



**Aluochier v Independent Electoral and Boundaries Commission & 19 others  
(Civil Application 2 of 2013) [2013] KESC 25 (KLR) (26 March 2013) (Ruling)**

Neutral citation: [2013] KESC 25 (KLR)

**REPUBLIC OF KENYA  
IN THE SUPREME COURT OF KENYA  
CIVIL APPLICATION 2 OF 2013**

**WM MUTUNGA, CJ & P, PK TUNOI, MK IBRAHIM,  
JB OJWANG, SC WANJALA & N NDUNGU, SCJJ**

**MARCH 26, 2013**

**APPLICATION BY MR. ALUOCH POLO ALUOCHIER FOR JOINDER IN THE PETITIONS  
IN THE MATTER OF ARTICLES 22, 138 AND 140 OF THE CONSTITUTION  
IN THE MATTER OF THE ALLEGED CONTRAVENTION OF ARTICLES  
2, 10, 27, 77(2), 88, 99, 137 AND 148 OF THE CONSTITUTION  
IN THE MATTER OF THE ALLEGED CONTRAVENTION  
OF SECTIONS 22, 23, 59 AND 72 OF THE ELECTIONS ACT  
IN THE MATTER OF RULE 25(2) OF THE SUPREME COURT  
(PRESIDENTIAL ELECTION PETITION) RULES, 2013  
IN THE MATTER OF RULE 50 OF THE SUPREME COURT RULES, 2012**

**BETWEEN**

**ISAAC ALUOCH POLO ALUOCHIER ..... PETITIONER**

**AND**

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

**RT HON RAILA AMOLO ODINGA ..... 2<sup>ND</sup> RESPONDENT**

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

**WYCLIFFE MUSALI MUDAVADI ..... 4<sup>TH</sup> RESPONDENT**

**PETER KENNETH ..... 5<sup>TH</sup> RESPONDENT**

**STEPHEN KALONZO MUSYOKA ..... 6<sup>TH</sup> RESPONDENT**

**HON WILLIAM SAMOEI RUTO ..... 7<sup>TH</sup> RESPONDENT**

**ORANGE DEMOCRATIC MOVEMENT ..... 8<sup>TH</sup> RESPONDENT**



THE NATIONAL ALLIANCE .....	9 <sup>TH</sup> RESPONDENT
UNITED DEMOCRATIC FORUM PARTY .....	10 <sup>TH</sup> RESPONDENT
KENYA NATIONAL CONGRESS .....	11 <sup>TH</sup> RESPONDENT
AHMED ISSACK HASSAN .....	12 <sup>TH</sup> RESPONDENT
LILIAN BOKEEYE MAHIRI-ZAJA .....	13 <sup>TH</sup> RESPONDENT
AMB YUSUF A NZIBO .....	14 <sup>TH</sup> RESPONDENT
MOHAMED ALAWI HUSSUIN .....	15 <sup>TH</sup> RESPONDENT
ADULLAHI M SHARAWA .....	16 <sup>TH</sup> RESPONDENT
THOMAS LETANGULE .....	17 <sup>TH</sup> RESPONDENT
J MUTHOMI WANGAI .....	18 <sup>TH</sup> RESPONDENT
ALBERT CAMUS ONYANO BWIRE .....	19 <sup>TH</sup> RESPONDENT
KULE GALMA GODANA .....	20 <sup>TH</sup> RESPONDENT

**Application for joinder to a presidential election petition must raise a direct electoral grievance.**

*The court dismissed an application for joinder as a co-petitioner in a presidential election petition. It held that the applicant's intended participation in the proceedings would be an academic exercise with a focus on constitutional principles and it was not one that would raise practical electoral grievances that amounted to issues that required judicial intervention or dispute settlement.*

Reported by Moses Rotich

***Electoral Law** - presidential election petitions - applications for joinder - whether an application for joinder that did not raise a direct electoral grievance could be allowed - Supreme Court (Presidential Election Petition) Rules, 2013, cap 9B Sub Leg, rule 17*

**Brief facts**

The applicant sought to be joined as a co-petitioner to Petition No 4 of 2013, which had been consolidated with other petitions concerning the presidential election held on March 4, 2013. The application was anchored on the Constitution and rule 17 of the Supreme Court (Presidential Election Petition) Rules, 2013, which allowed a person entitled to be a petitioner to apply for joinder before the conclusion of the hearing.

The application was opposed by the respondents who contended, among others, that its purpose was to delay the expeditious prosecution of the petition.

**Issues**

Whether an application for joinder that did not raise a direct electoral grievance could be allowed.

