



Ukweli Party v Kenya National Commission On Human Rights & another; Independent Electoral & Boundaries Commission & 15 others (Interested Parties) (Advisory Opinions Application 1 of 2017) [2018] KESC 36 (KLR) (Civ) (13 July 2018) (Ruling)

Ukweli Party v Kenya National Commission on Human Rights & 17 others [2018] eKLR

Neutral citation: [2018] KESC 36 (KLR)

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

CIVIL

ADVISORY OPINIONS APPLICATION 1 OF 2017

PM MWILU, DCJ & VP, I LENAOLA, MK IBRAHIM, JB OJWANG & N NDUNGU, SCJJ

JULY 13, 2018

IN THE MATTER OF AN APPLICATION BY THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS FOR AN ADVISORY OPINION UNDER ARTICLE 163(6) OF THE CONSTITUTION

–AND–

IN THE MATTER OF ARTICLES 2(1) & (2), 3(1), 4(2), 10, 73,75, 232 AND 259 OF THE CONSTITUTION OF KENYA, 2010

–AND–

IN THE MATTER OF SECTION 3 OF THE SUPREME COURT ACT NO. 7 OF 2011

–AND–

IN THE MATTER OF CHAPTER 6 OF THE CONSTITUTION ON LEADERSHIP AND INTEGRITY

BETWEEN

UKWELI PARTY INTENDED INTERESTED PARTY

AND

**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS .. 1ST RESPONDENT
HONOURABLE ATTORNEY GENERAL 2ND RESPONDENT**

AND

INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION . INTERESTED PARTY



ETHICS & ANTI-CORRUPTION COMMISSION.	INTERESTED PARTY
AMANI NATIONAL CONGRESS.	INTERESTED PARTY
CHAMA CHA MWANANCHI	INTERESTED PARTY
DEMOCRATIC PARTY OF KENYA	INTERESTED PARTY
FORD KENYA	INTERESTED PARTY
JUBILEE PARTY	INTERESTED PARTY
KENYA AFRICAN NATIONAL UNION	INTERESTED PARTY
LABOUR PARTY OF KENYA	INTERESTED PARTY
MAENDELEO CHAP CHAP	INTERESTED PARTY
NARC-KENYA	INTERESTED PARTY
NATIONAL RAINBOW COALITION	INTERESTED PARTY
ORANGE DEMOCRATIC MOVEMENT	INTERESTED PARTY
WIPER DEMOCRATIC MOVEMENT- KENYA	INTERESTED PARTY
DIRECTOR OF PUBLIC PROSECUTIONS	INTERESTED PARTY
AUDITOR GENERAL	INTERESTED PARTY

(Being an application by the Intended Interested Party/Applicant seeking to be enjoined as an Interested Party in the Reference filed by the Kenya National Commission on Human Rights, KNCHR for an advisory opinion under Article 163(6) of the Constitution)

RULING

- (1) Upon perusing the Notice of Motion application dated 30th October, 2017 and lodged on 7th November, 2017 by Ukweli Party, pursuant to the provisions of Section 25 of the [Supreme Court Rules](#), 2012 seeking to be enjoined in the Reference as an Interested Party; and
- (2) Upon perusing the grounds adduced in support of the Application that the Applicant, a political party registered under the [Political Parties Act](#), seeks to participate in the Reference and submit to the Court on; (i) the jurisdiction of the Court to give an advisory opinion; (ii) whether Chapter 6 of the [Constitution](#) sets up a fit and proper test for leadership including elective and appointive offices; (iii) whether the fit and proper test for leadership required under Chapter 6 is an objective test and not a subjective test in the mind of the vetting and/or appointing bodies for elective and appointive offices; (iv) whether the fit and proper test for leadership is wider than the criminal test of conviction for criminal offences; and (v) whether the vetting and/or appointing bodies/persons have an obligation to objectively and positively determine that a person seeking elective or appointive office is fit and proper; and
- (3) Upon further perusing the averments by the Applicant that it is a registered political party which had fielded candidates in the 2017 General Elections and therefore has an identifiable stake/interest in the proceedings as any decision by this Court on the Reference will impact on the determination of integrity of leaders in Kenya including the Applicant's leaders; and



- (4) Upon reading the averments by the Applicant that there would be no prejudice occasioned to the other parties to the Reference if it is enjoined as an Interested Party; and
- (5) Upon taking notice that none of the other parties to the Reference have filed any pleadings in support of or in objection to the said Application for joinder;
- (6) And having carefully considered the Application, the Supporting Affidavit and annexures thereto, by a unanimous decision of this Bench, we make the following orders under Section 23(2)(b) of the Supreme Court Act and Rules 21 and 23 of the Supreme Court Rules, 2012;

Orders

- (a) The Application dated 30th October, 2017 and filed on 7th November, 2017 by the Applicant seeking to be enjoined as an Interested Party in the instant Reference is hereby disallowed; and
- (b) There shall be no orders as to costs.

Reasons

- (a) The Application by the Applicant seeking to be enjoined in the instant Reference as Interested Party does not satisfy the conditions and threshold set out in the case of Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others SC Petition No. 12 of 2013 where this Court, at paras. 14 & 18 stated, *inter alia*;

“[An] interested party is one who has a stake in the proceedings, though he or she was not a 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 herself appears in the proceedings, and champions his or her cause...”

- (b) The Applicant has not established that it has a recognizable stake or interest in the Advisory Opinion sought by the Kenya National Commission on Human Rights and the fact that it is a duly registered political party in Kenya and is interested in an interpretation of Chapter 6 of the Constitution of Kenya on Leadership and Integrity, is not a sufficient ground for joinder in the circumstances of the Reference;
- (c) It would not be imperative or necessary for the Applicant to be enjoined as an Interested Party in the Reference which was filed specifically on matters important to the Kenya National Commission on Human Rights; and
- (d) On costs, not having been joined as an Interested Party and there being no response to the Application for joinder, there shall be no order as to costs.

DATED AND DELIVERED AT NAIROBI THIS 13TH DAY OF JULY, 2018

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P. M. MWILU

DEPUTY CHIEF JUSTICE & VICE PRESIDENT OF THE SUPREME COURT

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M. K. IBRAHIM

JUSTICE OF THE SUPREME COURT



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J. B. OJWANG

JUSTICE OF THE SUPREME COURT
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N. S. 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

