the betterment of the country. Further that the Applicant has previously been involved in similar matters where the rights provided under Articles 26 and 43 have been the subject of litigation, including Federation of Women Lawyers (Fida – Kenya), Jmm Through Pkm (Suing As Guardian & Next Friend of Jmm), Ruth Mumbi Meshack & Victoria Otieno Awuor v Attorney General, Cabinet Secretary, Ministry of Health & Director of Medical Services (2019). The Applicant asserted that the Court and the parties would benefit from its joinder and that its interest is limited to ensuring that the Court gives orders in agreement with Articles 26 and 43 of the Constitution as well as the interpretation matrix provided for under Articles 19, 20, 24 and 260 of the Constitution as well as related policy.
 4. The Applicant stated that it is ready to comply with any directions the Court may give after joinder. Additionally, the Applicant stated that considering the important nature of the issues raised in the Petition and the obviously inherent public interest in their proper adjudication, it is prudent and of utmost necessity to allow the Applicant's joinder so that the Court gets the benefit of all necessary material and perspectives when it retires to make a final determination. The Applicant asserted that it has an identifiable stake within the meaning of Rule 2 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (the Rules), in the protection of the right to life from conception to natural death and thus seeks joinder in the proceedings herein in keeping with the provisions of Rule 5(d).
 5. The Application is opposed by the Petitioner vide a replying affidavit of Allan Maleche its Executive Director, sworn on 28.5.25. He took issue with the filing of the present Application for joinder nearly 3 years after the Petition was filed and noted that pleadings closed on 12.6.23, when the Respondents filed their responses. It was further averred that there have been numerous attendances and substantive directions on the hearing of the Petition were given by the Court, including a judgment date which was given on 10.7.25.
 6. It was averred that the Court first gave directions on the filing of submissions on 18.7.24 which directions were reiterated on 11.11.24 over 2 years after the filing of the Petition. Pursuant to the directions, the Petitioner filed its submissions on 3.3.25. It would therefore be prejudicial to the Petitioner as well as to those affected by the impugned law, should the Applicant be admitted



at the tail end of the proceedings, as the unconstitutional law continues to be in existence. The Petitioner's submissions have demonstrated that the impugned Act challenged before this Court does not meet constitutional threshold when it comes to public participation, the right to the highest attainable standard of health, right to privacy and limitation of the right to abortion outside the requirements provided for in Article 26(4) of *the Constitution*. In particular, the Petitioner reiterates that the constitutional standard with regard to the Bill of Rights cannot be limited beyond what *the Constitution* itself provides. It is noteworthy that the impugned Act continues to be in place, largely prejudicing the rights of those seeking health care services within Kilifi County due to the unjustifiable limitations which do not meet the constitutional threshold. It is therefore imperative that this Court pronounces itself as soon as possible on the issues raised in the Petition

7. The Petitioner thus perceives the Application as mischievous and only intended to delay the determination of the Petition. Further, that the Applicant has not laid out a basis or demonstrated any identifiable stake or the relevance of its potential intervention to warrant its joinder herein. Additionally, that the Petitioner has addressed and submitted upon all the issues that the Applicant seeks to address the Court on. The Petitioner thus prayed that the Application be dismissed with costs.
8. When the Application came up for directions on 24.4.25, the 1st Respondent through its counsel informed the Court that it did not oppose the Application.
9. Rule 2 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 defines an interested party as follows:

“interested party” means 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;
10. An interested party is not a party to proceedings and may not be directly involved in the matter before a court. An interested party must however have an identifiable stake, legal interest or duty in the matter before the court.
11. In the case of *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others* [2014] eKLR, the Supreme Court considered an application by the Law Society of Kenya for admission in the matter as an interested party and defined an interested party as follows:

Consequently, 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.
12. Rule 7 provides for joinder of a person as an interested party 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 any interested party to the proceedings before it.
13. A person wishing to be joined as an interested party in any proceedings may apply orally or in writing to be so joined. The Court may also join any interested party suo moto.
14. The jurisdiction of a court to join a party in proceedings before it, is first and foremost discretionary. And order for joinder is not a right of a party. The guiding principles in an application for joinder



of a party as an interested party, were set out by the Supreme Court in the case of Francis Kariuki Muruatetu & another v Republic & 5 others [2016] eKLR 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 (sic) in proceedings as an interested party:

One must move the Court by way of a formal application. Enjoinment (sic) 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.

