



REPUBLIC OF KENYA



**KENYA LAW**

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**Mwau v Independent Electoral and Boundaries Commission & 2 others; Maina (Interested Party)  
(Presidential Election Petition 2 of 2017) [2017] KESC 4 (KLR) (14 November 2017) (Ruling)**

*John Haron Mwau v Independent Electoral And Boundaries Commission & 3 others [2017] eKLR*

Neutral citation: [2017] KESC 4 (KLR)

**REPUBLIC OF KENYA**

**IN THE SUPREME COURT OF KENYA**

**PRESIDENTIAL ELECTION PETITION 2 OF 2017**

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

**NOVEMBER 14, 2017**

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

**BETWEEN**

**JOHN HARON MWAU ..... PETITIONER**

**AND**

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

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

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

**AND**

**EDWARD KINGS ONYANCHA MAINA ..... INTERESTED PARTY**

**Qualifications to be enjoined as an interested party in the presidential election petition.**

Reported by John Ribia

***Election Law*** – presidential election petition – application to be enjoined as an interested party – considerations to be enjoined as an interested party in a presidential election petition – whether the petitioner met the qualifications to be enjoined as an interested party in the presidential election petition - *Trusted Society of Human Rights Alliance v Mumo Matemu and 5 Others [2015] eKLR: Francis Kariuki Muruatetu and another v Republic & 5 others [2016] eKLR*

***Civil Practice and Procedure*** – presidential election petition – application to be enjoined as an interested party – considerations to be enjoined as an interested party in a presidential election petition – whether the petitioner met the qualifications to be enjoined as an interested party in the presidential election petition - *Trusted Society of*



*Human Rights Alliance v Mumo Matemu and 5 Others [2015] eKLR: Francis Kariuki Muruatetu and another v Republic & 5 others [2016] eKLR*

### **Brief facts**

The applicant (Edward Kings Onyancha Maina) sought to be enjoined as an interested party in the presidential election petition. The Applicant was a registered voter who had cast his vote on the October 26, 2017 election and he stated that if the petition was upheld it would violate his freedoms and rights. He based his application on grounds that he was not consulted by the petitioner before making the instant petition and on further grounds that the petition sought to violate his freedoms and rights. He contended that he stood to have his rights violated in the event that the declared results were invalidated.

### **Issues**

Whether the petitioner met the qualifications to be enjoined as an interested party in the presidential election petition.

### **Held**

1. The applicant had not 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 that the issues he raised had already been addressed by the parties.
2. The applicant did not qualify to be joined as an interested party. The application did not meet the principles laid out in *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others [2015] eKLR* and *Francis Kariuki Muruatetu & another v Republic & 5 others [2016] eKLR* that the applicant did not intend to make submissions before the court that were not already presented by the rest of the parties.

*Application dismissed.*

### **Citations**

#### **Cases**

#### **Kenya**

1. *Muruatetu, Francis Kariuki & another v Republic & 5 others* Petitions 15 & 16 of 2015; [2016] eKLR (Consolidated) - (Explained)
2. *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others* Petition 12 of 2013; [2015] KESC 26 (KLR) - (Explained)

#### **Statutes**

#### **Kenya**

1. Supreme Court (Presidential Election Petition) Rules, 2017 (cap 9B Sub Leg) rule 4(2) - (Interpreted)
2. Supreme Court Rules, 2020 (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 2 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 under the application 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 <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 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 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**

