



**Mt. Kenya Network Forum & another v Attorney General & another;  
Kioli & another (Proposed Interested Parties) (Petition E049 of 2023)  
[2024] KEHC 1675 (KLR) (Constitutional and Human Rights) (23 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1675 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS  
PETITION E049 OF 2023  
LN MUGAMBI, J  
FEBRUARY 23, 2024**

**BETWEEN**

**MT. KENYA NETWORK FORUM ..... 1<sup>ST</sup> PETITIONER  
INDIGENOUS PEOPLE NATIONAL STEERING COMMITTEE ON CLIMATE  
CHANGE (IPNSCCC) SUING THROUGH EUNICE SINORE NKOPIO  
PARSITAU ..... 2<sup>ND</sup> PETITIONER**

**AND**

**ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT  
NATIONAL CLIMATE CHANGE COUNCIL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**JOHN KIOLI ..... PROPOSED INTERESTED PARTY  
KENYA CLIMATE CHANGE WORKING GROUP .... PROPOSED  
INTERESTED PARTY**

**RULING**

**Introduction**

1. By a Notice of Motion application dated 15<sup>th</sup> October 2023; the applicants sought the following orders:
  - i. Spent.
  - ii. John Kioli be enjoined as the proposed 1<sup>st</sup> interested party.
  - iii. Kenya Climate Change Working Group be enjoined as the proposed 2<sup>nd</sup> interested party.



- iv. The costs of this application be awarded to the applicants.

### **The Applicants' Case**

2. John Kioli, the proposed 1<sup>st</sup> interested party is the Chairman of the proposed 2<sup>nd</sup> interested party. He stated that he is a member of the civil society with vast expertise and experience in climate change matters- locally and internationally.
3. He deposes that the Ministry of Environment and Forestry through a letter dated 24<sup>th</sup> October 2022, requested the proposed 2<sup>nd</sup> interested party to nominate a representative from the civil societies. The proposed 2<sup>nd</sup> interested party nominated him for a position in the National Climate Change Council (the 2<sup>nd</sup> respondent herein) by dint of Section 7(2) (g) of the *Climate Change Act*.
4. He thus asserts that he has a stake in the instant suit as the orders sought in the petition are against him and other persons notwithstanding the fact that he was not joined as a party. On the other hand, he avers that the proposed 2<sup>nd</sup> interested party's stake in this matter is premised on the lawfulness of his appointment which stems from its decision to nominate him, a key contention in the instant Petition. He contended that the he has a demonstrable stake in the Petition and that the petitioners would not suffer any prejudice if this application is allowed.
5. Accordingly, the interested parties urged the court to allow the application to give them the opportunity to be heard in line with the right to a fair hearing.

### **The Petitioners' Case**

6. In response, the petitioners filed grounds of opposition dated 16<sup>th</sup> January 2024 on the basis that:
  - i. The application is premature, does not lie, is incompetent, superfluous, fatally defective, misconceived, lacks merits and tantamount to gross abuse of the court process having multiplicity of similar applications hereof.
  - ii. The proposed 1<sup>st</sup> interested party ought to be denied the right of audience because he has disobeyed the conservatory orders issued by Hon. Justice Thande on 19<sup>th</sup> February, 2023.
  - iii. This application has been made in bad faith and the applicants are guilty of inordinate delay in filing this application.
  - iv. This Court is functus officio having made a ruling on conservatory orders and no appeal has been preferred hereof.
  - v. The proposed 1<sup>st</sup> interested party has offended the law of equity for failing to comply with court orders to wit; he who seeks equity must do equity and he who comes to equity must come with clean hands.
  - vi. The applicants' application is a gross abuse of the Court process, lacks merits and so the Court ought to dismiss the application.
  - vii. The applicants have not given cogent, valid and reasonable grounds to support the application for joinder.
  - viii. This Court had already given hearing directions and set down the main petition for hearing. The orders sought will delay the matter and delivery of justice hereof.
  - ix. This application lacks merits, will prejudice the petitioners and public interest.



- x. The application dated 15<sup>th</sup> October, 2023 ought to be dismissed with costs to be assessed at Kshs. 100,000/= payable by the applicants to the respondents within 7 days from the date hereof.

