



**Mbuba v Kenya Tea Development Agency Holdings & 2 others; Mutegi (Applicant)
(Constitutional Petition E015 of 2024) [2025] KEHC 4614 (KLR) (25 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4614 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CONSTITUTIONAL PETITION E015 OF 2024**

LW GITARI, J

MARCH 25, 2025

**IN THE MATTER OF CONTRAVENTION OF THE CONSTITUTION
PURSUANT TO ARTICLES 19, 22, 23(3) (F), 27, 28, 47,
50(1) AND 159 OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF SECTIONS 4, 6, 7, 10(1), 11 AND 12 OF
THE FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2015**

BETWEEN

DAVID MURITHI MBUBA PETITIONER

AND

KENYA TEA DEVELOPMENT AGENCY HOLDINGS 1ST RESPONDENT

WERU TEA FACTORY COMPANY LIMITED 2ND RESPONDENT

THE COMPANY SECRETARY, WERU TEA FACTORY COMPANY

LIMITED 3RD RESPONDENT

AND

ROSE CIANJOKA MUTEGI APPLICANT

RULING

Background

1. The petitioner filed this petition seeking the following declarations:
 - a. A declaration that the applicant is the validly elected director of Chuka Electoral Area, Weru Tea Factory Limited.



- b. A declaration that the purported board meeting held on 31st July 2024 and subsequent reconstitution of the board of directors is unconstitutional, null and void ab initio.
 - c. An order compelling the respondents to unconditionally allow the petitioner to assume office of the Director of Chuka Electoral Area of Weru Tea Factory.
 - d. An order prohibiting the respondents from calling meetings or in any way transacting any business of the directors of the electoral areas of Weru Tea Factory Limited while excluding and/or discriminating the petitioner.
 - e. An order compelling the respondents to pay the petitioner all the benefits due to him as a director including allowances, and quarter fees pending the hearing and determination of this suit.
 - f. An order of permanent injunction do issue restraining the respondents from forcefully removing the petitioner from the office of Director of Chuka Electoral Area, Weru Tea Factory Limited.
 - g. Costs of this petition be borne by the respondents.
 - h. Any other and further relief that this Honourable Court may deem fit and just to grant in the circumstances.
2. The application pending before me is the one dated 22nd August 2024 filed by Rose Cianjoka Mutegi who seeks an order that she be enjoined in this Petition as an Interested Party. It is based on the ground that she is the immediate former Director of Weru Tea Factory representing Chuka Electoral Zone. That she is a candidate in the current elections for the position of nominee for election as a Director of Weru Tea Factory representing the Chuka Electoral Zone which is the main subject of this petition.
 3. That the decision of this court concerning the elections of a director nominee of Weru Tea Factory will affect her rights and interests and if she is not a party her interests will not be well articulated. That her joinder as party will result in the complete settlement of all the questions involved in those proceedings and prevent a likely course of proliferated litigation. That the rules of natural justice require that the intended interested party be heard before a decision is rendered.
 4. The applicant filed a supplementary affidavit to respond to matters raised in the replying affidavit. She avers that the petition seeks to answer the question as to who was the duly elected Director of Weru Tea Factory representing the Chuka Electoral Area. She contends that under the Elections Regulations of the Tea Board of Kenya the petitioner has only been nominated and has never been elected or confirmed. That the board of the 2nd respondent decided to hold fresh elections after the petitioner was rejected in accordance with the regulations. That the petitioner rushed to court and one of the prayers she is seeking is to prohibit the respondents from holding elections for the said electoral area. That the decision of the court will affect her either way and her interests will not be well articulated if she is not a party. That her joinder as a party will result in complete settlement of all questions involved and prevent a likely cause of proliferated litigation.

Respondent's Submissions

5. The respondent opposed the application and filed an affidavit sworn on 9/9/2024. His contention is that the dispute before court has nothing to do with the candidature in the coming elections as the petitioner was duly elected as the Director Chuka Electoral Area Weru Tea Factory in Elections held 29/6/2024 and was issued a certificate of elections by I.E.B.C but the respondents barred him from assuming office. The petitioner contends that the Interested Party's contention that the petition seeks



to address the candidature in upcoming elections is false and misleading as there are no upcoming elections.

6. The petitioner further contends that the Interested Party was disqualified from participating in the said elections and she filed a complaint in the Dispute Resolution Committee which held that she lacked the “O” level certificate and was ineligible to contest in the elections. He submits that under Order 1 Rule 10 of the Civil Procedure Rules, a person who wants to be enjoined in a suit as an interested party must show that her presence is necessary in the proceedings. He relied on the Supreme Court decision court decision in *Trusted Society of Human Rights Alliance -vs- Mumo Matemo & 5 Others* where the court held that a party who seeks to be enjoined in the suit as an interested need to establish that:
 - a. That he has a stake in the subject before the court.
 - b. The applicant has to show that he will be affected by the decision of the court.
 - c. The applicant has to show that his interest will not be articulated well in his absence from the proceedings.

7. The petitioner also relies on the decision in *Skou Estate Limited & 5 Others -vs- Tigri Cultural Development Corporation & another (2015) eKLR* where the court held that;

“The applicant must show that in addition to being affected the reliefs which will be granted will not fully be decided upon because an important element of fact which he has shall miss if she is not added to the proceedings.”

