

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. E456 OF 2024

BETWEEN

**LEGAL ADVICE CENTER T/A KITUO CHA
SHERIA.....PETITIONER**

VERSUS

SAFARICOM

PLC.....1ST

RESPONDENT

**COMMUNICATIONS AUTHORITY OF
KENYA.....2ND RESPONDENT**

**COMPETITION AUTHORITY OF
KENYA.....3RD RESPONDENT**

AND

LAW SOCIETY OF KENYA..... 1ST

INTERESTED PARTY

CONSUMERS FEDERATION OF KENYA..... 2ND

INTERESTED PARTY

GOODWEEK INTER-SERVICES LIMITED....PROPOSED 3RD

INTERESTED PARTY

R U L I N G

Introduction

1. By a Notice of Motion Application dated 23rd September 2024, the Applicant seeks orders that:
 - i. This Court be pleased to join the Applicant as the 3rd Interested Party in the Petition herein.***
 - ii. Costs of the Application be provided for.***

Applicant's Case

2. The Application is supported by the affidavit of Salmon Ogwel, the Applicant's Head of Administration and also, his supplementary affidavit sworn on 10th December 2024.
3. He depones that on 21st June 2024, the Applicant filed **Constitutional Petition No.E299 of 2024 - Goddweek Inter-Services Limited vs Safaricom PLC, Vodafone Group PLC,Vodafone Kenya Limited and Mobitelea Ventures Limited** which relates to alleged corruption culture entrenched in the Respondents' organizations. He states that this scheme includes the Petitioner herein who is allegedly the default surrogate plaintiff contracted by the 1st Respondent herein to stall and frustrate any disruptive technology that has the potential of curtailing its monopoly in Kenya. He asserts that filing of this suit is an example of this tactic.

4. He claims that the instant suit was yet again instigated by the 1st Respondent's surrogate, the Petitioner, with the sole purpose of corrupting the commercial and regulatory landscape in Kenya and to retain its monopoly control over the telecommunication market. He alleges that this scheme follows a consistent pattern where a threat to the 1st Respondent's dominance triggers a perverse scheme being the Petitioner, to block the threat. He alleges that this is what happened to Equity Bank's thin-sim revolutionary technology which would have challenged Mpesa. He notes that these facts are well detailed in its Petition cited herein above and also can be gleaned from its annexure herein marked "SO 2" and "SO 4" in his further affidavit.
5. It is contended that in these surrogate suits, the Petitioner acts in the 1st Respondent's interests not in public interest. He adds that the aim of these suits is not to succeed but a strategy to deflect, forestall and frustrate market disruptions to the 1st Respondent's dominance. On this basis, he dubs the Petitioner as not being a credible public interest institution adding that public matters cannot be compromised privately.
6. In the instant suit, he avers that the matter is intended to be referred to the 2nd and 3rd Respondents who are also claimed to be part of the pervasive scheme and under the 1st Respondent's influence. He alleges that owing to this

regulatory capture, it is guaranteed that these Respondents will produce a result favourable to the 1st Respondent. He asserts that these issues which confront the unconstitutional practices of the 1st Respondent cannot be adjudicated upon by the 2nd and 3rd Respondents or their Tribunals as they do not have the jurisdiction to do so.

7. He further argues that the instant Petition is disguisedly brought in public interest yet it is a continuing known strategic ruse. He claims that in this matter, out of fear of being seen to be antagonizing Starlink Limited owned by Elon Musk, the 1st Respondent occasioned instigation of this surrogate suit. He claims that this is the reason Starlink Limited has not been joined in this suit yet the subject matter relates to it.
8. He postulates that the alleged illegal and corrupt conduct of the 1st Respondent ought to be investigated in these two suits. He asserts that if the two suits are allowed to proceed separately, there is a potential risk of spawning two separate and conflicting outcomes. It is on this premise that the Applicant seeks to be joined in this suit.

