



County Assemblies Forum v Attorney General & 3 others; Parliamentary Service Commission (Interested Party); Siaya County Assembly Service Board (Proposed Interested Party) (Petition (Application) 22 of 2017) [2021] KESC 54 (KLR) (24 March 2021) (Ruling)

County Assemblies Forum v Attorney General & 3 others (Interested parties) Parliamentary Service Commission & another [2021] eKLR

Neutral citation: [2021] KESC 54 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
PETITION (APPLICATION) 22 OF 2017
PM MWILU, DCJ & V-P, MK IBRAHIM, SC WANJALA, NS NDUNGU & I LENAOLA, SCJJ
MARCH 24, 2021**

BETWEEN

THE COUNTY ASSEMBLIES FORUM PETITIONER

AND

HON ATTORNEY GENERAL 1ST RESPONDENT

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION 2ND
RESPONDENT**

ANDREW KIPLIMO SANG MUGE 3RD RESPONDENT

RICHARD OUMA OGINDA 4TH RESPONDENT

AND

PARLIAMENTARY SERVICE COMMISSION INTERESTED PARTY

AND

**SIAYA COUNTY ASSEMBLY SERVICE BOARD PROPOSED INTERESTED
PARTY**

*(Being an application by the intended Interested Parties/
Applicant seeking to be enjoined as an Interested Party)*

An application for joinder as an interested party cannot be allowed where the applicant introduced new issues that were not pending before the court

An applicant for joinder had to satisfy the court that he or she had fulfilled the legal requirements for joinder.



Reported by Kakai Toili

Civil Practice and Procedure - parties to a suit - joinder of parties – requirements for joinder of parties - where a party sought to be enjoined to the proceedings as an interested party - whether an application for joinder as an interested party could be allowed where the applicant introduced new issues that were not pending before the court - Supreme Court Rules, 2020, rule 24.

Brief facts

The applicant filed the instant application seeking joinder in the capacity of an interested party. It was the applicant's case that between the year 2013 and 2014, it advanced car and mortgage loan facilities to former members of the first Assembly to be repaid within five years of their term in office from their salaries.

The applicant submitted that it intended to raise issues related to the appeal, which issues included that: a majority of Members of Siaya County Assembly Service Board had been unable to repay their outstanding loans; that the members had petitioned it to write off the outstanding mortgage debt and accruing interest as at January 8, 2019, and extended the loan repayment period until the final conclusion and determination of the Supreme Court matter. The applicant alleged further that the petitioner had failed to accommodate the foregoing concerns within the body of the petition and declined to update it on the case pending before the court. It also contended that no prejudice would be occasioned to the petitioner and the respondents.

Issues

Whether an application for joinder as an interested party could be allowed where the applicant introduced new issues that were not pending before the court.

Relevant provisions of the Law

Supreme Court Rules, 2020

Rule 24

1. *A person may, within seven days of filling a response in any proceedings, apply for leave to be enjoined as an interested party.*
2. *An application under sub-rule (1) shall include-*
 1. *A description of the interested party;*
 2. *A depiction of such prejudice as the interested party would suffer if the intervention was denied; and*
 3. *The grounds or submissions to be adduced by the interested party, their relevance to the proceedings, and their departures from the standpoint of the parties...*

Held

1. An applicant for joinder had to satisfy the court that he or she had fulfilled the legal requirements for joinder. The applicant sought joinder to have its concerns included within the body of the petition of appeal. The applicant was in essence introducing new issues that were not pending before the court. The applicant had not advanced any submissions that would be helpful to the court as regarded the main issue before the court. The applicant would not suffer any prejudice if its intervention was denied as its interest would be well ventilated by the petitioner, whereby the applicant was a member.

Application dismissed; applicant to bear the costs of the 2nd respondent.

Citations

Statutes

None referred to

Advocates

None mentioned



RULING

1. The Applicant seeks joinder in Petition 22 of 2017, *The County Assemblies Forum vs. The Hon. Attorney General & 5 others*, in the capacity of an interested party. Its Notice of Motion is dated and filed on 26th February 2020, and supported by an affidavit sworn by Eric Ogenga, Acting Secretary of the Siaya County Assembly Service Board, on the same date. The Application is premised on Articles 25(c), 50(1), 127(1) and 6(e) (i) of the Constitution of Kenya, Sections 3 and 24(1) of the Supreme Court Act, 2012, and Rules 3 and 25(1) of the Supreme Court Rules, 2012(now revoked).
2. In addition to the grounds set in the application, the Applicant filed its written submissions on 12th March 2020. It is the Applicant's case that between the year 2013 and 2014, it advanced car and mortgage loan facilities to former members of the first Assembly to be repaid within five years of their term in office from their salaries. The Applicant submits that it intends to raise issues related to the appeal before us, which issues include that: a majority of Members of Siaya County Assembly Service Board have been unable to repay their outstanding loans; that the said members have petitioned it to write off the outstanding mortgage debt and accruing interest as at 8th January 2019, and extend the loan repayment period until the final conclusion and determination of the Supreme Court Matter.
3. The Applicant alleges further that the Petitioner has failed to accommodate the foregoing concerns within the body of the Petition and declined to update it on the case pending before us. It also contends that no prejudice will be occasioned to the Petitioner and the Respondents. The Applicant cites several legal provisions and cases to support its argument including Section 23 of the Supreme Court Act, Rule 25 of the Supreme Court Rules, 2012, *Judicial Service Commission vs. Speaker of the National Assembly & 8 others*, [2014] eKLR, *Trusted Society of Human Rights Alliance vs. Mumo Matemo & 5 others* [2014] eKLR and *Francis Kariuki Muruatetu & another vs. Republic & 5 others*, Petition 15 as consolidated with 16 of 2013; [2016]eKLR (the Muruatetu Case)
4. Opposing the application, the 2nd Respondent (the Independent Electoral and Boundaries Commission), filed its written submissions on 14th May 2020 whereby it submits that the Applicant has not met the principles and threshold for joinder as an interested party. In that regard, it urges that the Applicant has not demonstrated a personal interest or stake it has in the determination of the petition herein, and which interest cannot be effectively canvassed by the parties on record. The 2nd Respondents submits that the issue for determination before us concerns the violation of the constitutional rights of the Petitioner as a group of first elected Members of County Assembly under the new Constitution contrary to the issue being advanced by the Applicant, the inability of the Members of Siaya County Assembly to service the mortgage advanced by them owing to their reduced term of office. The 2nd Respondent urges that the issue can be canvassed by the Petitioner and the outcome determined on all Members of County Assemblies. The 2nd Respondent also contends that the Applicant has not substantiated its allegations that the Petitioner has failed to address their concerns in the petitioner.
5. Furthermore, the 2nd Respondent urges that the mortgages between the Applicant and its former Members of County Assembly does not amount to sufficient stake in the matter and that the taking of a loan is a separate and independent arrangement from the term of office of a Member of a County Assembly. The 2nd Respondent maintains that the Applicant has not demonstrated how the orders being sought by the Petitioner would specifically have a legal impact on the discharge of the Applicant's mandate. The 2nd Respondent adds that its interests can be adequately advanced by the Petitioner.



