



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT KERICHO (NAKURU)

PETITION NO.5 OF 2019

ENG. LUCY WANJIRU KARIUKI..... PETITIONER

VERSUS

THE COUNTY ASSEMBLY OF NAKURU.....1ST RESPONDENT

THE SPEAKER, COUNTY ASSEMBLY OF NAKURU..... 2ND RESPONDENT

THE GOVERNOR,

COUNTY GOVERNMENT OF NAKURU3RD RESPONDENT

THE COUNTY GOVERNMENT OF NAKURUINTENDED INTERESTED PARTY

RULING

The intended interested party, the County Government of Nakuru by application and Notice of Motion dated 19th September, 2019 and filed under the provisions of Rule 7(1) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 and seeking for orders that the County Government of Nakuru be enjoined herein as an interested party and be given leave to file pleadings, affidavits and such other necessary documents in response to the petition and application herein.

The application by the intended interested Party is supported by the affidavit of Benjamin Njoroge and on the grounds that he is the County Secretary and head of the County Public Service Board of the intended interested Party and conversant with matters herein. That the petitioner is an employee of the intended interested Party and who has filed the current petition which is due for hearing. There is a Notice of Motion seeking for conservatory orders which requires the intended interested Party to comply and the outcome of the same and petition generally will directly have impact on the intended interested Party and unless admitted as an interested party there shall be prejudice.

In his affidavit, Mr Njoroge also avers in his affidavit that the intended interested Party is a body corporate exercising constitutional and statutory authority with powers necessary for the discharge of its functions and the petitioner as its employee serving as county executive committee member for youth, gender, culture and social services and sports and noting the petition and seeking for orders which the intended interested Party may be called upon to comply it shall service the interests of justice to be enjoined herein. There is thus a genuine interest in the outcome of the petition and unless enjoined the same shall proceed with the intended interested Party being denied the chance for a hearing. For the ends of justice to be achieved and to avoid any prejudice being visited upon the intended interested Party it is only fair and lawful to be a party and argue its case.

There shall be no prejudice visited on the parties herein.

The petitioner and 3rd respondents were not opposed to the application.

The 1st and 2nd respondents filed Grounds of Opposition noting that the application is incompetent; superfluous and violates articles 176 and 179 of the Constitution, 2010 and should be dismissed.

The intended interested Party and the 1st and 2nd respondents made their oral submissions in court.

The intended interested Party thus submitted that there is distinct interest herein and seek joinder to urge its case and should not be condemned unheard. The 3rd respondent in opposing the enjoinder of the intended interested Party has relied on articles 176 and 179 of the Constitution, 2010 and which provisions favour the intended IP. The petitioner is an employee of the intended interested party and under article 176 of the constitution it is a distinct entity and executive power is vested in the executive committee and office of the 3rd respondent, the Deputy governor and the county executive committee and by the petitioner suing the respondent and leaving out the intended IP, the

defined executive organ is missing. The joinder of the intended interested Party shall not prejudice any other party herein.

The 1st and 2nd respondents submitted that article 176 of the constitution have created the County Government which has executive and the assembly with the head of the executive being the 3rd respondent as the chief executive officer of the government and herein the 3rd respondent is a party. For the assembly the County Speaker is enjoined as 2nd respondent. the County Government cannot therefore take a different form from the 3rd respondent.

The petitioner as an employee of the County government under Article 179 of the Constitution the 3rd respondent with the approval of the county assembly appointed her and to being the intended interested Party is an amorphous party as the titular head of the executive is the 3rd respondent. the application by the intended interested Party is a misnomer and there is no stake and should be dismissed.

Who is an interested party? In this case the intended interested Party has no personal stake in the matter which has not been defined as held by the **Supreme Court in Petition No.12 of 2013 – Trusted Society of Human Rights Alliance versus Mumo Matemu & others**. The intended interested Party is a body with different parts which are inseparable and the petitioner had the right to define who to sue as a respondent and the intended interested Party has no defined interests to be enjoined in these proceedings.

The intended interested Party motion for enjoinder in these proceedings is on the grounds that the petitioner is its employee and who is seeking for conservatory orders that requires compliance by the intended interested Party and the outcome of the petition will directly and indirectly have an impact of it and unless admitted as a party herein the petition will be heard and the intended interested Party condemned unheard. Other grounds are that there shall be no prejudice upon the other parties if the intended interested Party is enjoined as an interested Party herein.

As well submitted by the 1st and 2nd respondent, the Supreme Court has had the chance to define who an *interested party* in court proceedings is in the case of

Trusted Society of Human Rights Alliance versus Mumo Matemu & others, cited above. Further in the case of **Elizabeth Nyambura Njuguna & another (suing as the Legal representatives of Njuguna Mwaura Mbogo) versus E. K. Banks Limited & 2 others; Edward Kings Onyancha Maina (Interested Party) [2019] eKLR** the Court of Appeal in addressing the same question of who an interested party in court proceedings is held that;

An interested party is one who has a stake in the proceedings, though he or she was not 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 she herself appears in the proceedings, and champions his or her cause. Similarly in the case of Meme v. Republic, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- (i) Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings;
- (ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- (iii) Joinder to prevent a likely course of proliferated litigation.

We ask ourselves the following questions: a) what is the intended party's state and relevance in the proceedings and b) will the intended interested party suffer any prejudice if denied joinder.?

The questions posed above also relevant to pose herein. What is the intended interested Party stake and relevant herein and will it suffer any prejudice if denied joinder as an interested party?

The 1st and 2nd respondents argue that under Article 176 of the Constitution, 2010 the County Government consists the County Assembly and the County Executive. The 2nd respondent herein represents the County Assembly herein listed as the 1st respondent and thus the 3rd respondent represents the executive.

The court reading of the entire Article 176 of the Constitution, 2010 is that under Article 176(2) is that the County Government could decentralize its function and provision of its service to the extent that is efficient and practicable and which is broken down under the County Government Act, which set out various bodies and assigned with various duties.

By the intended interested Party thus seeking to be enjoined herein on the grounds that the petitioner is its employee and the orders sought in the Notice of Motion and the petition shall have a bearing on them, The decision to be taken herein with regard to the petitioner's employment with the intended interested Party is going to affect the running of the entire County Government and which is headed by the 3rd respondent as the chief executive office and therefore it is imperative that the intended interested Party actions or inaction, commission or omission be properly addressed herein for and on behalf of the County Government. See **Simon Wachira Kagiri versus County Assembly of Nyeri & 2 Others Petition 7 of 2013 ELRC Court at Nyeri**.

Taking the above into account, the intended interested Party herein enjoined as an interested party shall not cause any prejudice to the respondents. No relief is sought from the intended interested Party and therefore not a proper respondent save to serve its stake herein as an interested party.

the principles objectives for joinder are enunciated in the case of **Joseph Njau Kingori versus Robert Maina Chege & 3 others [2002]eKLR** that;

... that the guiding principles when an intending party is to be joined are as follows:

(1) He must be a necessary party;

(2) He must be a proper party;

(3) In the case of the Defendant there must be a relief flowing from that Defendant to the Plaintiff;

(4) The ultimate order or decree cannot be enforced without his presence in the matter;

(5) His presence is necessary to enable the Court to effectively and completely to adjudicate upon and settle all questions involved in the suit.'

For the court to thus *effectively and completely* adjudicate upon the petition, the application by the intended interested Party is hereby found with merit and is hereby allowed. The County government of Nakuru is hereby enjoined as an interested party. Costs shall be in the petition.

Delivered at Nakuru this 17th day of October, 2019.

M. MBARU

JUDGE

In the presence of: