

REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CONSTITUTIONAL PETITION NO. E013 OF 2025

ROSE ESTHER MUTHONI WAUMIYA.....

PETITIONER

VERSUS

ETHICS AND ANTI-CORRUPTION COMMISSION.....1ST

RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS 2ND

RESPONDENT

ATTORNEY GENERAL3RD

RESPONDENT

AND

JOSEPH KIMEMIA THUITA

INTERESTED PARTY

RULING

1. This is a ruling arising from the Notice of Motion application dated 26.9.2025. The application was filed by the Intended Interested Party. The application seeks the following reliefs:

- a) Spent
- b) Spent
- c) Spent
- d) Spent

- e) The Intended Interested Party be admitted as party to the suit.
- f) There be stay of execution of the proceedings in MCAC/E001/2025 – Republic v Joseph Kimemia Thuita & 3 Others pending the decision of this Honourable court and the application dated 4.9.2025.
- g) The Applicant be granted opportunity to participate in these proceedings by filing appropriate responses and documents.

2. The Petitioner filed her Replying Affidavit on 12.11.2025, in which she deposed in material as follows:

- a) The application sought to alter the nature of the suit to introduce new issues which is against the principles on joinder of parties to a Constitutional Petition.
- b) New issues include matters in 2018 when the Petitioner was Executive Committee Member and head of procurement Nyandarua County as well as tender to Catapult Branding Consulting Limited.
- c) The averments in the application are extraneous to the petition.
- d) The Applicant fails to meet the threshold for joinder.
- e) The outcome of the petition will not prejudice the interested party.

3. The 2nd Respondent also filed Replying Affidavit sworn by Jennifer Kaniu, Prosecution Counsel, on 12.11.2025. It was deposed as thus:

- (i) The office of the ODPP is an independent office under section 157 of the constitution.
- (ii) The charges arose out of the mandate of the 1st Respondent to investigate.
- (iii) The investigations disclosed economic crimes in fraudulent procurement by the petitioner.
- (iv) The investigations also implicated the intended Interested Party who was son of the then Governor of Nyandarua County who discussed the tender prior to advertisement.
- (v) The 2nd respondent reviewed evidence and found the petitioner and interested party criminally culpable.
- (vi) The decision to charge was well founded.

4. The interested party filed a further affidavit sworn on 12.11.2025, deposing as follows:

- (i) The fact that the Petitioner was charged together with the interested party and two others was not a new issue.
- (ii) The interested party would present unbiased information without which his rights seem to be infringed.
- (iii) The prosecution has lined up 40 witnesses, and if the petitioner takes a plea, the matter would commence *de*

novo, depriving him of his right to a fair hearing and expeditious disposal of justice.

Submissions

5. The Applicant filed submissions dated 12.11.2025. It was submitted that the Petitioner obtained a conservatory order which barred her from taking a plea to the exclusion of other co-accused, including the interested party.
6. The Interested Party had a recognizable stake in the Petition. Reliance was placed on Order 1 Rule 10(2) of the Civil Procedure Rules and Rules 2 & 7 of the Mutunga Rules, 2013.
7. The Interested Party also relied on **CCK & 4 Others v Royal Medical Services Limited & 7 Others**, Supreme Court Pet No. 7 of 2014, to submit that the Interested Party had a stake in the proceedings.
8. It was submitted that the court ought to stay the criminal case, pending the determination of the petition, to ensure fair administration of justice. Reliance was placed on **Giella v Cassman Brown** (1973) EA 358 to submit that the conditions for interlocutory injunction were achieved.
9. The Petitioner filed submissions dated 11.11.2025. It was submitted that the Applicant did not meet the condition under Rule 7 of the Mutunga Rules that an interested party may be joined if they have a stake or legal interest and their participation will not prejudice existing parties.
10. The interested party, it was submitted, did not demonstrate any prejudice for not joining the petition. Reliance was placed

on **Francis Karioko Muruatetu & Another v Republic & 5 Others** (2016) eKLR.

11. The Petitioner also submitted that the interested party was seeking to raise new issues parallel to the Petitioner. She cited **Trusted Society of Human Rights Alliance v Mumo Matemo & 5 Others** (2015) eKLR.
12. The Petitioner submitted that the interested party ought not introduce a new cause of action or frame its own issues. He should help the parties resolve their issues. Reliance was placed on the **Methodist Church in Kenya v Mohamed Fugicha & 3 Others** (2019) eKLR.