### **The Applicants' Submissions**

7. Counsel for the applicants, James Oketch and Company Advocates filed written submissions and a list of authorities dated 19<sup>th</sup> January 2024. Counsel submitted that the proposed 1<sup>st</sup> interested party has a direct interest in this matter as the subject of the petition is a challenge to his appointment to the 2<sup>nd</sup> respondent. This court's pronouncement in the end will determine whether or not he will retain his position in the Council.
8. With regards to the proposed 2<sup>nd</sup> interested party, Counsel submitted that its interest is premised on the fact that it nominated the proposed 1<sup>st</sup> interested party for the position in the Council.
9. Accordingly, Counsel is certain that joinder of the applicants is crucial since it will assist the court to determine the claim that the proposed 1<sup>st</sup> interested party's nomination was marred with illegalities. It was argued that joinder of the applicants would assist the court determine whether the law was complied with before the appointment of the proposed 1<sup>st</sup> interested party to the Council. It was also stressed that the applicants would be prejudiced if the court fails to allow the parties to be heard.
10. On the assertion of inordinate delay, Counsel noted that the applicants were never been notified of the instant suit. The applicants however filed this application as soon as they became aware of the suit. It is Counsel's argument therefore that the joinder is in the interest of justice.
11. In support of their case, Counsel relied on the Supreme Court of Kenya in Petition No.14 of 2014 Communications Commission of Kenya and 4 Others v Royal Media Services Limited & 7 Others Petition No. 15 of (2014) eKLR where it was held that:

“An interested party is one who has stake in the proceedings, though he or she was not a 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.”

12. Additional cases relied upon by the applicant were: Supreme Court of Kenya in Petition 12 of 2013 Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others [2014] eKLR; Supreme Court of Kenya at Nairobi in Petition No.15 of 2015 Francis K. Muruatetu and another v. Republic & 5 others (2016) eKLR; Environment and Land Court at Nakuru in ELC No.251 of 2012 Skov Estate Limited & 5 others v Agricultural Development Corporation & another (2015) eKLR; High Court of Kenya at Nairobi Constitutional and Human Rights Division in Petition No.37 of 2017 Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others [2017] eKLR; and Environment and Land Court at Kitale in Environment & Land Case E046 of 2021 James Ndung'u Kero v Chief Land Registrar, Director Of Survey & Attorney General [2022] eKLR.

### **Petitioners' Submissions**

13. The petitioners through Kurauka and Company Advocates filed written submissions dated 24<sup>th</sup> January 2024. Counsel submitted that the applicants had not met the threshold for joinder and had not demonstrated the prejudice they would suffer if the application is not allowed.



14. In support Counsel cited the Supreme Court decision in *Francis Kariuki Muruatetu and Another v Republic & 5 Others* (2016) eKLR where it was held that:

“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 a 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 participation, 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.”

To explain their relevance to the proceedings and the reason for believing their submissions will be useful to the court and different from those of the other parties.”

15. The Respondent also relied on the case of *Communications Commission of Kenya and 4 Others vs Royal Media Services Limited & 7 Others* Petition No. 15 of (2014) eKLR and *Trusted Society of Human Rights Alliance vs Mumo Matemu* (2014) eKLR.

### **Analysis and Determination**

16. Upon perusal of the pleadings and submissions by the parties, it is clear to me that there is only one issue for determination, namely:

Whether the applicants have demonstrated sufficient grounds for joinder in this Petition as Interested Parties.

17. Joinder of parties in constitutional petitions is provided for in the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013*.

Rule 3 (1) and (2) of the *Rules* state that the rules apply to all proceedings made under Article 22 of the *Constitution* and the overriding objective is to facilitate access to justice for all persons as required under Article 48 of the *Constitution*.

18. The definition of an ‘interested Party’ is contained in Rule 2 which is as follows:

“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.”



19. The Supreme Court in *Trusted Society of Human Rights Alliance*(supra) discussed this principle as follows:

“ 17. Suffice it to say that while an interested party has a ‘stake/interest’ directly in the case, an amicus’s interest is its ‘fidelity’ to the law: that an informed decision is reached by the Court having taken into account all relevant laws, and entertained legal arguments and principles brought to light in the Courtroom.

18. 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...”