Petitioner's Case

9. The Petitioner in reaction to the Application filed its Replying Affidavit sworn on 11th October 2024 by Dr. Annette Mudola

Mbogoh. The Petitioner filed further affidavit sworn by John Mwariri on 21st February 2025.

10. The Petitioner asserts that the Applicant is a busy body and extortionist who seeks to misuse and abuse the Court process through this frivolous Application. It is noted that the Applicant does not meet the test set out in **Francis Karioki Muruatetu Ltd & Another V Republic & 5 others (2016) eKLR** for joinder of an interested party. The Petitioner contends that the Applicant does not have any particular or special interests in this Petition. Likewise, that the facts that led to this Petition and Petition No.E299 of 2024 are substantially different and have no relationship. The Petitioner makes known that the dispute in **Petition No.E299 of 2024** revolves around a distributorship agreement which is a contractual matter. It is stressed that the Applicant in seeking to try the substantive matters in the cited suit in two separate Courts is in breach of the principle of *res judicata*.
11. The Petitioner argues that the Application is intended to delay the process and its claim before this Court while maligning its name and reputation in defense of public interest. In fact, it is stated that the Applicant has defiled the sanctity of this Court by commissioning paid bloggers to soil these proceedings by making accusations that the Petitioner

is a proxy and surrogate for the 1st Respondent. It is stressed that the Applicant's action is tantamount to sub judice.

12. It is further postulated that the Applicant's claims ought to be struck out and expunged in totality from the Court record as they are untrue, vexatious, deceitful and are particularly damaging to its reputation which is central to its work.
13. The Petitioner avers that it would be a grave injustice to the parties herein having dropped all the interlocutory Applications in favour of an expedited hearing, if the Applicant is allowed to join the Petition.
14. The Petitioner further argues that the Applicant relies heavily on his assertions concerning Starlink Limited and Space X who are not parties to this suit. It makes known that Starlink's mention in this suit by name and reason for lack of their joinder is due to their incorporation status in Kenya. In addition, it is noted that the impugned letter marked "AMM-4" came to the Petitioner's knowledge via the social media platform called X (*formerly twitter*).

1st Respondent's Case

15. The 1st Respondent filed a Replying Affidavit by its Senior Legal Counsel, Daniel Ndaba sworn on 2nd October 2024.

16. To begin with, he argues that the Applicant seeks to be enjoined in this suit based on unfounded and malicious allegations of collusion between the Petitioner and the 1st Respondent. He argues that this and the grounds therein do not satisfy the set standard for joinder of an Interested Party.
17. He avers further that the dispute in **Petition No. E299 of 2024** revolves around the business relationship between the 1st Respondent and Applicant. Considering this, it is stated that the issues are not similar neither have a relationship to those in this Petition. He adds that being a party in both petitions does not create a sufficient basis for joinder.
18. Equally, he avers that the Petitioner in its application insinuates that the two Petitions should be consolidated or heard together which is not viable in two unrelated matters. The proposition is also deemed to be improper.
19. It is also submitted that the Applicant's allegations are not supported by any evidence but are merely speculative and aimed at tarnishing the 1st Respondent's reputation. Similarly, the claim that this suit is a surrogate suit instituted by the Petitioner is scandalous, vexatious, baseless and amounts to a defamatory attack on the 1st Respondent.
20. He asserts that the Interested Party has further failed to demonstrate the prejudice it will suffer and should its joinder not be allowed. Moreover, how the prayers sought will affect

it or how its presence will enable the Court to wholly adjudicate the matter.

21. On this premise, he contends that the Applicant's joinder will not prejudice it instead will serve to unnecessarily obfuscate, complicate and delay these proceedings and given that the parties compromised all interlocutory applications in favour of the expeditious disposal of this suit. To this end, the 1st Respondent urges that the Application should not be allowed and be dismissed with costs.

