

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA

(Before Hon. Lady Justice Monica Mbaru)

MISCELLANEOUS APPLICATION NO. E029 OF 2023

KIAMA WANGAI AND COMPANY ADVOCATES.....APPLICANT

VERSUS

KENYA NUTRITIONISTS AND

DIETITIANS INSTITUTE..... RESPONDENT

AND

JAIKA SILVESTER NDORI.....1ST PROPOSED INTERESTED PARTY

AYOMA SCAR KAMBONA..... 2ND PROPOSED INTERESTED PARTY

RULING

The ruling herein relates to an application filed by the two proposed interested parties dated 16th March 2026 under the provisions of Order 1 Rule 10(2) and 22 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act, and ordering that they be enjoined as interested parties. The joinder will allow the two applicants to participate in these proceedings to the extent necessary and enable the court to adjudicate the matter effectively and completely.

The application is supported by the Supporting Affidavit of Jaika Silvester Ndori, who avers that he is a registered and contributing member of the Kenya

Nutritionists and Dieticians Institute, the respondent, together with the 2nd proposed interested parties. The respondent is a statutory body whose operations are funded through contributions and subscriptions paid by the members.

Ndori avers in his affidavit that, as proposed interested parties, they have a direct interest, including proprietary, beneficial, and financial interest in the respondent. Any attachment of the respondent properties will adversely affect the interested parties and other members, and unless they are enjoined in these proceedings, the matter will be determined without being given a hearing. To assist the court in effectively and finally determining the matter, it is important that they be enjoined as interested parties in this case.

Ndori avers that he is aware that the execution of the applicant's costs has commenced. This will be satisfied only through members' contributions, which can be made only after an annual general meeting (AGM). Any decisions to make a payment must be ratified at the AGM. Any agreement relating to the fee to be paid to the advocates and applicants herein was entered into without proper ratification, and these matters can only be addressed by the interested parties upon further notice.

The applicant filed a response through the Affidavit of Prof. Kiama Wangai. He avers that the interested parties' application is an abuse of the court process. There have been proceedings to review the ruling herein and to stay execution,

all intended to frustrate payment of the dues owed on the application. The procedures undertaken by the interested parties who are members of the Respondent are an abuse of court process.

Determination

Before addressing the instant application by the proposed interested parties, the purpose of a miscellaneous application is to address the single issue addressed by the applicant, as held in **Muravvej Holdings Limited v Mwadzoya [2024] KEELRC 792 (KLR)**.

In [Republic v Richard Munyi Ndwiga & another \[2015\] KEHC 4125 \(KLR\)](#), the court held that once the primary purpose of a miscellaneous application is addressed, the matter is spent. It cannot be revised by any other means once the primary issue has been definitively addressed.

It would not serve any useful purpose to maintain a miscellaneous application file to serve other purposes, such as would be done under a petition or a plaint. See **Mbira v Makau [2024] KEELC 5413 (KLR)**.

In this case, the proposed interested parties seek joinder and admit that they are registered and contributing members of the respondent. In such a role, they seek to urge a case that the respondent is founded through contributions and payments by registered members who pass resolutions at an AGM.

Such are matters within the respondent's knowledge. The respondent has fully and effectively participated in these proceedings. To urge a case as proposed by the proposed interested parties would defeat the purpose of the respondent's attendance in these proceedings for and on behalf of its registered and contributing members.

The application by the applicant, Prof. Kiama Wangai & Co. Advocates, thus spent, the instant application by the proposed interested parties becomes solely an abuse of the court process. This has no justification. The attendance of the respondent, the Kenya Nutritionist and Dieticians Institute, was sufficient.

**Accordingly, the application dated 16th March 2026 is hereby dismissed.
The proposed IP shall cover the costs incurred by the applicant.**

Delivered in open court at Nairobi, this 23rd day of April 2026

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Catherine and Omar

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