



REPUBLIC OF KENYA



KENYA LAW
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**Mahamud v Mohammad & 3 others; Muktar (Intended Interested Party)
(Petition 7 of 2018) [2018] KESC 26 (KLR) (28 September 2018) (Ruling)**

Mohamed Abdi Mahamud v Ahmed Abdullahi Mohammad & 4 others [2018] eKLR

Neutral citation: [2018] KESC 26 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA**

PETITION 7 OF 2018

**DK MARAGA, CJ, PM MWILU, DCJ & V-P, MK IBRAHIM, JB
OJWANG, SC WANJALA, NS NDUNGU & I LENAOLA, SCJJ**

SEPTEMBER 28, 2018

BETWEEN

HON. MOHAMED ABDI MAHAMUD APPELLANT

AND

AHMED ABDULLAHI MOHAMMAD 1ST RESPONDENT

AHMED MUHUMED ABDI 2ND RESPONDENT

GICHOHI GATUMA PATRICK 3RD RESPONDENT

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION 4TH
RESPONDENT**

AND

AHMED ALI MUKTAR INTENDED INTERESTED PARTY

((An application for joinder as an interested party under Rule 25 of the Supreme Court Rules))

Legal requirements for joinder of an interested party in Supreme Court Proceedings

*The applicant satisfied the legal requirements governing applications for parties to be enjoined as interested parties in Supreme Court Proceedings as established in the case of *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others*, Supreme Court Petition No. 12 of 2013 [2015] eKLR and *Francis Kariuki Muruatetu & another v Republic & 5 others*, Supreme Court Petition No. 15 & 16 of 2015 (consolidated) [2016] eKLR.*

Reported by Chelimo Eunice

Civil Practice and Procedure– parties – parties to a suit – joinder as an interested party - where applicant sought to be admitted as an interested party in proceedings before the Supreme Court – circumstances in which a party could be admitted as an interested party in a matter – where the applicant was a running mate of



the appellant in gubernatorial elections - whether the applicant could be admitted as an interested party in the circumstances –Supreme Court Rules, 2012, rule 25.

Brief facts

The applicant applied to be enjoined as an interested party in the petition contending that he had direct and legitimate interest in the petition since he was a running mate of the appellant in the election for Governor of Wajir County which election was the subject of the petition and that he would suffer prejudice if he was not enjoined as an interested party in the proceedings.

Issues

- i. Whether the applicant satisfied the legal requirements governing applications for parties to be enjoined as interested parties in Supreme Court proceedings as established in the case of *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others*, Supreme Court Petition No. 12 of 2013 [2015] eKLR and *Francis Kariuki Muruatetu & another v Republic & 5 others*, Supreme Court Petition No. 15 & 16 of 2015 (consolidated) [2016] eKLR.

Held

1. The appellant was nominated and elected with the applicant. It was expected that the applicant would advance submissions that would be relevant and useful to the petition and which would be different from those of the other parties that had a direct bearing on the proceedings and the ultimate outcome and that he would be directly affected by the outcome of the Petition.
2. The applicant had an identifiable stake in the matter and he would be prejudiced if not enjoined.
3. The application met the principles for joinder as an interested party laid out in *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others*, Supreme Court Petition No. 12 of 2013 [2015] eKLR and *Francis Kariuki Muruatetu & another v Republic & 5 others*, Supreme Court Petition No. 15 & 16 of 2015 (consolidated) [2016] eKLR in that the applicant, having been a running mate to the appellant and the Deputy Governor, Wajir County, was going to be directly affected by the outcome of the petition in the event of invalidation of the declared results.

Application allowed.

Citations

Statutes

None referred to

Advocates

None mentioned

RULING

1. Upon perusing the Application dated 7th June, 2018 and filed on 8th June, 2018 by Ahmed Ali Muktar, for joinder as an interested party in Petition No. 7 of 2018 and;
2. Upon reading: the Affidavit of Mr. Ahmed Ali Muktar, the running mate of the Appellant in the election for Governor of Wajir County and the Deputy Governor of the said County, sworn on the 7th June, 2018; and;
3. Upon considering the arguments made for the Applicant in which it is contended that the applicant has direct and legitimate interest in the present petition; he was a running mate of the Appellant in the election for Governor of Wajir County which is the subject of the present petition; he will suffer prejudice if he is not enjoined as a party in the proceedings; the Appellant was nominated and elected with the Interested Party; he shall advance submissions that are relevant and useful to the petition and which will be different from those of the other parties that have a direct bearing on the current



- proceedings and the ultimate outcome; and, that he will be directly affected by the outcome of this petition; and;
4. Upon considering the Applicant will be prejudiced if not enjoined and that he has an identifiable stake in the matter in line with the criteria laid down in *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others*, Supreme Court Petition No. 12 of 2013, [2015] eKLR and *Francis Kariuki Muruatetu & another v Republic & 5 others*, Supreme Court Petition No. 15 & 16 of 2015 (consolidated); [2016] eKLR
 5. Having considered the Application, by a unanimous decision of the Court, we find that the Applicant qualifies to be joined as an interested party and make the following orders under Rule 25 of the Supreme Court Rules.
 - 6.

Orders	Reasons
The Application is allowed	The application meets the principles laid out in <i>Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others</i> , Supreme Court Petition No. 12 of 2013, [2015] eKLR and <i>Francis Kariuki Muruatetu & another v Republic & 5 others</i> , Supreme Court Petition No. 15 & 16 of 2015 (consolidated); [2016] eKLR in that the applicant having been a running mate to the Appellant and the Deputy Governor, Wajir County, will be directly affected by the outcome of the Petition in the event of invalidation of the declared results.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF SEPTEMBER, 2018.

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D. K. MARAGA

CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT

.....
P. M. MWILU

DEPUTY CHIEF JUSTICE & VICE-PRESIDENT OF THE SUPREME COURT

.....
M.K IBRAHIM
JUSTICE OF THE SUPREME COURT

.....
J.B. OJWANG
JUSTICE OF THE SUPREME COURT



.....

S. C. WANJALA

JUSTICE OF THE SUPREME COURT

.....

S. N. 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