2nd Respondent's Case

22. The 2nd Respondent in response filed Grounds of Opposition dated 4th October 2024 on the grounds that:
- i. **Petition No. E299 of 2024: Goodweek Inter-Services Ltd vs Safaricom & others** (which is the basis for the joinder application), is a commercial dispute between the proposed 3rd Interested Party and the 1st Respondent herein over their dealership business and whether the dealership should be reinstated or not.
 - ii. The substance of the Petition herein is the mandate of the 2nd Respondent on the regulation of satellite internet services.
 - iii. Petition No. E299 of 2024 is therefore unrelated to, and has no bearing on the issues subject of the Petition herein.
 - iv. Joining the proposed 3rd Interested Party to the Petition herein will result in misjoinder of parties and/or causes of action.

- v. *By the authority of the Supreme Court in **Trusted Society of Human Rights Alliance v. Muma Matemu & 5 Others, Sup. Ct. Pet. No. 12 of 2013** and its progeny, the proposed Interested Party must disclose and demonstrate an identifiable stake/interest in the Petition herein, how or to what extent it will be affected by the outcome of the Petition and any prejudice it will suffer if not joined to the Petition, to warrant its joinder to the Petition to champion its identified interest(s).*
- vi. *The proposed 3rd Interested Party has not met any of the above-mentioned conditions precedent to its joinder to the Petition herein.*

3rd Respondent's Case

23. This Party's pleadings and submissions are not in the Court file or Court Online Platform (CTS).

1st Interested Party's Case

24. The 1st Interested Party through its Chief Executive Officer, Florence Wairimu Muturi filed its Replying Affidavit sworn on 2nd December 2024.
25. She depones that Senior Counsel Mr. Nderitu in view of this matter was contacted by a Counsel referred to as YYYYYY who represents a Party in this suit referred to as ZZZZZZ. YYYYYY on behalf of ZZZZZZ's director informed that he had been advised that it would be wise to work together with the 1st Interested Party as the issues being raised by the

Applicant are quite heavy. She notes that this proposal which he termed as strange surprised Mr. Nderitu.

26. She notes that he declined the invitation as he had not been instructed so by the 1st Interested Party. Likewise, the same would not be prudent as ZZZZZZ is a principal party in this suit an adversarial capacity. She depones that she is ready to disclose the identity of ZZZZZZ's Director and that of its Counsel, YYYYYY, if this Court directs so. She states however that Mr. Nderitu was not certain whether the request was made innocently or with an aim of defeating the cause of justice and public interest.
27. Prior to this, she avers that she had been made aware of a letter dated 5th July 2024 addressed to one, David Mugonyi the Director General and Chief Executive Officer of the 2nd Respondent by the 1st Respondent's Acting Chief Corporate Affairs Officer. (Annexure "AMM-4"). This letter is said to contain the same contents as the Petitioner's, which was produced as Exhibit "DM3" in the 2nd Respondent's Affidavit. After examining the letters, she avers that she deduced that the Petitioner had been given a copy of the letter which was a photocopy of the original having originated from Exhibit "DM3". She theorizes that it is peculiar for the Petitioner to have a copy of an original letter that was not addressed to it and original meant for the 2nd Respondent's personal file.

28. In view of the foregoing and whether the Applicant should be enjoined in this suit, she avers that the same is dependent on the answer to the question, how did the impugned letter reach the Petitioner's hands and why did the 2nd Respondent black out the inscriptions on the letter.
29. She further avers that the Petitioner mentions Starlink Limited in its Petition more than thirty times yet the impugned letter does not mention Starlink and did not find it prudent to join it in this suit. In the same breath, being that there are other telecommunications and internet service providers companies, it is argued that it is curious why they too were not joined in this suit.
30. Considering this, she asserts that this Petition is of great public interest and importance. Importantly with reference to the legislative limits of the 2nd and 3rd Respondents, the extent to which a service provider can lawfully propose to and advise a regulator and if the alleged surrogate relationship is proved, whether this would amount to the pursuit of a legal action for an improper, collateral advantage which is legally impermissible and thus an abuse of the Court process. Consequently, the 1st Interested Party urges that the Applicant's application should be allowed.

