



REPUBLIC OF KENYA



**Ibrahim & another v Director of Public Prosecutions & another; Muhsin (Intended Interested Party) (Petition E057 of 2024) [2025] KEHC 2705 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2705 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
PETITION E057 OF 2024**

**OA SEWE, J**

**FEBRUARY 26, 2025**

**IN THE MATTER OF ENFORCEMENT OF ARTICLES 2, 10, 20, 21, 22, 23(F),  
25, 29, 48, 50, 157(C) & 258 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS  
& FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

**BETWEEN**

**NEDUN MOHAMED IBRAHIM ..... 1<sup>ST</sup> PETITIONER**

**SARAH ABDELLA ABDUSEMED ..... 2<sup>ND</sup> PETITIONER**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... 1<sup>ST</sup> RESPONDENT**

**THE REGISTRAR, CHIEF MAGISTRATE'S COURT ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**ABDULKARIM SALEH MUHSIN ..... INTENDED INTERESTED PARTY**

**RULING**

- (1) Before the Court for determination is the Notice of Motion dated 1st October 2024. It was filed by the proposed interested party, Abdulkarim Saleh Muhsin, pursuant to Articles 2, 3, 10, 20, 21, 24, 27, 47, 48 and 50 of *the Constitution* of Kenya and Rules 3, 5, 7 and 19 of *the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, 2013, for orders that:
- (a) Spent
  - (b) That leave be granted for the applicant to be enjoined as an interested party in these proceedings for purposes of fully participating in these proceedings.



- (c) If, and once enjoined, the applicant be allowed to respond to both the petitioner's Notice of Motion dated 7th November 2023 and the Petition filed herein.
  - (d) That the costs of the application be in the cause.
2. The application was predicated on the grounds that, the applicant's attention had been drawn to the Petition and the Notice of Motion filed therewith both dated 10th September 2024 seeking to challenge the proceedings at the Mombasa Chief Magistrate's Court relating to Criminal Case No. E1217 of 2022: Republic v Sarah Abdella Abdusemed & Nedim Mohamed Ibrahim. The applicant further averred that he is the complainant in the said criminal proceedings; and that the issues advanced both in the Petition and the Notice of Motion have a direct impact and bearing on his rights.
3. The applicant further contended that failure by the petitioners to join him to these proceedings was deliberate, and was intended to rob him of an opportunity of being heard on a matter that fundamentally affects his right to access to justice. Accordingly, the applicant posited that it is in the interest of justice that his application for joinder be allowed.
4. The grounds aforementioned were amplified in the applicant's own Supporting Affidavit annexed to the application sworn on 1st October 2024. In addition, the applicant responded to the petitioners' averments in support of his Notice of Motion as well as the Petition.
5. The petitioners opposed the application. To that end, they filed Grounds of Opposition dated 7th October 2024, contending that:
  - (a) The applicant has failed to satisfy the test laid down by the Supreme Court of Kenya regarding the joinder of parties to proceedings as interested parties.
  - (b) The applicant seeks to regurgitate herein on the validity of the Mediation Agreement and Resolution dated 7th May 2017, an issue that has been settled by the Court (Hon. Lady Justice Florence Wangari) in Mombasa HCCC No. E051 of 2021: Nedim Mohamed Ibrahim v Abdulkarim Saleh Muhsin, Zumzum Investment Limited and 2 others.
  - (c) The applicant has failed to demonstrate that his joinder would meet the ends of justice and instead has articulated his dissatisfaction with the judgment in HCCC No. E051 of 2021.
  - (d) The applicant is disguising himself as having a stake in the proceedings, yet vide the Mediation Agreement and Resolution dated 7th May 2017 he agreed to settle all the internal disputes in Zumzum Investment Limited and ceased to be its shareholder and director; the gist of the complaint in Criminal Case No. E1217 of 2022.
  - (e) The applicant has failed to demonstrate the prejudice that he would suffer in case of non-joinder.
  - (f) The Mediation Agreement and Resolution dated 7th May 2017 is binding upon the applicant pursuant to which he agreed to withdrawn the complaint in Criminal Case No. 1217 of 2022.
6. The application was urged by way of written submissions, pursuant to the directions given herein on 2nd October 2024. The applicant filed written submissions dated 15th October 2024 and reiterated the contents of the Supporting Affidavit and its annexures. The applicant submitted that since the petitioners are seeking to impugn the criminal charges filed in Mombasa Chief Magistrate's Criminal Case No. E1217 of 2022: Republic v Nedim Ibrahim Mohammed & Another in which he is the complainant, it is only fair and just that the he be enjoined to these proceedings.



