



**Miinyan v Turkana County Assembly & another; Edukon & others (Proposed Interested Party); Turkana County Assembly Service Board (Interested Party) (Petition E006 of 2023) [2023] KEELRC 2346 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2346 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KITALE  
PETITION E006 OF 2023  
MA ONYANGO, J  
SEPTEMBER 28, 2023**

**BETWEEN**

**LINUS LOKAWA MIINYAN ..... PETITIONER**

**AND**

**THE TURKANA COUNTY ASSEMBLY ..... 1<sup>ST</sup> RESPONDENT**

**THE SPEAKER, TURKANA COUNTY ASSEMBLY ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**HON. STEPHEN EDUKON & OTHERS ..... PROPOSED INTERESTED PARTY**

**AND**

**THE TURKANA COUNTY ASSEMBLY SERVICE BOARD .... INTERESTED PARTY**

**RULING**

1. Vide an application by way of a motion dated 9<sup>th</sup> June 2023 filed under Articles 19, 20, 21, 22 and 46 of *the Constitution* of Kenya 2010, section 1A and 3A of the *Civil Procedure Act*, Order 1 Rule 10(2) and Order 51 of the Civil Procedure Rules, and all other enabling laws, the Applicants seek the following orders:
  - a. That the constitutionally and duly elected 47 members of the Turkana County Assembly be enjoined as interested parties to the Petition;
  - b. That the Applicants/ interested parties herein be granted an opportunity to submit written and oral arguments on both the Application and Petition herein



- c. That in the interim be pleased to vacate/ stay and/ or set aside the consent or any orders given on the 29<sup>th</sup> May 2023 without the approval of the affected members of the County Assembly of Turkana.
  - d. That the intended interested party be allowed to submit with leave of court any other information it may deem important and relevant to allow for the just determination of this matter.
  - e. That there be no costs in relation to this Application.
2. The application is premised on the grounds on the face thereof and the Supporting Affidavit of Stephen Edukon, the Majority Leader of Turkana County Assembly.
  3. The application is opposed by the Petitioner, Respondents and 1<sup>st</sup> Interested Party.
  4. The Petitioner filed Grounds of Opposition dated 7<sup>th</sup> July 2023 in which he raises the following grounds in opposition to the Application:
    1. That the Application is frivolous, vexatious and a blatant abuse of the process of this Honourable Court. It is incurably and fatally defective for want of form and substance and should be struck out and/or otherwise dismissed.
    2. That the proposed Interested Parties are Members of the Turkana County Assembly which is the 1<sup>st</sup> Respondent in this Petition. Enjoining the entire Membership of the County Assembly when the same is duly represented by the Constitutional body established under Article 176 of *the Constitution*, will amount to over-representation and/or double representation and will defeat the goals of justice by delaying the matter longer than it should as their interests are already taken care of and there is nothing new they will be bringing before the Court.
    3. That the Speaker of the County Assembly of Turkana, the 2<sup>nd</sup> Respondent herein, is a Member of the County Assembly by dint of Article 177 of *the Constitution*. By virtue of Article 178 (2) of *the Constitution* and section 10(4) of the *County Governments Act*, the Speaker is the titular head of a County Assembly, mandated with the overall powers and duties of protecting, advancing and representing the interests of the entire County Assembly. Bringing in an additional forty-seven (47) Member of the County Assembly as Interested Parties is, frivolous, unnecessary and a waste of the Court's valuable time.
    4. That the well-established practice both in Kenya and in the Commonwealth as set out in a plethora of cases filed in various courts is that, suits by or against a legislative body (i.e. the National Assembly, the Senate and a County Assembly) are brought by or against the Speaker of the relevant legislative body.
    5. That the law on joinder of interested parties to suits has been settled by the Supreme Court of Kenya in the case of Francis K. Muruatetu & Another v. Republic & S others (2016) eKLR, where the court set out identifiable key elements for consideration in an application for joinder as an Interested Party.

