



**Mue & another v Chairperson Independent Electoral and Boundaries Commission
& 2 others; Maina (Applicant) (Presidential Election Petition 4 of 2017)
[2017] KESC 6 (KLR) (Election Petitions) (14 November 2017) (Ruling)**

*Njonjo Mue & another v Chairperson Independent Electoral
and Boundaries Commission & 3 others [2017] eKLR*

Neutral citation: [2017] KESC 6 (KLR)

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

PRESIDENTIAL ELECTION PETITION 4 OF 2017

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

NOVEMBER 14, 2017

BETWEEN

NJONJO MUE 1ST PETITIONER

KHELEF KHALIFA 2ND PETITIONER

AND

**CHAIRPERSON INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION 1ST RESPONDENT**

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

UHURU MUIGAI KENYATTA 3RD RESPONDENT

AND

EDWARD KINGS ONYANCHA MAINA APPLICANT

Considerations for one to be enjoined as an interested party in a presidential election petition.

Reported by Robai Nasike Sivikhe

***Election Laws** - presidential election petition - joinder of parties in a presidential election petition - application to be enjoined as an interested party in a presidential election petition - whether the Applicant had an identifiable stake in the petition and would be prejudiced if he was not enjoined as an interested party - whether the applicant had qualified to be enjoined as an interested party.*



Civil Practice and Procedure - joinder of parties - application to be enjoined as an interested party in a presidential election petition - whether the applicant had an identifiable stake in the petition and would be prejudiced if he was not enjoined as an interested party - whether the applicant had qualified to be enjoined as an interested party.

Brief facts

Mr. Edward Kings Onyancha Maina made an application for joinder as an interested party in the Presidential Election Petition No. 4 of 2017. The applicant contended that he was a registered voter, who cast his vote in the October 26, 2017 repeat presidential election and that he was not consulted by the petitioner before instituting the petition (No. 2 of 2017). According to the applicant, the petition being urged had violated his freedoms and rights. The applicant stated that grant of leave will enable him to ventilate, sustain, protect, promote, enforce and champion his freedoms and rights enshrined under the Constitution and the relevant law. The applicant contended that he strongly feared that unless he was enjoined in the instant petition he stood to be violated as a voter in the event that the declared results were invalidated.

Issues

- i. Whether the applicant had qualified to be enjoined as an interested party.
- ii. Whether the applicant had an identifiable stake in the petition and would be prejudiced if he was not enjoined as an interested party

Held

1. The applicant had neither demonstrated that he had an identifiable stake in the petition nor had he demonstrated that he would be prejudiced if he was not enjoined as a party taking into account the issues he raised had already been addressed by the parties.
2. The applicant had not qualified to be joined as an interested party. The applicant had not intended to make submissions before the court that were not already presented by the rest of the parties.

Application dismissed.

Citations

Cases

Kenya

1. *Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae)* Petition 15 & 16 of 2015 (Consolidated); [2016] KESC 12 (KLR) - (Applied)
2. *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others* Petition 12 of 2013; [2015] KESC 26 (KLR) - (Applied)

Statutes

Kenya

1. Constitution of Kenya In general - (Cited)
2. Supreme Court (Presidential Election Petition) Rules, 2017 (cap 9B Sub Leg) rule 4(2) - (Interpreted)
3. Supreme Court Rules, 2012 (cap 9B Sub Leg) rule 25 - (Interpreted)

Advocates

None mentioned



RULING

(An application for joinder as an interested party under rule 25 of the Supreme Court Rules, 2012 as read with rule 4(2) of the Supreme Court (Presidential Election Petition) Rules, 2017)

1. Upon perusing the application dated November 11, 2017 and filed on November 13, 2017 by Edward Kings Onyancha Maina for joinder as an interested party in the Presidential Election Petition No 4 of 2017 and;
2. Upon reading: the affidavit of Mr Edward Kings Onyancha Maina, a Kenyan citizen residing and working at Nakuru City and a registered voter, sworn on the November 11, 2017; and;
3. Upon considering the arguments made therein in which the applicant contends that he was a registered voter, who cast his vote in the October 26, 2017 repeat presidential election; that he was not consulted by the petitioner before making the Petition (No 2 of 2017); the petition seeks and does violate his freedoms and rights; that grant of leave will enable him to ventilate, sustain, protect, promote, enforce and champion his freedoms and rights enshrined under the *Constitution* and the relevant law; and, that he strongly fears that unless he is enjoined in the present petition he stands to be violated as a voter in the event that the declared results are invalidated.
4. The applicant has not demonstrated that he has an identifiable stake in the present petition neither has he demonstrated that he will be prejudiced if he is not enjoined as a party taking into account the issues he raises have already been addressed by the parties.
5. Having considered the application, by a unanimous decision of the court, we find that the applicant does not qualify to be joined as an interested party and make the following orders under rule 25 of the *Supreme Court Rules* as read with rule 4(2) of the *Supreme Court (Presidential Election Petition) Rules 2017*.

Orders	reasons
The application is disallowed.	The application does not meet 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 Nos 15 & 16 of 2015 (Consolidated); [2016] eKLR in that the applicant does not intend make submissions before the court that are not already presented by the rest of the parties.

DATED AND DELIVERED AT NAIROBI THIS 14TH DAY OF NOVEMBER, 2017.

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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

.....

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

