

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. E258 OF 2025

BETWEEN

**IBRAHIM KIMANI WAINAINA AND
DANIEL KOOME NDEGWA** (*Suing for and on Behalf of the
Bachelor of
Clinical Medicine Graduates Association*)

..... **PETITIONERS**

VERSUS

**CLINICAL OFFICERS COUNCIL OF
KENYA..... 1ST RESPONDENT**

**ATTORNEY GENERAL..... 2ND
RESPONDENT**

AND

**KENYA MEDICAL PRACTITIONERS AND DENTISTS
COUNCIL.....**

INTERESTED PARTY

**STELLAH BOSIRE WAIRIMU..... PROPOSED
INTERESTED PARTY**

R U L I N G

Introduction

1. By a Notice of Motion application dated 3rd June 2025, the Applicant seeks orders that:

i. Spent.

- ii. This Court be pleased to issue leave to admit the proposed Interested Party as a proper party in this suit.**
- iii. This Court be pleased to issue an order to allow the proposed Interested Party to be properly served with all pleadings and or documentation that have since been filed in the matter before this Court.**
- iv. This Court be pleased to award the proposed Interested Party the costs of this application.**
- v. This court be pleased to award any other order that it may deem fit and just in the circumstances of this case.**

Applicant's Case

2. The Application is supported by the Applicant's supporting affidavit of even date and the grounds on the face of the Application.
3. The Applicant deponed that **she is a medical doctor** with a *Bachelors of Medicine and Surgery and Master of Science in Global Health Policy*, and currently, undertaking her Advocates Training Program at the Kenya School of Law.
4. With this background, she states that she has a full understanding and appreciation of the issues herein and their legal implication. She depones that she learnt of this matter through a newspaper article in she learnt that the

petitioners are seek to be allowed to use the prefix title of **'Doctor'**.

5. She is opposed to this pursuit since there is a clear set legal threshold for one to become a doctor and therefore questions the call to lower the threshold to accommodate the Petitioners. She instead argues that the Petitioners should pursue further studies so that they can attain the title rightfully.
6. She adds that allowing this call will set a dangerous precedent for other professions in Kenya. Consequently, she asserts that allowing this Petition will lower the standards of the medical profession which have been set over the years and are upheld both regionally and internationally.
7. She depones that having been nominated for the position of Civil Society Advisory Committee for Africa among other leadership positions in the health sector and received awards, many medical professionals are looking up to her to have the nobility of the profession protected. Considering this, she asserts that she has an identifiable stake in this matter and no prejudice will be suffered by the Petitioners if she is joined.

Petitioner's Case

8. In opposition to the application, the Petitioners filed Grounds of Opposition dated 12th June 2025 on the ground that:

- i. *The Intended Interested Party has not met the threshold for joinder as an Interested Party as laid down in various court decisions.*
- ii. *The Intended Interested Party has not indicated her stake and relevance in the present proceedings.*
- iii. *The Intended Interested Party has not indicated nor particularized any prejudice that she would suffer if the intervention sought by dint of the instant application for joinder is denied.*
- iv. *The Intended interested party has neither alleged nor provided reasons for the belief that the submissions she intends to make would be different from those of the primary parties being the Respondents.*
- v. *The Intended Interested Party, who is a registered medical practitioner by the Medical Practitioners and Dentists Board and hence regulated by the Interested Party herein (Kenya Medical Practitioners and Dentists Council), has neither alleged nor provided reasons for the belief that the submissions she intends to make would be different from those of the said Interested Party herein, who is her regulator.*
- vi. *The instant application (if allowed) would unnecessarily cloud the issues for determination in the Petition.*
- vii. *The Application is frivolous, vexatious and otherwise an abuse of the Court process.*
- viii. *The Application contravenes the overriding objective of the law to facilitate a just and expeditious resolution of the dispute and is only meant to delay or circumvent just determination.*

- ix. *The grounds laid in the Application, lack merit, are misconceived and bad in law and hence the application should be dismissed with costs.*

Respondents' Case

9. There were no responses and submissions to the instant Application by the Respondents.

Applicant's Submissions

10. In support of her application, the Applicant through J.W. Oruko and Associates Advocates filed submissions dated 25th June 2025. Counsel, identified the issue for discussion as: *whether the Proposed Interested Party has met the requisite conditions to be joined in the suit as an Interested party.*
11. In support of the Applicant's case, Counsel relied in Rule 7 of the **Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013** and the case of **Madara v Gitonga & 17 others; Waweru & 2 others (Interested Parties); Said (Proposed Interested Party) [2024] KEHC 7561 (KLR)** where it was held that a person with leave of the Court, may make an oral or written application to be joined as an interested party.
12. Further reliance was placed on **Civicon Limited -vs- Kivuwatt Limited and 2 Others [2015] eKLR.**

13. Counsel argued that the Applicant had moved the Court without any delay to the proceedings thus in no way inconvenienced any of the parties to the suit. Counsel argued moreover that the Petitioners will not suffer any prejudice as a result of the Applicant's Application. In this regard, Counsel argued that the Petitioner had complied with the procedural requirement.
14. Further to this, Counsel submitted that the Applicant had met the substantive test set out by the Supreme Court in **Francis Karioko Muruatetu & another v Republic and 5 others [2016] eKLR** where it was held that an interested party must identify its proximate stake, the prejudice that will be suffered if not joined and the submissions it seeks to rely on.
15. Counsel recapped that the Applicant in her affidavit had set out that she a medical doctor with a Bachelor of Medicine and Surgery, together with Master of Science in Global Health Policy and Master of Business Administration in Healthcare Management and also a Civil Society Representative for the Africa region. As such, she understands the adverse impact that the conferment of the title 'Doctor' to the Petitioners will have on the health professionals within the Country and in the African region.
16. Considering this, Counsel argued that the interest of the Applicant is the dignity of the medical doctors operating

regionally. Thus, the Applicant seeks to be enjoined so as to address the interests of the doctors practicing on a regional sphere. It was asserted that medical doctors practicing regionally will be prejudiced if she is not joined in these proceedings.