The elements are 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 application, set out the case and/or submission 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."
4. That in the premises, owing to paragraph 1-5 above, the proposed Interested Parties have not established sufficient grounds why their application should be allowed and as such it should be dismissed.
  5. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents and the interested party filed a Replying Affidavit of Christopher Doye Nakule, the speaker of Turkana County Assembly.
  6. The Application was disposed of by way of written submissions. The Applicants filed submissions dated 19<sup>th</sup> July 2023 while the Petitioner's submissions are dated 28<sup>th</sup> July 2023. The Respondents and 1<sup>st</sup> Interested Party filed submissions dated 4<sup>th</sup> August 2023.

### **Background to the Instant Application**

7. The Petitioner is the Clerk of the Turkana County Assembly and by virtue thereof, the Secretary to the Turkana County Assembly Service Board, the Interested Party herein. By a resolution of the County Assembly on 11<sup>th</sup> May, 2023, the Petitioner was removed from office and his deputy assumed office as Acting Clerk of the County Assembly of Turkana.
8. The Petitioner filed the instant petition dated 16<sup>th</sup> May 2017 in Nakuru ELRC together with an application seeking conservatory orders suspending the implementation, operationalisation, validity, execution and/or coming into effect of the impugned resolution and/or decision of the 1<sup>st</sup> Respondent on the Motion for Removal from office of the Petitioner as the Clerk of the County Assembly of Turkana.
9. The Petitioner further sought orders of injunction restraining the members of the 1<sup>st</sup> Respondent from blocking, obstructing/and or hindering the Petitioner from access and occupation of his statutory office located at the Turkana County Assembly buildings.
10. The Petitioner further sought a conservatory order restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and the Interested Party from allowing and/or permitting any other person but the Petitioner from acting, performing and/or discharging the function and exercising the powers of the office of the Clerk pending the service, hearing and determination of the petition.
11. The application was placed before Nderitu J. who directed the Petitioner to serve the application upon the Respondents and Interested Party not later than 19<sup>th</sup> May 2023 and appear before Wasilwa J. on 29<sup>th</sup> May 2023 for further orders and/or directions.
12. The firm of Sisule Musungu LLP entered appearance dated and filed on 25<sup>th</sup> May 2023 for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and the Interested Party.
13. When the matter came up before Wasilwa J. on 29<sup>th</sup> May 2023 Mr. Mwangi appeared for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and the Interested Party while Mr. Ngwele appeared for the Petitioner.



14. Mr. Mwangi informed the Court that he had instructions from his client to enter into a consent to pave way for parties to dispose of the petition. Mr. Ngwele agreed with Mr. Mwangi and the parties recorded consent as follows: -

“By consent prayer no. 6, 7, 8 and 9 are allowed pending the hearing of the petition.”

15. The court thereafter gave directions for filing of responses to the petition and for parties to dispose of the petition by way of written submissions and fixed the petition for mention on 3<sup>rd</sup> July 2023 for further directions.

16. On 31<sup>st</sup> May 2023 Muga & Associated Advocates filed a Notice of Change of Advocates to take over the representation of the 1<sup>st</sup> Respondent from Sisule & Associates. He also filed a motion under certificate of urgency seeking orders to vacate and/or stay and/or set aside the consent orders and/or any orders given on 29<sup>th</sup> May 2023.

17. The application was considered by Nderitu J who certified the application urgent and fixed the same for further orders and/or directions before Wasilwa J on 8<sup>th</sup> June 2023.

18. Upon hearing the parties, the court directed them to file submissions on representation of the 1<sup>st</sup> Respondent.

19. In her ruling on the representation of the 1<sup>st</sup> Respondent delivered on 21<sup>st</sup> June 2023 the Judge found that on 29<sup>th</sup> May 2023 when the consent was recorded Sisule & Associates LLP were properly on record for the Respondents and Interested Party. She further found that Muga & Associates Advocates were instructed by the Deputy Clerk who on 31<sup>st</sup> May 2023 had no authority to give such instructions as the Petitioner had by then been reinstated by the consent orders.