15. In the case of Julius Meme v Republic & another [2004] eKLR, this Court stated:

We have seen clear merit in this proposition that in public law matters such as those falling under judicial review or constitutional reference, the High Court ought to satisfy itself that all persons who should be served with the trial papers and any supporting evidence, have been duly served. Counsel submitted, and we agree, that in public law applications of the type exemplified herein, it is desirable that the widest possible participation should be allowed. Dr Muigai proposed that all situations, in such proceedings, where the interests of a party are likely to be affected, and consequently such a party has a genuine interest in joining in, the Court should permit joinder where it is sought. This proposition was supported by the Supreme Court of Uganda case, *Departed Asians Property Custodian Board v Jaffer Brothers Ltd* [1999] 1 EA 55 (SCU), in which the following pertinent remarks were made by Mulenga, JSC;

“In order for a person to be joined on the ground that his presence was necessary for the effective and complete settlement of all questions involved in the suit, it was necessary to show either that the orders sought would legally affect the interests of that person and that it was desirable to have that person joined to avoid a multiplicity of suits, or that the defendant could not effectually set up a desired defence unless that person was joined or an order made that would bind that other person.....”

The foregoing passage spawns certain principles which are opposite to the joinder of parties in a constitutional reference such as the present one: (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 preempt a likely course of proliferated litigation.

16. The matter before Court relates to the Kilifi Maternal, Newborn and Child *Health Act* which the Petitioner contends is unconstitutional, having been passed without meaningful public participation as required under Articles 10, 174 and 196 of *the Constitution*. Further, that the provisions of the Act



unjustifiably limit sexual and reproductive health rights under Articles 43(1)(a) and 26(4) and violates the rights of children under Articles 28, 29, 31, 43 and 53 of *the constitution*. This is clearly a public interest matter.

17. I am of the considered view that in public interest matters such as the one before Court, it is desirable that the widest possible participation should be allowed so that the Court arrives at a just and fair determination. The stated mandate of the Applicant to bring together Christian professionals from various denominations sharing common values on life, family, religion, value-based education & governance and engages in research, advocacy and public interest litigation for the betterment of the country. The Applicant has also stated that it has previously been involved in advocacy and protection of rights and has participated in similar matters including the cited Federation of Women Lawyers (Fida – Kenya) case, where the rights provided under Articles 26 and 43 have been the subject of litigation. This is not disputed. Additionally, the Applicant asserted that it has an identifiable stake within the meaning of Rule 2 of the Rules, in the protection of the right to life from conception to natural death. In light of this, I am persuaded that the Applicant has an identifiable stake and interest in the matter herein. Further, its input will assist the Court in the complete settlement of all the questions arising in the Petition.
18. I have noted the contention by the Petitioner that the Applicant seeks to delay this matter. While it is not disputed that the Applicant seeks joinder rather late in the proceedings, the record shows that the legislative process has been ongoing which has taken rather long. Further, there have been attempts to resolve the matter through alternative dispute resolution. On 18.7.24, counsel for the Respondent informed the Court that the amendment Bill (the Bill) had been approved by cabinet and forwarded to the county assembly. The Bill was shared with the Petitioner and the Interested Party. On 11.11.24, the Court was informed that the Bill had been published but that the Assembly was unable to finance public participation.
19. As previous directions issued by the Court on 18.7.24 for filing of submissions had not been complied with, further directions were given, with mention on 6.3.25 for compliance. On this date, the present Application was placed before the Court for directions which directed that the Application be served and responses filed. Further directions were to be given on 24.4.25. On 24.4.25, counsel for the Respondent stated that the first reading of the Bill was done on 3.3.25 and notice of public participation published in April, inviting memoranda from key stakeholders. Meetings were held on 25.3.25 and 26.3.25 between the County Assembly, the County Government Department of Health and the Petitioner to explain the need for the amendments. Another meeting of stakeholders was expected where the Petitioner was to be invited. Counsel then stated that on 8.5.25 after recess, a report would be prepared by the County Assembly so that the Bill would go to 2nd reading and final legislative process.
20. Given the foregoing history of this matter and the fact that the Petitioner has been appraised of and participated in the legislative process which is still ongoing, I hold the view that no prejudice will be occasioned to any of the parties by the joinder of the Applicant. I am accordingly satisfied that the participation of the Applicant herein will be useful and will enrich the proceedings herein.
21. In the end, I find merit in the Application dated 26.11.24 and the same is hereby allowed on the following terms:
 - a. Kenya Christian Professional Forum is admitted as an interested party herein.
 - b. All pleadings filed by the Petitioner and the Respondent shall be served upon Kenya Christian Professional Forum by 10.11.25.



- c. Leave is granted to Kenya Christian Professional Forum to file and serve all its pleadings and/or affidavits and submissions on the Petition by 24.11.25. In default, the leave so granted shall lapse.
- d. The Petitioner may file and serve to file and serve supplementary affidavit and submissions, if need be, by 8.12.25.
- e. Mention for compliance on 17.12.25.
- f. No orders as to costs.

DATED SIGNED AND DELIVERED IN MALINDI THIS 7TH DAY OF NOVEMBER 2025

M. THANDE

JUDGE