2nd Interested Party's Case

31. This Party's pleadings and submissions are not in the Court file or Court Online Platform (CTS).

Applicant's Submissions

32. In support of its application, the Applicant through Okoth and Kiplagat Advocates, filed submissions dated 20th January 2025.

33. On a preliminary note, Counsel submitted that it is trite law that Public Interest Litigation cannot be used as a tool to achieve private ulterior motives such the case herein. To support this position Counsel cited the case of **Dindi Oscar Okumu v Robert Pavel Oimeke, Board of Directors Energy & Petroleum Regulatory Authority, Public Service Commission, Cabinet Secretary Ministry of Energy, Ministry of Petroleum & Mining & Ethics and Anti-Corruption Commission [2021] KEHC 3575 (KLR)** where it was held that:

"In considering the public and intention of having public interest litigation emerges clearly that the Public Interest Litigation was designed to serve the purpose of protecting rights of the public at large through vigilant action by public spirited persons and swift justice. But the profound need of this tool has been plagued with misuses by persons who file Public Interest Litigations just for the publicity and those with vested political interests. The Courts, therefore, need to keep a check on the cases being filed and ensure the bona fide interest of the petitioners and the nature of the cause of action, in order to avoid unnecessary litigations.

Vexatious and mischievous litigation must be identified and struck down so that the objectives of Public Interest Litigation aren't violated. The constitution envisages the judiciary as "a bastion of rights and justice."

34. Like dependence was placed in **TWW v KJH & 2 others [2023] KEHC 1607 (KLR)**.
35. On the Applicant's joinder, Counsel underscored the key elements as outlined in **Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae) [2016] KESC 12 (KLR)** as follows:

"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: 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. 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. 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.”

36. Counsel submitted that the Applicant meets the set threshold. First, that the Applicant had laid out its interest which revolves around public interest owing to the alleged surrogacy relationship between the Petitioner and 1st Respondent. It was noted that this exposure is an unmasking and putting to end of the corruption and impunity that stems from this relationship. Second, Counsel submitted that the Applicant would be prejudiced if not joined due to the critical public interest concerning fair competition and suppressed regulatory oversight. Thirdly, Counsel submitted that the Applicant’s contribution would expose the true nature of the Petition and address issues like the need for transparency in regulatory matters and consequences of allowing a manipulated Public Interest Litigation. Accordingly, Counsel urged that the Court allow the Application.

Petitioner’s Submissions

37. Khaminwa and Khaminwa Advocates for the Petitioner filed submissions dated 6th March 2025 and identified the single issue as *whether the Applicant should be joined in this suit as an Interested Party*.
38. Counsel also relying in the principles set out in **Muruatetu** (supra) by the Supreme Court, contended that the Applicant has not met the requisite threshold for joinder as an

Interested Party. Counsel submitted that the Applicant's concerns are speculative and lack a substantial connection with the matter before this Court. These allegations are said to be mere assertions, devoid of any factual or legal basis. While the Applicant claims that the matter is in public interest, Counsel maintains that these unsubstantiated claims are meant to mislead the Court into allowing the Application.

39. Counsel submitted that the Petitioner instigated this suit with the bona fide intention of defending public interest that is, to ensure the benefits of technological advancements in internet services are accessible to all Kenyans especially those in underserved regions. In essence the Petition aims at preventing anti-competitive practices that could hinder the entry of innovative technologies into the Kenyan market. Similar dependence was also placed in **Dindi Oscar Okumu** (supra).
40. Counsel further argued that the Applicant had not demonstrated any prejudice that would be suffered if not joined. It was stressed that the grievances expressed by the Applicant are already subject of **Petition No.E299 of 2024**. As such, allowing the Application will amount to introducing new issues which fall outside the scope of this proceedings yet both Petitions are distinct.