Analysis

13. Two main issues emerge: whether the intended interested party should be joined to the Petition and whether there should be a stay of proceedings in MCAC/E001/2025.
14. The intended Interested Party is a co-accused with the Petitioner and two others in MCAC/E001/2025. The Petitioner obtained an interim conservatory order staying her plea-taking, and that order remains in effect. The Petitioner's case is that the intended interested party has no identifiable stake in the Petition and seeks to introduce new issues and cause of action prejudicial to the Petitioner. The 2nd Respondent is also opposed to permitting the intended interested party to be a party.
15. Principles regarding the enjoinder of an interested party are well settled. A party must move the court through a formal

application, and such joinder is not a matter of right. It is a discretionary order. The Supreme Court in **Francis Karioko Muruatetu and Another v Republic**, Petition No. 15 of 2016 held as follows:

“From the foregoing legal provisions, and from 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, and enjoinder is not as of right but at the discretion of the Court. Sufficient grounds must be established based on the following: the personal interest or stake that the party has in the matter must be clearly identifiable and proximate enough to distinguish it from anything merely peripheral; the prejudice likely to be suffered in the event of non-joinder must be clearly demonstrated; and finally, the intended interested party must set out the case or submissions they intend to make before the Court and show their relevance, ensuring they are not merely duplicative of what other parties will present.”

16. In applying the above test, the intended interested party indicates that they stand to suffer substantial prejudice should they not be joined in these proceedings. It is their case that the outcome of this petition directly impacts their position as co-accused in the trial court. This cannot be true. The court cannot join a party that cannot be affected by the outcome of the case. In the case of **Methodist Church in Kenya v in the case of Fugicha & 3 others [2019] KESC 59 (KLR)**,

the Supreme Court [DK Maraga, CJ & P, MK Ibrahim, JB Ojwang, N Ndungu & I Lenaola, SCJJ] posited as follows regarding an interested party.

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,

especially in view of article 163(7) of the Constitution which provides that ‘All courts, other than the Supreme Court, are bound by the decisions of the Supreme Court.’ Moreover, this cross-petition did not comply with rule 15(3) of the Mutunga Rules which speaks to a respondent filing a cross-petition; and it was also not in conformity with rule 10(2) of these rules. Rule 10(3) cannot also be invoked as the replying affidavit of the interested party does not fit any of the descriptions contained therein. 

17. So, what is the stake of the applicant in this matter? I cannot see any identifiable stake or legal interest in the proceedings before the court. The fate of a co-accused or proposed co-accused does not affect the other accused persons. In the case of **Judicial Service Commission v Speaker of the National Assembly & another** (Petition 518 of 2013) [2013] KEHC 1569 (KLR) (Constitutional and Human Rights) (6 November 2013) (Ruling), (Odunga J, as he then was, stated as follows, regarding the same question:

 The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2012, defines an interested party as “a person or entity that has an identifiable stake or legal interest in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation”. From the foregoing, it is clear that an interested party, as opposed to an amicus curiae or a friend of the court, may not be wholly

indifferent to the outcome of the proceedings in question. He is a person with an identifiable stake or legal interest in the proceedings, hence may not be said to be wholly non-partisan, as he is likely to urge the Court to make a determination favourable to his stake in the proceedings. Amicus curiae on the other hand, is defined as a “an expert on an issue which is the subject matter of proceedings but is not party to the case and serves to benefit the court with their expertise.” Amicus curiae is therefore a person who shows that he is possessed of some expertise relevant to the matters for determination before the Court. Such a person as is expected of experts is required to be non-partisan, and his role is meant to enable the Court to get a clear picture of the issues in dispute in order for the Court to arrive at an informed and just decision. Therefore, the mere fact that the applicant herein may be partisan does not necessarily render him unsuitable to be joined in these proceedings as an interested party.

18. There is no interest the applicant will be defending in the suit. If the petition is dismissed, the respondents will deal with the proceedings as they are. If it is allowed, the case against the petitioner will be terminated. This will not affect the outcome of the cases against the applicant. Whichever the outcome of this petition, there will be no bearing on the case in the lower court.
19. The outcome of this petition will have no bearing on the Applicant’s legal rights, reputation, and status. The suspension

or nullification of criminal proceedings against the Petitioner would not affect the petition at all. The lower court has a choice on how to proceed if the other cases proceed. The applicant's stake is theoretical.

20. Consequently, the applicant has not met the threshold to be joined as an interested party, being aware of the position of an interested party in the case. The result is that the application lacks merit and is accordingly dismissed.

Determination

21. The upshot of the foregoing is that I make orders as follows:

- (a) The application dated 26.9.2025 for joinder of the proposed interested party is dismissed.
- (b) The matter shall proceed on the directions of the main petition.

DELIVERED, DATED, and SIGNED at **NYERI** on this **15th** day of **December, 2025**. Ruling delivered through Microsoft Teams Online Platform.

KIZITO MAGARE
JUDGE

In the presence of:

Mr. Omari for the Petitioner

Ms. Omweri for the 1st Respondent

No appearance for the ODPP

No appearance for the Interested Party

Court Assistant - Michael

ORIGINAL