



Mwau v Independent Electoral and Boundaries Commission & 2 others; Wamaya (Applicant) (Presidential Election Petition 2 of 2017) [2017] KESC 7 (KLR) (14 November 2017) (Ruling)

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

Neutral citation: [2017] KESC 7 (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 HARUN MWAU PETITIONER

AND

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

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

UHURU MUIGAI KENYATTA 3RD RESPONDENT

AND

BEN CALEB WAMAYA APPLICANT

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 the proceedings before the Supreme Court – circumstances under which a party can be admitted as an interested party in a matter – 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

Ben Caleb Wamaya made an application for joinder as an interested party in the Presidential Election Petition No. 2 of 2017. He contended that he was a registered voter, who wished to cast his vote in the October 26,



2017 repeat presidential election but he was denied his right to do so due to the unavailability of election staff and materials and the actions of the Police chasing away people from the polling station.

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

The 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.

The Supreme Court (Presidential Election Petition) Rules, 2017;

Rule 4 (2);

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 had not demonstrated that he had an identifiable stake in the instant petition, nor had he demonstrated that he would be prejudiced if he was not enjoined as a party taking into consideration the issues he raised had already been addressed by the parties.
2. The applicant did not qualify to be joined as an interested party and his application was disallowed by the court under rule 25 of the Supreme Court Rules as read with rule 4(2) of the Supreme Court (Presidential Election Petition) Rules 2017.
3. The application did not meet 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 did not intend to make submissions before the court that were not already presented by the rest of the parties.

Application disallowed.

Citations

Cases

Kenya

1. *Muruatetu, Francis Karioko & another v Republic & 5 others* Petitions 15 & 16 of 2015; [2017] KESC 2 (KLR) (Consolidated) - (Applied)
2. *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others* Petition No 12 of 2013; [2015] eKLR - (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

(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 7, 2017 and filed on even date by Ben Caleb Wamaya for joinder as an interested party in the Presidential Election Petition No 2 of 2017 and;
2. upon reading: the affidavit of Mr Ben Caleb Wamaya (registered to vote at Carwash Polling Station code No 015, in Kisumu Central Constituency, Kisumu County), sworn on the November 7, 2017;
3. Upon considering the arguments made therein, in which the applicant contended that he is a registered voter, who wished to cast his vote in the October 26, 2017 repeat presidential election but he was denied his right to do so due to the unavailability of election staff and materials and the actions of the police chasing away people from the polling station.
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 consideration 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.
- 6.

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 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 14TH DAY OF NOVEMBER, 2017.

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D. K. MARAGA



CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT

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P. M. MWILU

DEPUTY CHIEF JUSTICE & VICE-PRESIDENT OF THE SUPREME COURT

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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