41. Reliance was placed in **Trusted Society of Human Rights Alliance v Matemo & 5 others [2014] KESC 32 (KLR)** where it was held that:

“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.”

42. Equally, it was argued that the Applicant had failed to set out its case and or submissions it intends to make before the Court and demonstrate the relevance of those submissions. In sum, Counsel submitted that the Applicant fails to meet the test for joinder.

1st Respondent’s Submissions

43. On 19th February 2025, Iseme, Kamau and Maema Advocates for the 1st Respondent filed submissions and outlined the key issue as *whether the Applicant has met the threshold for joinder*.
44. Counsel also argued that the Applicant had not satisfied the requirements for joinder as an Interested Party in this Petition. Equally relying in the case of **Trusted Society of Human Rights Alliance** (supra), Counsel stressed that such a party must have a recognizable stake where if its interests are not articulated they will be affected by the Court

determination. Like dependence was placed in **Muruatetu** (supra).

45. Counsel pointed out that the allegations upon which the Application is founded are baseless and absurd. In fact, Counsel submitted that the allegations are akin to a conspiracy theory.
46. Furthermore, Counsel argued that the prejudice that is likely to be suffered was not demonstrated. Its joinder is argued will duplicate the issues raised in **Petition No. E299 of 2024**. Counsel argued that the Applicant will not suffer any prejudice as it is already pursuing its cause on the same in **Petition No. E299 of 2024**.
47. Accordingly, Counsel argued that the Applicant's real intention is to takeover prosecution of this suit in the Petitioner's place as against the Respondents while introducing new issues. Counsel said that this will only convolute issues and curtail an expeditious hearing of this Petition. Counsel urged the Court to dismiss the Petition. To buttress this point reliance was placed in **Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others [2017] KEHC 8776 (KLR)** where the Court stated as follows:

“Finally, it is important to distinguish between two kinds of interested party interventions, those where the intervener is seeking to represent the public interest, or

merely his or her own private interest. Generally speaking, a case may be appropriate for an intervention if it:

- (i) raises one or more issues of public importance; and*
- (ii) there is a risk that this public interest may not be sufficiently well-addressed by the submissions of the parties alone. In short, any would-be public interest intervener must ask how they might assist the court in this case; or how they might ‘add value’ to the court’s consideration of the issues before it.”*

48. Like dependence was placed in **Shirvling Supermarket Limited v Jimmy Ondicho Nyabuti & 2 others [2018] KEELC 3460 (KLR)**.

2nd Respondent’s Submissions

49. The 2nd Respondent filed submissions dated 24th March 2025 through S.M. Kilonzo and Associated Advocates. Similarly, Counsel noted that the single issue for discussion is: *whether the Applicant has satisfied the conditions for joinder as an Interested Party.*

50. Echoing the other parties and citing the case of **Muruatetu** (supra) and **Trusted Society of Human Rights Alliance** (supra), Counsel submitted that the Applicant has no identifiable stake or legal stake or interest in the subject matter of the Petition. To buttress this point reliance was

placed in **Kenya Medical Laboratory Technicians and Technologists Board (supra)** where it was observed that:

“A person is legally interested in the proceedings only if he can say that it may lead to a result that will affect him legally that is by curtailing his legal rights. In determining whether or not an applicant has a legal interest in the subject matter of an action sufficient to entitle him to be joined as an interested party the true test lies not so much in an analysis of what are the constituents of the applicant's rights, but rather in what would be the result on the subject-matter of the action if those rights could be established. It is apparent that a party claiming to be enjoined in proceedings must have an interest in the pending litigation, but the interest must be legal, identifiable or demonstrate a duty in the proceedings directly identifiable by examining the questions involved in the suit.”

