



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mue & another v Chairperson Independent Electoral and Boundaries  
Commission & 3 others; Aukot (Applicant) (Presidential Election  
Petition 4 of 2017) [2017] KESC 10 (KLR) (14 November 2017) (Ruling)**

*Njonjo Mue & another v Chairperson of Independent Electoral  
and Boundaries Commission & 4 others [2017] eKLR*

Neutral citation: [2017] KESC 10 (KLR)

**REPUBLIC OF KENYA**

**IN THE SUPREME COURT OF KENYA**

**PRESIDENTIAL ELECTION PETITION 4 OF 2017**

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

**NOVEMBER 14, 2017**

**(APPLICATION FOR JOINDER AS INTERESTED PARTY)**

**BETWEEN**

**NJONJO MUE ..... 1<sup>ST</sup> PETITIONER**

**KHELEF KHALIFA ..... 2<sup>ND</sup> PETITIONER**

**AND**

**CHAIRPERSON INDEPENDENT ELECTORAL AND BOUNDARIES  
COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION .... 2<sup>ND</sup>  
RESPONDENT**

**UHURU MUIGAI KENYATTA ..... 3<sup>RD</sup> RESPONDENT**

**NATIONAL SUPER ALLIANCE (NASA) ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**EKURU AUKOT ..... APPLICANT**

*(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)*

**Legal requirements to be enjoined as an interested party in Supreme Court proceedings**

Reported by Chelimo Eunice



**Civil Practice & Procedure** – parties – parties to a suit – joinder as an interested party - where applicant applied 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 presidential candidate in the fresh presidential election - whether the applicant could be admitted as an interested party in the circumstances –Supreme Court Rules, 2012, rule 25; Supreme Court (Presidential Election Petition) Rules, 2017, rule 4 (2).

### **Brief facts**

Ekuru Aukot, the Party Leader of the Thirdway Alliance Kenya, made an application for joinder as an interested party in the Presidential Election Petition No 4 of 2017. He contended that he had direct and legitimate interest in the petition; that he was a presidential candidate for both the general election held on August 8, 2017 and the fresh presidential election held on October 26, 2017; that being a presidential candidate in the election which was the subject of the instant petition, he would suffer prejudice if he was not enjoined as a party in the proceedings; that he would advance submissions that were relevant and useful to the petition and which would be different from those of the other parties since he had been an active player in the elections and had gathered crucial information, facts and analysis that had a direct bearing on the instant proceedings and the ultimate outcome; and, that he would be directly affected by the outcome of the instant petition.

The applicant further contended that he had made a similar application within Presidential Election Petition No 1 of 2017 and the court had found that he would have been prejudiced if not enjoined and that he had 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*.

### **Issues**

- i. What were the legal requirements governing applications for parties to be enjoined as interested parties in Supreme Court proceedings?
- ii. Whether the applicant satisfied the legal requirements governing applications for parties to be enjoined as interested parties in Supreme Court proceedings.

### **Relevant provisions of the Law**

#### **Supreme Court Rules, 2012**

##### **Rule 25 - Interventions**

(1) A person may at any time in any proceedings before the court apply for leave to be joined as an interested party.

(2) an application under this rule shall include :-

(a) a description of the interested party;

(b) any prejudice that the interested party would suffer if the intervention was denied; and

(c) the grounds or submissions to be advanced by the person interested in the proceeding, their relevance to the proceedings and the reasons for believing that the submissions will be useful to the court and different from those of the other parties.

(4) An application under this rule shall be determined on the basis of written submissions. Provided that the court may, where the applicant is unrepresented, direct that submissions may not be made orally.

#### **Supreme Court (Presidential Election Petition) Rules, 2017**

##### **Rule 4**

(2) Where there is no applicable provision in the Act or in these Rules, the procedures set out in the Supreme Court Rules, 2017 in so far as they are not inconsistent with the Act or these Rules, shall apply to an election petition.

### **Held**

1. The applicant qualified to be joined as an interested party and allowed the application under rule 25 of the Supreme Court Rules as read with rule 4(2) of the Supreme Court (Presidential Election Petition) Rules, 2017.



2. The application met the principles 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 presidential candidate in the fresh presidential election was directly affected by the outcome of the petition in the event of invalidation of the declared results.

*Application allowed.*

#### **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 Matemu & 5 others* Petition 12 of 2013; [2015] KESC 26 (KLR) - (Applied)

#### **Statutes**

#### **Kenya**

1. Supreme Court (Presidential Election Petition) Rules, 2017 (cap 9B Sub Leg) rule 4(2) — (Interpreted)
2. Supreme Court Rules, 2012 (cap 9B Sub Leg) rule 25 — (Interpreted)

#### **Advocates**

None mentioned

### **RULING**

1. Upon perusing the application dated November 10, 2017 and filed on November 11, 2017 by Ekuru Aukot for joinder as an interested party in the Presidential Election Petition No 4 of 2017 and;
2. Upon reading: the affidavit of Mr Ekuru Aukot, the Party Leader of the Thirdway Alliance Kenya, sworn on the November 10, 2017; 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 presidential candidate for both the general election held on the August 8, 2017 and the fresh presidential election held on October 26, 2017; being a presidential candidate in the election which is the subject of the present petition, he will suffer prejudice if he is not enjoined as a party in the proceedings; he shall advance submissions that are relevant and useful to the petition and which will be different from those of the other parties since he has been an active player in the elections and has gathered crucial information, facts and analysis 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.
4. The applicant had made a similar application within Presidential Election Petition No 1 of 2017 in the month of August and the court found he would have been prejudiced if not enjoined and that had 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 as read with rule 4(2) of the Supreme Court (Presidential Election Petition) Rules, 2017.

6.

Orders	Reasons
The application is allowed.	The application meets the principles laid out in <u>Trusted Society of Human Rights Alliance v Mumo Matemu &amp; 5 others</u> , Supreme Court Petition No 12 of 2013, [2015] eKLR and <u>Francis Kariuki Muruatetu &amp; another v Republic &amp; 5 others</u> , Supreme Court Petition No 15 & 16 of 2015 (Consolidated); [2016] eKLR in that the applicant having been a presidential candidate in the fresh presidential election 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 14<sup>TH</sup> DAY OF NOVEMBER, 2017.

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**D. K. MARAGA**

**CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT**

.....

**P. M. MWILU**

**DEPUTY CHIEF JUSTICE & OF THE SUPREME COURT VICE-PRESIDENT**

.....

**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**