7. The applicant further pointed out that the Mediation Agreement and Resolution dated 7th May 2017, which is the basis of the Petition, was an agreement between him and the 1st petitioner; and therefore he stands to be directly affected by the orders sought in the event the same are granted. Accordingly, the applicant urged that he be given an opportunity to participate in these proceedings.
8. In response to the applicant's written submissions, the petitioners filed written submissions dated 22nd October 2024. The petitioners opposed the application for joinder, contending that the intended interested party vide the Mediation Agreement, agreed to withdraw the complaint filed against the petitioners that gave rise to Criminal Case No. 1217 of 2022. They further deposed that they only resorted to filing the instant Petition because the 1st respondent unjustly refused to withdraw the charges against the petitioners in Criminal Case No. E1217 of 2022.
9. In the petitioners' submission, the applicant has failed to satisfy the laid-out test on joinder of interested parties. They relied on *Trusted Society of Human Rights Alliance v Mumo Matemu & others, Hope v Director of Survey and others* and urged for the dismissal of the application.
10. The 1st respondent was not opposed to the application and therefore did not file any written submissions.
11. In Rule 1 of *the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013* (the Mutunga Rules) an interested party is defined as hereunder:
 

“interested party” means a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation.”
12. In respect of joinder of such parties, the following principles were enunciated in *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 Others* [2014] eKLR by the Supreme Court, which were later reaffirmed in *Francis Kariuki Muruatetu & Another v Republic & 5 Others* (supra) thus:
 

“(37) From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party:

One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:

  - i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
  - ii. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.
  - iii. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also



demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court...”

13. Accordingly, the single issue for determination in this application is whether the applicant has given sufficient cause for his joinder.
14. First and foremost, the applicant has complied and moved the Court by way of a formal application. It is also manifest from both the Petition and the Notice of Motion dated 10th September 2024 that the reliefs sought in the Petition are all in connection with Mombasa Criminal Case No. E1217 of 2022 in which the applicant is the complainant. He averred that he stands to suffer prejudice should these proceedings go on without his participation. There is therefore good cause for the joinder of the applicant to the instant proceedings whose outcome will no doubt impact on the pending Criminal Case.
15. I am therefore satisfied that the applicant has demonstrated sufficient interest in this suit to warrant his joinder as well as the prejudice he stands to suffer in the event of non-joinder. Moreover, as was pointed out in *Judicial Service Commission v Speaker of the National Assembly* (supra), unlike an *amicus curiae*, an interested party "...may not be wholly indifferent to the outcome of the proceedings in question...he may not be wholly non-partisan as he is likely to urge the court to make a determination favourable to his stake in the proceedings."
16. In the result, the orders that commend themselves to the Court and which I hereby grant in respect of the application dated 1st October 2024 are as hereunder:
  - (a) That leave be and is hereby granted for the applicant, Abdulkarim Saleh Muhsin, to be enjoined as an interested party in these proceedings for purposes of fully participating in these proceedings.
  - (b) That leave be and is hereby granted to the applicant to respond to both the petitioner's Notice of Motion dated 10th September 2024 and the Petition filed herein. The same to be done within 14 days from the date hereof.
  - (c) That the costs of the application be in the cause.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 26TH DAY OF FEBRUARY, 2025**

**OLGA SEWE**

**JUDGE**