51. Counsel noted that the Applicant’s basis of joining this suit is anchored in **Petition No. E299 of 2024** which is a commercial dispute. It was disputed that, that Petition and the instant Petition have no nexus and further it has not established how the outcome of this Petition will affect its legal rights. Correspondingly, it was argued that the Petitioner’s Application is not anchored in a legitimate public interest concern instead a calculated attempt to advance its private commercial dispute with the 1st Respondent.
52. Counsel stated that the Applicant had not demonstrated the prejudice it would suffer if not joined in the suit. In closing, Counsel emphasized that allowing the Application would

conflate the issues before this Court and inevitably cause unnecessary delay in its hearing and determination.

1st Interested Party's Submissions

53. Nderitu and Partners Advocates for the 1st Interested Party filed submissions dated 25th April 2025.
54. Counsel on a preliminary note stated that the Applicant has satisfied the criteria set for being allowed to participate as an Interested Party in this Petition. Counsel as a side note questioned why the Petitioner was challenging the Applicant's application yet categorically emphasized in its Petition that litigation is not a game of win-or-lose in which winners must be identified for reward, and losers for punishment and rebuke as established in **James Kuria v Attorney General & 3 Others [2018] eKLR**. In equal measure Counsel submitted that the Petitioner had joined the 1st and 2nd Interested Party without their application.
55. Counsel disclosing the identity of Counsel YYYYYY, submitted that the Petitioner's advocate, Mr. Chirchir in making the request for the alliance on the Petitioner's behalf, acted inappropriately and unethically. Counsel submitted that this matter clearly presents a conflict of interest given the fact that the Petitioner is one of the principal parties in the Petition. It is alleged that it is also curious that the Petition has since changed its Counsels.

56. Discussing the issue at hand, Counsel submitted that the Supreme Court in **Trusted Society of Human Rights Alliance**(supra) set out the elements for one to qualify to join a suit.
57. Counsel relying on its own observations through the peculiar call from the Petitioner's advocate noted that no party had controverted this claim. Moreover, Counsel noted that the 1st Interested Party had also highlighted the issues surrounding the impugned letter which no attribution is made to any user(s) on the X platform who may have posted the said letter on his/her X handle. Counsel noted therefore that the 1st Interested Party was concerned how then the Petitioner had procured this letter. In its view, it would be in public interest to determine these unanswered issues by examining these issues in detail in the full hearing of the Petition.
58. Counsel as such submitted that the Applicant's Application discloses and uncovers a public interest element that permeates through the entire administration justice. Counsel submitted that the Applicant sets out the distinct contribution it would bring to this Petition by examining the assertions made including those in respect of **HCCHRPET/E299/2024**. Further, its correlation with the present Petition as invokes legitimate public interest concerns.

Analysis and Determination

59. Following a perusal of the pleadings and submissions of the parties, it is my view that the single issue raised for determination is:

Whether or not this Court should allow the Applicant's application for joinder.

60. The law on joinder of interested parties in constitutional petitions is set forth in the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013*. Rule 2 defines an 'interested party' as follows:

'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'.

61. The addition of an interested party is provided for under Rule 5 (d) (ii) of the Rules. The Rule states as follows:

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—

(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.

62. The Supreme Court in **Communications Commission of Kenya & 3 others v Royal Media Services Limited & 7 others; Nature Foundation Limited (Proposed**

Interested Party) [2014] KESC 52 (KLR) discussed joinder of an interested party as follows:

“[22] In determining whether the applicant should be admitted into these proceedings as an Interested Party we are guided by this Court’s Ruling in the Mumo Matemo case where the Court (at paragraphs 14 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...”

[23] 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.”

***[24] We ask ourselves the following questions:
(a) what is the intended interested party’s stake and relevance in the proceedings? and***

(b) will the intended interested party suffer any prejudice if denied joinder?”

18. 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...”

63. Equally, the applicable principles in an application for joinder of an interested party were set by the Supreme Court in **Muruatetu & another (supra)** where it was underscored as follows:

- 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.

