



**Yoya v Kenyatta International Convention Centre & 2 others; Mwaura  
(Intended Interested Party) (Employment and Labour Relations Petition  
E060 of 2024) [2024] KEELRC 13324 (KLR) (3 December 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13324 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS PETITION E060 OF 2024  
AN MWAURE, J  
DECEMBER 3, 2024**

**BETWEEN**

**TONGE YOYA ..... PETITIONER**

**AND**

**KENYATTA INTERNATIONAL CONVENTION CENTRE ... 1<sup>ST</sup> RESPONDENT  
CABINET SECRETARY MINISTRY OF TOURISM & WILDLIFE .... 2<sup>ND</sup>  
RESPONDENT**

**HON. ADELINA MWAU ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**JAMES MBUGUA MWAURA ..... INTENDED INTERESTED PARTY**

**RULING**

**Introduction**

1. The Applicant/intended interested party filed a Notice of Motion dated 26<sup>th</sup> July 2024 seeking the following orders that:
  - i. This Honourable Court be pleased to join Mr. James Mbugua Mwaura in these proceedings as an interested party.
  - ii. This Honourable Court be pleased to allow the interested party to file responses, affidavits and submissions on the application and petition in the matter as may be appropriate.
  - iii. The costs of this application be provided for.



### **Petitioner/Respondent's replying affidavit**

2. In opposition, the Petitioner/Respondent filed a replying affidavit dated 24<sup>th</sup> August 2024.
3. The Petitioner/Respondent avers that the intended party is the CEO of the 1<sup>st</sup> Respondent through gazettelement dated 25<sup>th</sup> March 2024.
4. The Petitioner/Respondent avers that including the intended party in these proceedings will not add value and will only waste time which is seen as a tactic to prolong the intended party's unlawful stay in office to the detriment of the people of Kenya until the petition is determined.
5. The Petitioner/Respondent avers that the petition focuses on compliance with legal qualifications, procedures, and recruitment processes, which are entirely the responsibility of the Respondents.
6. The Petitioner/Respondent avers that the intended interested party, having been an applicant along with others not before the court, has their interests adequately represented by the Respondents, who are responsible for responding to the petition.
7. The Petitioner/Respondent avers that if the interested party is added to these proceedings, he will only replicate the evidence of his qualification which the Respondents will adduce before this Honourable Court.
8. The Petitioner/Respondent avers that the application submitted is intended to delay the resolution of the petition, which would render the Petition nugatory by the time a decision is made, as the applicant's three-year contract with the 1<sup>st</sup> Respondent would have largely expired.
9. The Petitioner/Respondent avers that the intended interested party will not be prejudiced by the petition's outcome. In contrast, the people of Kenya are already suffering and will continue to suffer irreparably due to the prolonged delay in determining the petition.
10. The Petitioner/Respondent avers that the application lacks merit and should be dismissed with costs.
11. The application was canvassed by way of written submissions.

### **Applicant/Intended interested party submissions**

12. The Applicant/intended interested party submitted that the joinder of an interested party in proceedings is provided under Order 1 Rule 10(2) of the Civil Procedure Rules which provides as follows:

“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 effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.
13. In *Trusted Society of Human Rights Alliance V Mumo Matemu* [2015] eKLR the Supreme Court defined an interested party as follows:

“An interested party is one who has a stake in the proceedings, though he or she was not a 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 herself appears in the proceedings, and champions his or her cause.”

14. In *Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae) (Petition 15 & 16 of 2015) (Consolidated) [2016] KESC 12 (KLR) (Civ) (28 January 2016) (Ruling)* the court set out the principles for a party to be enjoined as interested party as follows:

“From the foregoing legal provisions, and 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 a 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:

- a. 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.
  - b. 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.
  - c. Lastly, a party must, in its participation, 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. The Applicant/interested party submitted that he has a clear stake and legal interest in the matter because the current petition challenges and seeks to overturn his appointment as the 1<sup>st</sup> Respondent.
16. The Applicant/interested party also submitted that any ruling or judgment in this matter will negatively impact his interests, as his appointment is at risk of revocation thus, it is crucial for the Applicant to be included in these proceedings as an interested party.
17. The Applicant/interested party submitted that he will assist the court in determining the issues in contention by providing evidence that he meets the requisite qualifications, having served in a senior managerial position in tourism for the past 10 years, as required by section 48(2) of the *Tourism Act*. This evidence will help the court decide whether his employment was legal.
18. The Applicant/interested party submitted since he has met the requirements therefore the application should be allowed as prayed.

#### **Petitioner/Respondent’s submissions**

19. The Petitioner/Respondent submitted that the applicant was a beneficiary of an unconstitutional process via Gazette notice dated 25<sup>th</sup> March 2024 done by the 2<sup>nd</sup> Respondent.
20. The Petitioner/Respondent submitted that the application is a delaying tactic and the application has not met the threshold of being enjoined as an interested party as set in the supreme court case of *Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (supra)*.



21. The Petitioner/Respondent submitted that the applicant intends to produce a replication of what the Respondents have and or will file in response to the petition.
22. In *Skov Estate Limited & 5 others v Agricultural Development Corporation & Another* [2015] eKLR Justice Munyao Sila in dealing with the issue of an Interested Party seeking to be enjoined in a suit stated that to be enjoined in a suit as an interested party, one must demonstrate that their involvement is necessary for the court to fully settle all questions involved in the matter. It is insufficient to show a cursory interest in the litigation. While litigation affects many people, mere interest without demonstrating that one's presence will assist in resolving the issues is not enough. The interested party must show their presence is crucial for the court to settle the questions effectively. Joinder may also be allowed if the interested party has a claim that needs to be tried alongside the existing claims. The threshold for joinder should not be too low to avoid allowing busybodies to join proceedings merely to speculate or confuse the issues. The context and circumstances of each case determine whether to enjoin a person as an interested party.
23. The Petitioner/Respondent submitted that the interest of the applicant is well represented by the Respondents and enjoining him to the proceedings will be duplicating the production of recruitment documents for the position of Chief Executive Officer in possession of the Respondents.
24. The Petitioner/Respondent submitted that the application is without merit and be dismissed with cost.

### **Analysis and determination**

25. The main issue for determination herein is whether the application is merited.
26. For a party to be enjoined as an interested party is clearly set out in the case of *Muruatetu & Another v Republic; Kenya National Commission on Human Rights & 2 Others*(supra) and it is upon the discretion of this Honourable Court to allow or disallow the application.
27. In the above case of *Muruatetu Supra* the court laid down the elements to be applied when considering an application for joinder of a party as follows-
  - a. 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.
  - b. 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.
  - c. Lastly, a party must, in its participation, 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.
28. In this instant case, the applicant was appointed to the position of CEO vide Gazette Notice 3753 dated 25<sup>th</sup> March 2024. The Interested Party has a clear interest in these proceedings as the petition seeks to quash his appointment as the CEO.
29. A per his submissions any judgment delivered herein will have impact on the applicant. It is just to allow the applicant to be enjoined in the suit. The Respondents have no objection to the granting of the application.



30. In view of the foregoing and in the interest of justice, this Honourable Court will allow the application as prayed.

31. Costs of the application will be in the cause.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 3<sup>RD</sup> DAY OF DECEMBER, 2024.**

**ANNA NGIBUINI MWAURE**

**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.

**ANNA NGIBUINI MWAURE**

**JUDGE**