20. The Judge proceeded to strike out from the court record the documents filed by Muga & Associates which included the application to vacate the consent orders dated 29<sup>th</sup> May 2023 on grounds that on the date of filing the documents which never-the-less were dated 28<sup>th</sup> May 2023, the said advocates were not on record for the 1<sup>st</sup> Respondent.

21. The Judge further directed that the file be transferred to Eldoret for hearing and disposal.

22. It is under the foregoing background that the instant application dated 9<sup>th</sup> June 2023 was filed.

### **The Application**

23. The instant application essentially seeks two orders. The first is to enjoin the applicants as interested parties and the second is to set aside the consent orders of 29<sup>th</sup> May 2023.

24. In the grounds and affidavit in support of the application as well as in the submissions, the Applicants state that upon the Deputy Clerk Mr. John E. Komol assuming office as Acting Clerk of the County Assembly, all the Applicants consented to the appointment of Muga & Associates to represent the Assembly in the petition. That there were no instructions to appoint Sisule & Associates to represent the Assembly and that the appearance of the said firm for the 1<sup>st</sup> Respondent and the consent recorded on 29<sup>th</sup> May 2023 was without authority and knowledge of the Applicants.

25. It is the position of the Applicants that they have an identifiable stake in the petition as the orders and reliefs sought by the petitioner would not only affect the Applicants personally but would also impact on the electorate on whose behalf they were sent to the Assembly.



26. On the prayer to vacate the consent orders of 29<sup>th</sup> May 2023, it is the Applicants' position that they were not made aware of the hearing date of the petitioner's application and Sisule & Associates did not have the instructions of the 1<sup>st</sup> Respondent to record any consent on the said date.
27. That the import of the consent is that the Applicants were consenting that in impeaching the Petitioner they had violated the Petitioner's constitutional rights.
28. It is the Applicant's position that the direct effect of the consent is that by virtue of section 19 of the County Assembly Service Act, the Petitioner would control the Response of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. That this would mean that the process undertaken by the Applicants in the exercise of their constitutional powers would be compromised and or undermined by the petitioner and would amount to a direct conflict of interest.
29. That upon resumption of office by virtue of the consent orders the first port of call for the Petitioner was to withdraw instructions from the Advocates of the 1<sup>st</sup> Respondent, an act that amounts to self-preservation.
30. It is the submission of the Applicants that the Advocate on record for the 1<sup>st</sup> Respondent does not seem to be working for the interests of the members of the County Assembly who are the Applicants herein. That it is for this reason that they deemed it fit to represent themselves.
31. As stated above the Petitioner filed grounds of opposition and submissions in opposition to the instant application. It is the Petitioner's position that the Speaker of the County Assembly is the titular head of the Assembly by virtue of Article 177 of *the Constitution* and therefore champions the interests of the Applicants who are members of the County Assembly.
32. It is further the Petitioner's position that enjoining the Applicants would be contrary to section 10 of the *County Assemblies Powers and Privileges Act* which provides that no proceedings or decision of a county assembly or the committee of powers and privileges acting in accordance with the Act may be questioned in court. That to enjoin the Applicants would amount to holding the Applicants individually accountable for immunities granted by *the Constitution* and statute, a situation that would open a floodgate of cases against members of the assembly. For emphasis the Petitioner cites and relies on the decision in *Jacob Ngwele Muvengei v Speaker Nairobi City Council Assembly & 2 Others* [2015] eKLR.
33. It is further the submission of the Petitioner that the Applicants do not meet the test for joinder as interested parties as set out in Order 1 Rule 10(2) of the *Civil Procedure Act* for emphasis. The Petitioner relies on the decision in *Communications Commission of Kenya and 4 Others v Royal Media Services Limited and 7 Others* [2014] eKLR.
34. The Respondents and Interested Party filed a Replying Affidavit of Hon. Christopher Doye Nakuleu and submissions in opposition to the application. In the replying affidavit it is deposed that the list attached to the application is a forgery.
35. Hon. Nakuleu further deposes that the 1<sup>st</sup> Respondent is not a corporate body under *the Constitution* and is represented by the Speaker as titular head.
36. It is submitted that the Applicants do not meet the threshold for joinder as Interested Party. That they further do not meet the threshold for setting aside of the consent order. The Respondents and Interested Party rely on the decision in *Kenya Commercial Bank Limited v Specialized Engineering Co. Limited* (1982) KLR 485. They further rely on the decision in *Owen Yaa Baya v County Assembly of Kilifi and Simon Wachira Kagiri v County Assembly of Nyeri* [2013] eKLR.