6. The 2nd Respondent also submits that the Applicant has not demonstrated the prejudice it will suffer if it is not enjoined in the petition and that its presence will not add value or alter the cause of the proceedings as any and all of the submissions that will be made will be a replication of the averments of the Petitioner. It relies on the Muruatetu Case to support its argument.
7. The 2nd Respondent also urges that allowing the application will open a flood gate of similar applications from 46 other similar statutory bodies and consequently occasion delay in in determination of the petition. The 2nd Respondent prays that we dismiss the instant application.
8. We have taken note that on 13th October 2020 when this matter was mentioned before the Hon. Deputy Registrar, Learned Counsel, Mr. Achiando holding brief for Mr. Mbarak for the Interested Party confirmed that they did not intend to file any submissions. Learned Counsel Mr. Njenga for the Petitioners did not indicate whether or not the Petitioner is opposed to the Application. Mr. Muge who was present for the 3rd Respondent did not indicate the position taken by the 3rd Respondent in respect to the Application. The Hon. Attorney General, and the 4th Respondents were not represented.
9. An applicant for joinder has to satisfy this Court that he or she has fulfilled the legal requirements for joinder. The relevant law is Rule 24 of the Supreme Court Rules 2020 (previously 25 of the Supreme Court Rules, 2012). The said Rule provides as follows:
 - “(24) A person may, within seven days of filling a response in any proceedings, apply
 - (1) for leave to be enjoined as an interested party.
 - (2) An application under sub-rule (1) shall include-
 - a) A description of the interested party;
 - b) A depiction of such prejudice as the interested party would suffer if the intervention was denied; and
 - c) The grounds or submissions to be adduced by the interested party, their relevance to the proceedings, and their departures from the standpoint of the parties...” [emphasis supplied].
10. This Court has set the criteria for joinder as an interested party in the cases of Trusted Society of Human Rights Alliance v. Mumo Matemu & 5 Others, Supreme Court Petition No. 12 of 2013; and Francis Kariuki Muruatetu & Another v. Republic & 5 Others, Petition 15 as Consolidated with 16 of 2013 [2016] eKLR.
11. We have noted in the instant matter that the Applicant seeks joinder to have its concerns included within the body of the Petition of appeal before us. The concerns alluded to include: it advanced car and mortgage facilities to former members of the 1st Assembly to be repaid within five years of their term in office from their salaries; that a majority of the members have been unable to repay their outstanding loans; and that the said members have petitioned the Applicant to write off the outstanding mortgage debt and accruing interest owed by each of them; and extend the loan payment period until the final conclusion and determination of the Supreme Court matter. The Applicant is in essence introducing new issues that are not pending before us.
12. Furthermore, the Applicant has not advanced any submissions that will be helpful to the Court as regards the main issue before us. We decline to allow the Applicant to introduce a new cause of action contrary to this Court’s previous decisions mentioned above. Furthermore, we are not convinced that



the Applicant will be suffer any prejudice if its intervention is denied as its interest will be well ventilated by the Petitioner, whereby the Applicant is a member. Towards that end, we are inclined to dismiss the application.

13. The costs of this application shall follow the event as was decided by this Court in the case of Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others Petition No. 4 of 2012; [2014] eKLR. Hence, the Applicant shall bear the 2nd Respondent's costs incurred in this application.

14. Consequently, we make the following Orders:

- i. The Notice of Motion dated 26th February 2020 and filed on even date be and is hereby dismissed.
- ii. The Applicant shall bear the costs of the 2nd Respondent.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF MARCH, 2021.

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P. M. MWILU

Ag. CHIEF JUSTICE & Ag. PRESIDENT OF THE SUPREME COURT

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M. K. IBRAHIM

JUSTICE OF THE SUPREME COURT

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S. C. WANJALA

JUSTICE OF THE SUPREME COURT

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NJOKI NDUNGU

JUSTICE OF THE SUPREME COURT

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I. LENAOLA

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

Registrar,

Supreme Court of Kenya

