



Komala & 2 others v Registrar of Societies & 2 others (Judicial Review Application E008 of 2024) [2026] KEHC 1402 (KLR) (6 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1402 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
JUDICIAL REVIEW APPLICATION E008 OF 2024**

OA SEWE, J

FEBRUARY 6, 2026

IN THE MATTER OF AN APPLICATION FOR AN ORDER OF MANDAMUS

AND

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE
LAW REFORM ACT, CAP 26 OF THE LAWS OF KENYA**

BETWEEN

CHARLES PHILIP KOMALA 1ST APPLICANT

MOSES OCHIENG JACOB 2ND APPLICANT

SYPRIAN RABWARE 3RD APPLICANT

AND

THE REGISTRAR OF SOCIETIES 1ST RESPONDENT

CITY OF LOVE CHURCH 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. Before the Court for determination is the Notice of Motion dated 18th October 2024. It was filed on behalf of the proposed interested party, Dixon Akech Akech under Section 1A, 3A of the [Civil Procedure Act](#), Chapter 21 of the Laws of Kenya and Order 1 Rule 10(2) and 22 as well as Order 51 Rule 15 of the Civil Procedure Rules for the following orders:
 - (a) That the proposed interested party be allowed to join these proceedings.
 - (b) That the Court be pleased to grant leave to the proposed interested party to fully participate in the proceedings herein and file such pleadings, affidavits, submissions and other documents subsequent to joinder.



- (c) That the Court do set aside the order staying the proceedings in Oyugis Law Courts in Civil Case No. E049 of 2024.
- (d) That the costs of the application be provided for.
2. The application was predicated on the grounds that the proposed interested party is the Chairman of a registered society, namely God's Last Appeal Church; and that the three applicants herein have been actively interfering with the activities of God's Last Appeal Church; thus prompting the filing of Oyugis Civil Case No. E049 of 2024 in which the applicants have been participating. The proposed interested party further averred that by obtaining an order of stay herein, the applicants are pre-empting the decision of the court in the matter before the lower court at Oyugis.
3. The grounds were amplified in the Supporting Affidavit sworn by Dixon Akech Akech on 18th October 2024 to which he annexed a copy of the activities that have so far been undertaken in Oyugis Civil Case No. E049 of 2024 as reflected in the Judiciary Case Tracking System (CTS) to demonstrate that the proposed interested party is the plaintiff in that suit and that the 1st defendant in the Oyugis suit is the 1st applicant in this matter. Hence, the proposed interested party averred that he has sufficient interest in this matter to warrant his joinder on behalf of the members of God's Last Appeal Church.
4. The application was opposed by the applicants. They filed Grounds of Opposition dated 23rd November 2024, contending that:
- (a) The order of stay in respect of Oyugis Civil Case No. E049 of 2024 does not prejudice the intended interested party in any way.
- (b) There is no cause of action in the current proceedings before the Court that connects the applicants and the proposed interested party.
- (c) The application does not disclose any triable issues between the parties nor does it show the interest the proposed interested party is entitled to.
- (d) The application is bad in law and is lacking in merit.
5. The application was canvassed by way of written submissions pursuant to the directions given herein on 19th February 2025. The proposed interested party relied on his written submissions dated 22nd April 2025. He made reference to the cases of Francis Kariuki Muruatetu & another v Republic & 3 others [2016] eKLR and Trusted Society of Human Rights Alliance v Mumo Matemu & others [2014] eKLR for an explication of the guiding principles for joinder of an interested party. The proposed interested party contended that he has a direct legal and personal interest in the outcome of these proceedings.
6. The proposed interested party also submitted that the ex parte order of stay granted on 8th October 2024 not only halted the proceedings in the Oyugis matter but also interrupted delivery of a ruling that was reserved after full compliance with procedural timelines. He added that ex parte orders are granted on the premise of utmost good faith and full disclosure; and are therefore subject to setting aside if found to be based on concealment of material facts or if they result in miscarriage of justice. He relied on the cases of Bahadurali Ebrahim Shamji v Noor Jamal & 2 others [2006] eKLR, Republic v The Chief Magistrate's Court, Nairobi & another, Ex Parte Tusker Mattresses Ltd [2013] eKLR for the proposition that a court of law will not allow a litigant to retain an advantage he has obtained through non-disclosure or misrepresentation.



7. The proposed interested party also made submissions to demonstrate the prejudice suffered by him. He cited Article 159(2)(b) of *the Constitution* to bolster his argument that the stay orders have occasioned him grave injustice by indefinitely delaying the final determination of the Oyugis matter. He relied on *William Odhiambo Ramogi & 2 others v the Hon. Attorney General & 3 others* [2019] eKLR, *Kenya Shell Limited v Benjamin Karuga Kibiru & another* [1986] eKLR, *ReGlobal Tours & Travels Limited (Nairobi High Court Winding Up Cause No. 43 of 2000)*, *David Morton Silverstein v Atsango Chesoni* [2002] eKLR for the applicable principles.
8. In their written submissions dated 12th May 2025, the applicants proposed the following issues for determination:
 - (a) Whether an order for joinder ought to issue.
 - (b) Whether the stay orders issued herein in respect of proceedings in Oyugis CMCC E049 of 2024 ought to be set aside and/or vacated.
 - (c) Who bears the Costs of this application?
9. The applicants made reference to Black's Law Dictionary, 9th Edition wherein an interested party is defined to mean a party who has a recognizable stake in a matter. They also relied on *Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others* [2017] eKLR to buttress their argument that the proposed interested party has failed to demonstrate his stake herein to warrant joinder. They submitted that that it is not enough for the proposed interested party to merely show that he has a cursory interest in the subject matter of litigation since litigation invariably affects many people. They added that a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough.
10. On whether the stay orders issued herein ought to be vacated or set aside, the applicants submitted that, since the proposed interested party is not a party to this suit, there is no cause of action in the current proceedings before this court that connects the applicants and the proposed interested party. It was therefore their contention that the proposed interested party lacks the locus standi to approach this court for such orders. They consequently prayed that the application be dismissed with costs.
11. Having carefully considered the application, the response thereto and the written submissions filed on behalf of the parties, the single issue arising for determination is whether the applicant has made out a good case to warrant his joinder herein as an interested party. Order 1 Rules 10(2) of the Civil Procedure Rules under which the application was brought states:

“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 to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court to effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”(Emphasis added)
12. It is manifest therefore that any person who wishes to be enjoined as one "whose presence before the court may be necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit" can only join the suit as either a plaintiff or defendant on the basis of a demonstrable personal stake. Thus, I would agree with the viewpoint taken by Hon.Muriithi,



J. in the case of *Brek Sulum Hemed v Constituency Development Fund Board & Another* [2014] eKLR, when he observed that:

“To be sure there is no procedure under the *Civil Procedure Act* and Rules for the joinder of interested parties and the practice of application for [by] interested parties must have been developed by necessary implication...”

13. Nevertheless, this being a judicial review matter for purposes of Article 47 of *the Constitution*, recourse can be had to *the Constitution* of Kenya (Enforcement of Rights and Fundamental Freedoms) Practice and Procedure Rules, otherwise known as the Mutunga Rules. In Rule 1 thereof “an interested party” is defined to mean:

“... 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.”

14. In respect to the said provision the following principles were enunciated in *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 Others* [2014] eKLR by the Supreme Court, which were later reaffirmed in *Francis Kariuki Muruatetu & Another v Republic & 5 Others* (supra) thus:

“(37) 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:

- 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 instant case, the proposed interested party has complied and moved the Court by way of a formal application. What is not easily discernible is the nexus between him and the substantive judicial review application dated 26th June 2024. The applicants seek to have the respondents compelled by an order of Mandamus to expunge their names from the records of the City of Love Church on the ground that they have an obligation to do so. The proposed interested party failed to show what connection his church, God’s Last Appeal Church, has with the City of Love Church. Moreover, he failed to show what prejudice he and the membership of his church stand to suffer if the orders prayed for against the respondents are granted.



16. I agree entirely with the position taken in Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others (supra) and find that, the proposed interested party has failed to demonstrate his stake to warrant joinder. The court held:

"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..."

17. As pointed out herein above, the applicants' merely seek to have their names expunged from the records pertaining to City of Love Church. Since no interest has been demonstrated herein by the proposed interested party to indicate how they will be affected by that outcome, his application must fail. I similarly find no basis for the setting aside the stay orders issued herein at the leave stage.
18. In the result, I find no merit in the Notice of Motion dated 18th October 2024. The same is hereby dismissed with costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 6TH DAY OF FEBRUARY, 2026

OLGA SEWE

JUDGE