8. The petitioner further submits that the applicant cannot be a candidate for the office of Director, Chuka Electoral Area Weru Tea Factory as she lacks the requisite academic qualifications. It is further submitted that the applicant will not suffer any prejudice if she is not joined in the suit as she has no personal interest or stake in the petition.
9. The respondent filed a replying affidavit sworn on 9/9/2024 and submits that the application is grossly misconceived, fatally defective and a sham. He further contends that the application is frivolous, vexatious and an abuse of court process. He avers that he applicant has misconstrued the proceedings as she is seeking the answer as to who was is duly elected as Director of Chuka Electoral Area. That the applicant has failed to disclose that she unsuccessfully sort to vie in the aforesaid elections but was not cleared by IEBC for lack of an O- level certificate. That the applicant has failed to disclose that she challenged the decision by the IEBC to disqualify her from contesting and filed a suit in the Chief Magistrate’s court Chuka Case No. E083/2024 which she later withdrew. He avers that the applicant has no interest in the matters in the petition and the application should be dismissed.

The crux of the matter is that he participated in the elections of Director Chuka Electoral Area, weru Tea Factory Company elections held on 29/6/2024 and emerged victorious. He was declared winner and was subsequently issued with a certificate of election by I.E.B.C but the respondents barred him from assuming office. The petitioner then instituted these proceedings seeking an order directed at the respondents to unconditionally allow him to assume office of the Director Chuka Electoral Area of Weru Tea Factory. Before the petition could be determined the petition, the applicant filed this application.

10. I have considered the application. The issue for determination is whether the applicant should be allowed to join the Petition as a 3rd party.



Order 1 Rule 10 (2) of the Civil Procedure Rules provides;

“The court may at any stage of the proceedings, either upon or without the application by either party, and on such terms as may appear to the court to be just, order a party who ought to have been joined, whether as plaintiff or a defendant or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit be added.”

11. The rule gives the court the sole discretion to determine whether or not a party should be joined in a suit. *The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rule 2013 otherwise known as Mutunga Rules 2013 provides for the Procedure to be followed. Rule 7(1) provides that, A person, with leave of the court, may make an oral or written application to be joined as an interested party.

12. For a party to be enjoined in court proceedings as an interested party, the court ought to satisfy itself that the matter is alive and is at the preliminary stages. The Supreme Court while dealing with the issue of the joinder of an interested party in the case of *Trusted Society of Human Rights Alliance -vs- Mumo Matemu* 2015, stated the principles to be considered as follows:

“Consequently, an interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause.”

13. The party is supposed to show any prejudice that he/or she will suffer if the intervention is denied and the grounds to be advanced by the person interested in the proceedings and the reasons for relieving the grounds will be useful to the court. The court has to satisfy itself that the proceedings are alive. That is to say that the case is still pending before the court and has not been stayed so the party if granted leave to join her/she will be able to proceed and advance his/her claims during the pendency of the case. See the case of *George Hope -vs- Director of Survey & 2 Others, John Sakaja & 2 Others (Interested Parties) Environment and Land Case 4/2021 (2022) KEELC 6 KCR (4th may 2022) Ruling.*

14. It is therefore clear from above authorities that a party who seeks to be joined in a suit as an Interested Party should move the court when the proceedings are still alive and must satisfy the court that he has an interest in the pending litigation. The applicant has filed this application when the petition is still alive and it is in the early stages of as it has not been heard. None of the issues in the petition has been heard. The applicant has therefore come to the court at the appropriate time.

15. The application is brought under Section 3A of the *Civil Procedure Act* and Order 50 of *the Constitution*. Section 3A of the *Civil Procedure Act* gives the court inherent discretion and jurisdiction to issue orders that may be necessary for the ends of justice. It provides:

“Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”



16. On the other hand, Article 50(1) of *the Constitution* provides:
- “Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.”
17. The overriding objectives of the *Civil Procedure Act* are the just, affordable, proportionate and expeditious determination of disputes under the act. The court has discretion to issue such orders as would ensure the determination of the suit with finality. The court has discretion to join a party whose interest can be heard and determined in the pending suit so as not to deprive him an opportunity to be heard.
18. The applicant has deponed that she has an interest in the petition pending before this court as is a former director of Weru Tea Factory representing Chuka Electoral Zone and the matter before this court relates to the election of the Director of Weru Teac Factory representing the Chuka Electoral Zone.
19. It is my view that the applicant has not shown that she has an interest in the matter. She has misconceived the application as what is before this court is not a petition to determine who was elected as director of Weru Tea Factory. The petitioner has stated that the elections were conducted and he emerged victorious in the elections held on 29/6/2024 and he was issued with certificate of election by I.E.B.C. As such the contention by the proposed interested party that the petitioner has not been elected is not true. The petitioner contends and this is clear from the record that he was elected and no petition has been filed to challenge the petitioner’s election. The interested party was not a candidate in he said elections. She has not moved the court in any way.
20. I find that although the case is still alive, the intended interested party has not proved on a balance of probabilities that she has an interest in the pending litigation. The court exercises discretion to allow a party to join proceedings where she has an interest. It is a cardinal rule that the court has to exercise discretion judiciously. In this matter the applicant interested party failed to disclose that she challenged the decision by the I.E.B.C to disqualify her from contesting in the elections in the Chief magistrate’s Court Case No. E083/2024 which she later withdrew. She has also not disclosed that she was disqualified by I.E.B.C from contesting for lack of an ‘O’ level certificate. The court will normally not exercise its discretion in favour of a party who is guilty of none disclosure of material facts as he/ she has come to court with unclean hands.
21. This court finds that the applicant has failed to prove that she has an interest in this matter. I find this court cannot exercise its discretion in favour of the applicant. For these reasons, I find that the application has no merits. It is dismissed with costs.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 25TH DAY OF MARCH 2025

HON. LADY JUSTICE L. GITARI

JUDGE