**Relevant provisions of the Law**

**Supreme Court (Presidential Election Petition) Rules, 2013, cap 9B Sub Leg**

**Rule 17**

*(2) Any person who was entitled to be a petitioner in the petition may apply and be joined as a co-petitioner at any time before the conclusion of the hearing of the petition.*

**Held**

1. The applicant's submissions were focused more on constitutional principles than on any electoral grievances, leading the court to view his application as academic rather than practical.



2. Settlement of disputes of a practical nature, was the primary purpose for which the judicial establishment was conceived, and must be regarded as the real justification for any proceedings that may be lodged.
3. Perceived against such a context of judicial engagement, the applicant's case had an improbable ring. There was no practicality or sincerity in the applicant's claim.

*Application disallowed.*

#### **Orders**

*No order as to costs.*

#### **Citations**

#### **Cases**

None referred to

#### **Statutes**

#### **Kenya**

1. Constitution of Kenya In general - (Cited)
2. Supreme Court (Presidential Election Petition) Rules, 2013 (cap 9B rule 17) - (Interpreted)

#### **Advocates**

Mr Regeru, M/s Oraro, Ngatia, Kigen and Mr Abdullahi for the respondents

## **RULING**

### **Application by Mr Aluoch Polo Aluochier for Joinder in the Petitions**

1. Mr Aluoch Polo Aluochier yesterday appeared before this court, for the purpose of canvassing the prayer that he be enjoined in Petition No 4 of 2013 which is already lodged and has now been consolidated with the other Petitions concerned with the Presidential election of March 4, 2013.
2. However, none of the counsel having the conduct of the said petition agrees that the applicant has a proper case to be enjoined as prayed for.
3. Learned counsel, Mr Regeru submitted that the said application has only recently been served upon him, and the prospect of joinder as prayed, in the circumstances, cannot but be for the purpose of delaying the dutiful prosecution of the cause. Learned counsel thus expressed concern:

“There must be a reason why he zeroes in on Petition No 4. He says he wants to advance brand new issues. [There will be] little benefit in admitting him.”
4. Counsel submitted that the applicant had not complied with the rules regulating the lodgement of causes in respect of a Presidential election; and that his issues were by no means related to the petitioner's issues in Petition No 4 of 2013. Counsel submitted that the applicant's motion was prejudicial to the petitioners, and that, therefore, there was no basis for allowing it.
5. Such was also the common position among other counsel in the series of petitions as now consolidated. Learned counsel, M/s Oraro, Ngatia and Kigen opposed the application for joinder; as did also Mr Abdullahi, who submitted that the applicant's grievance bore no relation to the matter in the consolidated petitions.



- 6. Mr Aluochier for his part, maintained that the Petitions in hand were a requisite foundation for constitutional deliberations of great public interest, which he ought to be allowed to canvass under the umbrella of those Petitions.
- 7. It is clear that the applicant believes his joinder-intent to be squarely supported by both the libertarian design of the Constitution of Kenya, 2010 and specifically by rule 17 of the Supreme Court (Presidential Election Petition) Rules, 2013 which thus provides:
  - “(2) Any person who was entitled to be a petitioner in the petition may apply and be joined as a co-petitioner at any time before the conclusion of the hearing of the petition.”
- 8. The applicant in his submissions, did not specifically address the question of his entitlement to be enjoined as a petitioner in respect of the Presidential election, but devoted his attention to important issues of constitutional principle which he was seeking to have adequately ventilated. In this respect, the applicant’s cause appeared more distinct by its academic element than by the object of securing the righting of an electoral wrong. It is not surprising, in these circumstances, that the parties who had in the first place moved the Court, perceived the instant application as a sheer encumbrance upon the setting of their causes towards expeditious disposal.
- 9. Settlement of disputes of a practical nature, is the primary purpose for which the judicial establishment was conceived, and must be regarded as the real justification for any proceedings that may be lodged.
- 10. Perceived against such a context of judicial engagement, the applicant’s case herein, in our view, has an improbable ring, just as learned counsel have urged; and, necessarily, all counsel will not welcome the applicant by way of joinder, as he seeks.
- 11. This court finds no practicality or sincerity in the applicant’s claim, and so, cannot allow it. The application, consequently, is disallowed.
- 12. There will be no order as to costs.
- 13. Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF MARCH, 2013.**

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**W.M. MUTUNGA**  
**CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT**

.....  
**P.K. TUNOI**  
**JUSTICE OF THE SUPREME COURT**

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

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



.....

**S.C. WANJALA**

**JUSTICE OF THE SUPREME COURT**

.....

**N.S. NDUNGU**

**JUSTICE OF THE SUPREME COURT**

I certify that this is a true Copy of the original

**REGISTRAR**

**SUPREME COURT OF KENYA**