17. Counsel as well argued that the Applicant in her Application had outlined that her submissions in the matter will revolve around the argument that the nobility of the medical profession is at stake since the established standard which is also recognized regionally and globally is threatened by the Petitioners' call to equally be recognized as doctors. In sum, Counsel argued that no prejudice will be suffered by the Petitioners if the Applicant is enjoined.

Petitioners' Submissions

18. In rebuttal, the Petitioners filed submissions dated 6th August 2025 through Ondieki Mogambi and Associates where the issue for discussion was set out as: *whether the Proposed Interested Party's application meets the threshold for being enjoined as an interested party.*
19. From the very beginning, Counsel submitted that the Applicant had not met the set threshold. Counsel pointed out that the Applicant in her submissions introduced new facts and issues not pleaded in the Application being she seeks to represent the interests of doctors who are based outside

Kenya. Counsel stressed that this is erroneous, noting that the Supreme Court in **Re Estate of Ndungu Mwaniki (Deceased) [2014] eKLR** held that:

“Written submissions should not be used to introduce new facts.”

20. On joinder, Counsel submitted that the Supreme Court in **Communications Commission of Kenya & 3 others v Royal Media Services Limited & 7 others [2014] eKLR** guided 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...”

21. Comparable reliance was placed in **Attorney General v David Ndi & 73 others [2021] KESC 17 (KLR)**.
22. Counsel submitted that the Applicant had not demonstrated the stake she has in the proceedings herein as required. Counsel stressed that the stake referred to is not personal and proximate enough to stand apart from anything merely peripheral. Counsel pointed out that the Applicant’s interest is already well represented by its governing body which is the Interested Party herein. Counsel submitted as well that the Applicant had not established that the interests she

seeks to represent are diverse from those in Kenya and outside Kenya.

23. Further to this, Counsel argued that the Applicant had not shown the prejudice she will suffer if not joined in this suit. In any case, Counsel stressed that the Petition herein does not touch on the medical doctors practicing outside the country and which issue this Court would not have jurisdiction to entertain.
24. Equally, Counsel argued that the Applicant's averment that she has diverse understanding on the topic is not sufficient to demonstrate the relevance of the case she intends to make before this Court. In the circumstances, Counsel argued that allowing the Application will amount to clogging the Petition with a party who will not submit anything different from that which the other parties will submit hence a waste of the Court's time. Counsel emphasized that the onus of proving joinder was on the Applicant and had failed to discharge this burden. To buttress this point reliance was placed in **Commissioner Irene Masit v Muchelule Tribunal (Established pursuant to Article 251 of the Constitution) & another [2024] KEHC 2561 (KLR)** where it was held that:

"In an application for joinder of an interested party, it is the responsibility of the applicant to show the stake or interest that the interested Party has that is likely to

be affected or prejudiced by the outcome of the proceedings before the Court.”

Analysis and Determination

25. It is my considered view that the single issue raised for determination is:

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

26. 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 (Mutunga Rules)*. 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'.

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

- (i) 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.*

28. The Supreme Court in **Communications Commission of Kenya [supra]** 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..."

29. 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.

30. 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.”

31. The law on joinder of interested parties is now well settled. To qualify for joinder in a court proceeding, the Court must discretionary examine the reasons for a party seeking to be joined and decide if the threshold for joinder laid down in the precedents has been satisfied.

32. In the instant suit, the bone of contention is the Petitioners’ claim that the Clinical Officers (Training, Registration and Licensing) Act provides that all persons who have either undergone training in clinical medicine at diploma level or

degree level, are referred to as clinical officers, despite possessing similar qualifications with those of medical doctors. As such, the Petitioners decry that this has discriminatively denied them the right to use the title *doctor* and the privilege that comes along with the use of this title.

33. The Applicant reasoned that her joinder is necessary since she is not only a medical doctor but also a leader in this field, with an appreciation of the issues raised herein. Equally, the need to protect the sanctity of the medical profession standards, which have been established and maintained over the years, the world over.
34. In my humble view that the Applicant has not demonstrated how the reliefs sought in this Petition will directly affect her, that is her direct stake in the matter or the prejudice that she will suffer if she is excluded from these proceedings.
35. Her claim is only grounded in her status as a medical doctor and her interest in preserving the standards and integrity of the medical profession. She has not specifically demonstrated how the reliefs and determination of the Petition will affect her personal rights, other than airing generalized concerns about the profession.
36. In **Methodist Church in Kenya v Fugicha & 3 others [2019] KESC 59 (KLR)** the Supreme Court cautioned thus:

“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 Karioki 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...”

37. Further to this, the Applicant has not established any specific prejudice she will suffer if she is not joined. As appreciated above, the Applicant’s apprehensions are collective in nature. It is worthy to mention that the Interested Party, which is the regulatory body for medicals doctors, is already joined in this suit to represent the collective medical professional concerns.

38. The Applicant has also not demonstrated through the submissions that she will offer are distinctively different from those that will be presented by the rest parties.
39. This Court finds that the threshold of joinder as an Interested Party has not been established by the Applicant.
40. The Application lacks merit and is hereby dismissed with costs.

Dated, signed and delivered virtually at Nairobi this 26th March, 2026.

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L N MUGAMBI
JUDGE