64. Furthermore, the Superior Court went on to note as follows:

“[41] 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 parties that first moved the Court. This is true, more so, in proceedings that were not commenced as Public Interest Litigation (PIL), like the proceedings now before us.”

65. Applying the foregoing principles, it is discernible that the joinder of a party as an interested party is not a matter of right. Further, that any joinder in a judicial proceeding is discretionary with each case being considered on its own merits and circumstances.

66. The Applicant strongly contends that the instant suit is a surrogate suit filed by the Petitioner on behalf of the 1st Respondent. The Petition concerns the need to ensure benefits of technological advancements in internet services are accessible to all Kenyans by curbing anti-competitive practices or policies that hinder the introduction of innovative technologies into Kenyan market.

67. The Applicant in its Application contends that its joinder will lay bare the corrupt conspiratorial plan/scheme between the Petitioner and 1st Respondent to benefit the 1st Respondent through strategic litigation camouflaged as public interest yet in actual fact are prejudicial to the public interest and also demonstrate the influence that the 1st Respondent exerts on the 2nd and 3rd Respondents by the 1st Respondent in a manner that fundamentally undermines public interest.
68. The law on joinder of interested parties is now well settled. Applying the relevant principles as set out in the case law I have referred to, it is difficult to pick out the specific identifiable stake demonstrated by the applicant as directly affecting it. Issues of corruption and conspiratorial theories should be reported for investigations by the relevant Constitutional, Statutory or Professional bodies charged with that mandate and having such matters introduced here will only serve to muddle the issues in this Petition which in my view is quite straightforward.
69. As guided by the Supreme Court, the Applicant's sole duty in an application for joinder is to satisfy this Court on the three basic elements but on the contrary all it has attempted is to re-direct the Petition by raising extraneous issues that have no bearing on the substratum of the Petition.

70. Allowing the joinder will confuse the issues and redirect the energy of the Court into totally a different tangent that completely departs from the original pleadings fundamentally changing the character of this Petition.
71. The Court must guard against admitting parties whose only aim is to expand the scope of proceedings or to litigate by proxy. In **Methodist Church in Kenya v Fugicha & 3 others [2019] KESC 59 (KLR)** the Supreme Court cautioned against misuse of joinder, noting that an Interested Party should not usurp the position of the principal parties or divert the litigation to new issues. The Superior Court stated as follows:

“53.What should we make of a cross-petition fashioned as such? Yet this court has been categorical that the most crucial interest or stake in any case is that of the primary parties before the court. We did remark, in Francis Kariuki Muruatetu & another v Republic & 5 others, Sup Ct Pet 15 & 16 of 2015 (consolidated); [2016] eKLR, as follows (paragraphs 41, 42):

“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 parties that first moved the court. This is true, more so, in proceedings that were not commenced as Public Interest Litigation (PIL), like the proceedings now before us.

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” [emphasis supplied].

54. In like terms we thus observed in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others*, Civil Appeal No 290 of 2012 (paragraph 24):

“A suit in court is a ‘solemn’ process, ‘owned’ solely by the parties. This is the reason why there are laws and Rules, under the Civil Procedure Code, regarding Parties to suits, and on who can be a party to a suit. A suit can be struck out if a wrong party is enjoined in it. Consequently, where a person not initially a party to a suit is enjoined as an interested party, this new party cannot be heard to seek to strike out the suit, on the grounds of defective pleadings.”

55. Against such a background, the trial court ought not to have entertained issues arising from the cross-petition by the interested party...”

72. It is my finding that the Applicant lacks proximate stake in the proceedings as all it seeks is to change the Petition so as to serve interests outside its scope.

73. The applicant has not met the threshold for joinder as an Interested Party. The application is hereby dismissed with costs.

Dated, signed and delivered virtually at Nairobi this 20th day of November, 2025.

.....
L N MUGAMBI

JUDGE