



**Abuya v CS Ministry of Agriculture Livestock, Fisheries & Co-operatives & 2 others; Linyiru & another (Interested Parties) (Petition E058 of 2021) [2024] KEELRC 13253 (KLR) (27 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13253 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E058 OF 2021  
HS WASILWA, J  
NOVEMBER 27, 2024**

**BETWEEN**

**JARED ONSONGO ABUYA ..... PETITIONER**

**AND**

**CS MINISTRY OF AGRICULTURE LIVESTOCK, FISHERIES & CO-OPERATIVES ..... 1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AGRICULTURE AND FOOD AUTHORITY ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**CPA DR. BRUNO MUGAMBI LINYIRU ..... INTERESTED PARTY**

**THE ETHICS AND ANTI-CORRUPTION COMMISSION .... INTERESTED PARTY**

**RULING**

1. The application before Court is the application dated 2/8/2024 filed by the 3rd intended interested party, the Consumer Federation of Kenya. The application is filed through a notice of motion application seeking orders of joinder plus costs. The application is supported by the affidavit of one Stephen Mutoro and on the following grounds:-
  1. That I am a male adult of sound mind, the Secretary General of the Applicant herein, fully conversant with the facts of this matter hence I am competent and duly authorized to swear this Affidavit on behalf of the Applicant.



2. That the Applicant is an independent, self-funded, multi-sectorial, non-political and apex non-profit Federation committed to consumer protection, education, research, consultancy, litigation, anti-counterfeits campaign and business rating on consumerism and customer-care issues.
  3. That I have read and understood and where necessary had explained to me by the Federation's Advocates on record, the contents of Application herein and I swear this Affidavit in support of the Application.
  4. That The Federation's on a day-to-day basis advocate for the constitutionally protected rights and interests of all consumers and works towards a fair, just and safe marketplace for all Kenyan and regional consumers in all sectors of the economy, both public and private.
  5. That The Application is anchored on the Applicant's mandate to advocate for safeguard of the rights and interests of consumers as protected under article 46 of *the Constitution* of Kenya, 2010.
  6. That The Petition which the Applicant seeks to be enjoined to is grounded on inter alia, the recruitment, employment or appointment of the Director General of the Agriculture and Food Authority, a Public Office whose mandate directly impacts on consumer rights and interests including issues of productivity as well as supply and prices of food.
  7. That the Petition is also grounded on questions of leadership and integrity as per Chapter six of *the Constitution* as well as the values and principles of public service as espoused under article 232 of *the Constitution*. The mandate of the Applicant includes advocating for recruitment to public office of individuals who pass the constitutional master, particularly to bodies whose work directly affects consumer rights.
  8. That it is in the interest of justice and regard to public interests and the rights of Kenyan consumers that he applicant be enjoined as the 3<sup>rd</sup> interested party in these proceedings.
  9. That the perspectives of the proposed 3<sup>rd</sup> interested party are necessary to ensure a just and fair determination of the petition and regard to the rights and interests of Kenyan consumers, and it therefore seeks leave before this honourable court to participate in the petition.
2. The affidavit of support reiterates the grounds above and in particular the mandate of the applicant being to advocate for rights and interests of consumers and work towards a fair, just and safe market place for all consumers in all sectors of the economy both public and private.
  3. The affiant avers that they seek to be enjoined on the issue inter alia on the recruitment, employment and appointment of the Director General of Agriculture and Food Authority a public office whose mandate directly impacts on consumer rights and interests including issues of productivity as well as supply and prices of food.
  4. The affidavit further avers that they have an interest in the recruitment of public office of individuals who pass the constitutional master particularly to bodies whose work directly affects Consumer Rights.
  5. On 24<sup>th</sup> September 2024, the Law Society of Kenya filed another motion seeking joinder in these proceedings. The LSK through their counsel argued that they have a vested interest in this matter as one of their own mandate is to support the courts in administering justice, upholding *the Constitution* of Kenya and promoting the rule of law for the effective administration of justice.



