



**Mathenge & 2 others v Inspector General of Police & 2 others; Kenya Human Rights Commission (Proposed Interested Party) (Judicial Review E032 of 2021) [2022] KEELRC 1734 (KLR) (23 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1734 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
JUDICIAL REVIEW E032 OF 2021**

**MN NDUMA, J  
JUNE 23, 2022**

**BETWEEN**

**AYUB GIKONYO MATHENGE ..... 1<sup>ST</sup> APPLICANT  
MBUSIRO CHRISTINE DOROTHY ..... 2<sup>ND</sup> APPLICANT  
ROBINSON KIPKORIR CHERUIYOT ..... 3<sup>RD</sup> APPLICANT**

**AND**

**INSPECTOR GENERAL OF POLICE ..... 1<sup>ST</sup> RESPONDENT  
NATIONAL POLICE SERVICE COMMISSION ..... 2<sup>ND</sup> RESPONDENT  
ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**KENYA HUMAN RIGHTS COMMISSION ... PROPOSED INTERESTED PARTY**

**RULING**

1. By a notice of motion dated February 17, 2022 the interested party/applicant prays to be joined to this suit on grounds set out on the face of the application to wit; that the organization is a key defender of Human Rights and has a clear stake in this matter.
2. The application is premised on Supporting Affidavit of David Malombe, the Executive Director of the interested party who deposes that the Labour rights the subject of this suit fall within their purview of operations.
3. That their track record and experience would enable them to advance sound submissions to the Court that would help the Court reach a fair and just determination of the matter.



4. The applicants are not opposed to the joinder but the respondents are opposed to it and have made submissions to that effect.
5. The petitioners herein as public servants, in the security service and the issues they raise are of public interest because they impact on the ability and effectiveness of the police service to discharge its statutory and constitutional mandate relying on its work force.
6. The interested party has constitutional mandate under Article 249(1) of the *Constitution* to: -
  - a. Protect the sovereignty of the people;
  - b. Secure the observance by all state organs of democratic values and principles; and
  - c. Promote Constitutionalism.
7. The application by the interested party herein is in furtherance of the aforesaid object of the Commissions and the Independent offices such as the applicant.
8. The application falls within the guideline of joinder provided by the Supreme Court in the case of *Kenya Methodist Church versus Mohammed Fugicha and 3 others* referring to its earlier decision in *Francis Kariuki Muruatetu and Another versus Republic and 5 others* where it held that: -

“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.”

9. In *Francis Kariuki Muruatetu versus the Republic*, Petition No 15 of 2015 the Supreme Court had the following to say: -

“in an application for joinder, one must move the Court by way of a formal application. Enjoinment is not as of 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: -

- (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.”

10. Having considered the depositions and submissions before Court, the Court finds that the application has merit and is granted.
11. The applicant to file submissions limited to matters within its mandate within 14 days of this Ruling and serve all other parties to be followed by highlighting of all submissions by the parties as earlier on directed in these proceedings.
12. It is so ordered.

**DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 23<sup>RD</sup> DAY OF JUNE, 2022.**

**MATHEWS N NDUMA**

**JUDGE**

**Appearances**

**Gichina Macharia Matotse & Co Advocates for the Applicant/Interested Party**

**The Hon Attorney General for the respondents**

**Muma & Kanjama Advocates for the Petitioners**