## Analysis and Determination

37. The law provides for applications for joinder of parties in Order 1 Rule 10 of the Civil Procedure Rules, 2010 which provides:

“The court may at any stage of the proceedings, either upon or without the application of either party,...order 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.”

38. Further, Legal Notice No. 117 of 2013 titled *The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (The Mutunga Rules, 2013) provide that “A person, with leave of the Court, may make an oral or written application to be joined as an interested party.”

39. In *Francis Kariuki Muruatetu & Another v Republic & 5 Others*, Petition No. 15 as consolidated with No. 16 of 2013 [2016] eKLR, the Supreme Court set out guidance on the requirements for successful application for joinder as an Interested Party. At paragraph 37 the Court stated that the Applicant(s) must show:

- (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.

40. In *Trusted Society of Human Rights Alliance v. Mumo Matemo & 5 others* [2015] eKLR the Supreme Court restated the same principles - the applicant has to have a stake in the subject matter before the Court, he has to show that he will be affected by the decision of the Court, and that his interests will not be articulated well in his absence from the proceedings.

41. In the *Judicial Service Commission -vs- Speaker of the National Assembly & Another* [2013] eKLR where the court stated that:

“...an interested party ..... is a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly non-partisan as he is likely to urge the court to make a determination favourable to his stake in the proceedings.”

42. In the instant application the Applicants are members of the County Assembly of Turkana County. They have stated that the office that is mandated to represent them in Court, being the Speaker, is conflicted. That the speaker has already entered into a consent without their authority, which consent has the impact of embarrassing them by undoing the decision they passed in the Assembly to impeach the Clerk who is the Petitioner.



43. They have further demonstrated that the body mandated to act on the resolution of the Assembly being the County Assembly Service Board, is presided over by the said Clerk and Speaker who would therefore be unable to represent the interests of the members of the Assembly.
44. They have further demonstrated that the issues raised by them against the Clerk are matters touching on their individual personal interests being misappropriation/embezzlement of Turkana State officers Car loan and mortgage fund.
45. The averment by the Speaker that the signatures in the application are a forgery is supported by affidavits of the same signatories who are part of the applicants. It is my view that the application having been supported by the majority leader of the Assembly, cannot be vitiated by the fact that not all the members of the Assembly support the same.
46. I am satisfied that the Applicants meet the threshold for joinder as interested parties having demonstrated their interest and prejudice if not joined and accordingly grant the said orders.
47. The second limb of the Application is whether to set aside the consent orders of 29<sup>th</sup> May 2023.
48. As submitted by the Applicants, the orders have the effect of undoing the resolution of the County Assembly to the effect that the Clerk, the Petitioner herein, be removed from the office of the Clerk of the county assembly of Turkana in accordance with section 22 and 23 of the [County Assembly Services Act](#) number 24 of 2017.
49. A resolution of the county assembly cannot be set aside by the speaker without another resolution of the assembly to that effect, especially on a matter that was passed unanimously by the assembly. The only other way it can be set aside is on merits, which is the issue for determination in the petition.
50. It is for these reasons that I find merit in the prayer:-
  - i. I accordingly grant leave to the applicants to be joined as Interested Party in the petition.
  - ii. I further set aside the consent orders of 29<sup>th</sup> May, 2023.
  - iii. The costs of the application shall be in the cause.

**DATED, DELIVERED AND SIGNED AT KITALE THIS 28 DAY OF SEPTEMBER, 2023.**

**M. ONYANGO**

**JUDGE**

