



Khalifa & 2 others v Chairperson, Independent Electoral & Boundaries Commission & another; Njenga (Intended Interested Party) (Petition (Application) 17 of 2017) [2019] KESC 78 (KLR) (8 May 2019) (Ruling)

Khelef Khalifa & 2 others v Chairperson, Independent Electoral & Boundaries Commission & another; Adrian Kamotho Njenga (Intended Interested Party) [2019] eKLR

Neutral citation: [2019] KESC 78 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
PETITION (APPLICATION) 17 OF 2017
MK IBRAHIM, SCJ, DK MARAGA, CJ & P, SC WANJALA, N NDUNGU & I LENAOLA, SCJJ
MAY 8, 2019**

BETWEEN

**KHELEF KHALIFA 1ST PETITIONER
SAMWEL M MOHOCHI 2ND PETITIONER
NAHASHON G KAMAU 3RD PETITIONER**

AND

**CHAIRPERSON, INDEPENDENT ELECTORAL & BOUNDARIES
COMMISSION 1ST RESPONDENT
INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION 2ND
RESPONDENT**

AND

ADRIAN KAMOTHO NJENGA INTENDED INTERESTED PARTY

(Being an Application for leave to be enjoined as an Interested Party brought under Articles 2(1), 3(1), 10, 19, 20, 21, 22, 27, 159, 160, 163, 258 and 259 of the Constitution, Section 3 of the Supreme Court Act and Rule 25 of the Supreme Court Rules, 2012)

A person cannot be enjoined in a suit without demonstrating how they will be affected by the decision of the court

Reported by Ian Kiptoo and Kadzo Jally



Civil Practice and Procedure-parties to a suit-joinder of parties – application to be enjoined - where applicant had not demonstrated prejudice he would suffer if not enjoined - what was the criterion used by a court for a party to be enjoined in a suit

Brief facts

The applicant filed the instant application seeking to be enjoined as an interested party in the substantive appeal before the Supreme Court on the ground that he had a legitimate interest to be enjoined in the proceeding since he purposed to argue matters of crucial public interest.

Issues

1. What was the criterion used by a court for a party to be enjoined in a suit?

Held

1. The applicant did not satisfy the conditions for admission as an interested party because he had not demonstrated how he/she would be affected by the ultimate decision of the Court or what prejudice he would have suffered if he/she was not enjoined. The applicant’s proposed arguments were not novel, but a replication of what was already before the Court.

Application disallowed.

Orders

Application dismissed with no orders as to costs.

Citations

Statutes

1. Constitution of Kenya, 2010
2. Supreme Court Act

Advocates

None mentioned

RULING

1. This is a Notice of Motion Application dated 25th October, 2017 and filed on even date by Adrian Kamotho Njenga, seeking to be enjoined as an Interested Party in the substantive appeal before us.
2. The Application is supported by the Applicant’s affidavit sworn on 25th October, 2017. The Applicant urges that he has a legitimate interest to be enjoined in the proceeding, since he proposes to argue matters of “crucial public interest”. He takes the position that the Court has no jurisdiction to entertain the substantive appeal, as the subject matter therein does not arise under Article 140 of the Constitution. Further, he proposes that the petitioners have not exhausted the available judicial avenues, before approaching this Court.
3. Having considered the Application and even without the benefit of other parties’ responses, it is our finding that the Applicant has not satisfied the conditions for admission as an Interested Party as set out in the cases of *Trusted Society of Human Rights Alliance v. Mumo Matemu & 5 Others* Supreme Court Petition No. 12 of 2013; [2014] eKLR and *Francis Kariuki Muruatetu & Another v. Republic & 5 Others* SC Petition No. 15 & 16 of 2015; [2016] eKLR. We say so because the applicant has not demonstrated how he will be affected by the ultimate decision of the Court or what prejudice he will suffer if he is not enjoined. In addition, the applicant’s proposed arguments are not novel, but rather a replication of what is already before the Court.



Orders

(a) The Notice of Motion dated 25th October, 2017 is hereby dismissed.

(b) No Orders as to costs.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 8TH DAY, OF MAY, 2019.

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**D. K. MARAGA
CHIEF JUSTICE & 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**

.....

**NJOKI NDUNGU
JUSTICE OF THE SUPREME COURT**

.....

**I. LENAOLA
JUSTICE OF THE SUPREME COURT**

I certify that this is a true
copy of the original.

**REGISTRAR
SUPREME COURT OF KENYA**