6. They aver that they have a legitimate and identifiable stake on the pleadings due to their key mandate of promoting and protecting public interests which are central to the petition before Court which touch on the appointment of the 2<sup>nd</sup> interested party to public office.
7. The applicants aver that they wish to submit on the doctrine of innocence for accused persons in criminal cases vis a vis the realization and enforceability of the provisions of article 10 and chapter six of *the Constitution* concerning individuals with pending criminal cases.
8. Both applications for joinder have been opposed by the petitioner, the respondent and the other interested parties.
9. The 3<sup>rd</sup> respondent filed their grounds of opposition opposing joinder of the Consumer Federation of Kenya on the following grounds,
  1. That the Joinder of the Intended Interested Party will not add value to the administration or dispensation of justice or to fair determination of the dispute in Court as they have not demonstrated what legal or substantial matters that their Joinder will achieve.
  2. That the Joinder of the Intended Party will cause unnecessary delays in the determination of the matter in Court, by introducing matters beyond the scope of the matters currently before the Court.
  3. That the Intended Interested Party has not shown what prejudice loss or damage it will incur if it is not permitted to be enjoined as an Interested Party as it has no stake in the Proceedings.
  4. That the Intended Interested Party's mandate does not extend to supervision of processes for or employment recruitment of Public Officers or State Officers, or attendance of Court Proceedings to which they are not Parties.
  5. That the Application is a clear manifestation of the Intended Interested Party's desire to intermeddle in the Administration of Justice, which is undesirable in Kenya's Adversarial System. The Intended Interested Parties mandate is not to intermeddle in each and every Case before the Court.
  6. That the Honourable Court is capable and competent to do Justice in the absence of the Intended Interested Party.
  7. That the Application has no legal merit.
10. They cited that joinder of the Consumer Federation of Kenya will not add any value to this case but will cause undue delay in its determination.
11. They aver that the mandate of the Consumer Federation of Kenya does not extend to supervision of the process for employment or recruitment of public officers or State officers or attendance to Court proceedings to which they are not parties.
12. As to joinder by the LSK, the 3<sup>rd</sup> respondent also filed grounds of opposition dated 3<sup>rd</sup> October 2024 opposing joinder on the following grounds.
  1. That the joinder of the intended interested party will not add value to the administration or dispensation of justice or to the fair determination of the dispute in Court as it has not demonstrated what legal or substantial matters that its joinder will achieve, for the benefit of the court.



2. That the joinder of the interested party will cause unnecessary delays in the determination of the matter in court, by introducing matters beyond the scope of the matters currently before the court.
  3. That the intended interested party has not shown what prejudice loss or damage it will incur if it is not permitted to be enjoined as an interested party, or why it cannot institute its own cause.
  4. That the applicant is a clear manifestation of the intended interested party's desire to intermeddle in the administration of justice which is undesirable in Kenya's adversarial system as the intended interested party is not impartial.
  5. That the honourable court is capable and competent to do justice in the absence of the intended interested party.
  6. That the application has no legal merit.
13. The 1<sup>st</sup> interested party filed submissions (not paid for) dated 7<sup>th</sup> November 2024. They set out in their submissions the Law and reasons why the interested parties should not be enjoined to these proceedings.
14. I have considered the averments and submissions of the parties herein. As concerns joinder, the Supreme Court has pronounced itself on this matter on the case cited by the 1<sup>st</sup> interested party Francis Muruatetu & Another vs Republic & 5 Others in Petition No 15 as consolidated with 16 of 2013 (2016) eKLR which held that:
- “a person seeking joinder must conjunctively demonstrate the following in their application:-
- a. Their clear identifiable, substantial and proximate enough interest or stake in the subject matter of the proceedings and not merely peripheral.
  - b. The prejudice they stand to suffer if they are not joined
  - c. The case and/or submissions they stand to make before the court upon their joinder and
  - d. The case and/or submissions in para 3(c) above are relevant to the issues for determination and are not mere replication of the other parties submissions.
15. Another case in point is Joseph Njau Kingori vs Robert Maina Chege & 3 Others (2002) eKRL where the court laid down the principles of joinder as follows:
- “That the grading principles when an intending party is to be joined is as follows:
- a. He must be a necessary party.
  - b. He must be a proper party.
  - c. In the case of the defend there must be a relief flowing from that defendant to the plaintiff.
  - d. The ultimate order on decree cannot be enforced without hi presence in the matter
  - e. This presence is necessary to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit”
16. In considering the application then before Court the Consumer Federation has casually stated their interest in this matter due to the fact that they have a duty in the appointment of the Director General



of Agriculture and Food Authority a public office whose appointment impacts directly on consumer rights and interests including on issues of productivity as well as supply and prices of goods.

17. The applicant just stopped at that point. They have not demonstrated what prejudice they stand to suffer if not enjoined. They have also not produced the submissions they seek to rely on in this petition that would aid the Court in reaching a determinable position.
18. The applicant's necessity from the onset has casually not been demonstrated in their application and this Court has no option but to decline their application for joinder.
19. The LSK on the other had has in their submissions indicated their interest in assisting Court administer justice. The LSK submitted that they intend to make submissions and the principle of innocence of a party when the criminal case is pending.
20. Indeed the issue being raised by the LSK is an important principle of law which if raised in this petition will be determinable and the LSK's submission will in this be useful. The LSK indeed has a stake in this case being a key player in the administration of justice.
21. It is therefore my finding that the application by the LSK is found to have merit and is allowed, and the LSK is therefore enjoined in this petition as the 3<sup>rd</sup> interested party.
22. Costs of this application will be in the petition.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 27<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**HELLEN WASILWA**

**JUDGE**

Order

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**HELLEN WASILWA**

**JUDGE**