20. The addition of an interested party is provided under Rule 5 (d) (ii) of the [\*Constitution of Kenya \(Protection of Rights and Fundamental Freedoms\) Practice and Procedure Rules, 2013\*](#). The Rule provides thus:

“The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear just—

(i) .....

(ii) that the name of any person who ought to have been joined, or whose presence before the court may be necessary in order to enable the court adjudicate upon and settle the matter, be added.”

21. In *Francis Kariuki Muruatetu* (supra), the Supreme Court concisely articulated the principles to be considered in an application for joinder of an Interested Party as follows:

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.

22. Flowing from the above, it is crystal clear that a Party applying for joinder as an interested party must plainly disclose or demonstrate an identifiable stake in the proceedings upon which it is relying to seek joinder.

23. In the instant case, the applicants aver that the reliefs being sought in this Petition will affect them directly especially the proposed 1<sup>st</sup> interested party as the orders sought by the petitioners seek to annul his appointment to the Board of the 2<sup>nd</sup> respondent. It is the interested parties’ position therefore that they should be accorded a chance to be heard so that they can articulate their position in the Petition before final orders are made by the Court.



24. The application was vehemently disputed by the petitioners. They asserted that the applicants are in breach of the conservatory orders issued by Hon. Lady Justice Thande on 19<sup>th</sup> February 2023 which were to the effect that:

“conservatory orders be and is hereby issued to prevent Emily Mwende Waira, John Kioli, Umar Omar and Dr. George Odera Outa from being appointed, gazetted and or assuming, occupying and or holding offices as members of the National Climate Change Council, pending the hearing and determination of this application’. The petitioners in the same breath argued that the applicants had no identifiable claim in the matter and that they had not satisfied the elements of joinder as interested parties.”

25. Further, that the application was made in bad faith and that the applicants are guilty of inordinate delay as the application was filed when the court had already given directions on the hearing and fixed a hearing date. That granting the orders sought would cause further delay.

26. One of the main grounds for opposing the joinder is that the proposed interested party applicants disobeyed the conservatory orders issued by Justice Thande on the 19<sup>th</sup> of February, 2023. Despite this contention, there is no demonstration whatsoever that the proposed interested party applicants were aware of the said order. There is no evidence of service upon any of them. They were not even parties at the time this conservatory order was issued by the Court. What is apparent is that the 1<sup>st</sup> proposed interested party’s name is mentioned in the reliefs sought in the Petitioner although the proposed 1<sup>st</sup> Interested Party was not a party then. In any event, the means of enforcing disobedience of a Court order is through contempt of Court application which the Respondent has not filed against the proposed interested parties’ applicants. Further, it is preposterous for the petitioners to argue that the applicants needed to comply with the conservatory order but at the same time also argue that the applicants have no stake or interest in this Petition.

27. Regarding the contention by the Petitioner that there has been inordinate delay in presenting the application having been filed long after directions on the hearing of this Petition were issued by the Court, the applicants explained that they were not aware of this Petition, until when they filed the instant application. The Petitioner did not controvert this assertion. In any case, the rule on joinder parties gives the Court discretion to join a party

“...at any stage of the proceedings...and on such terms as may appear just...”

28. Further, upon careful scrutiny of the Petition dated 16/2/2023; prayer b, c, and d read as follows:

b. That a declaration be issued that the nomination and or appointment of Ms. Emily Mwende Waita, Mr. John Kioli, Ms. Umar Omar and Dr. George Odera Outa, to be members of the National Climate Change Council was invalid, null and void *ab initio*

b. That an order be issued quashing the appointment of Mr. John Kioli, Umar Omar or any other person, to be a member of the National Climate Change Council, purporting to represent civil society organizations and marginalized communities

c. That permanent injunction to prevent Ms. Emily Mwende Waita, Mr. John Kioli, Ms. Umar Omar and Dr. George Odera Outa from assuming, occupying and or holding offices as members of the National Climate Change Council.

29. Evidently, the proposed 1<sup>st</sup> interested Party/Applicant is John Kioli which is conspicuously named reliefs whose effect would be to annul his appointment to the Board of the 2<sup>nd</sup> Respondent should this



Petition succeed. The Proposed 2<sup>nd</sup> Interested Party role is relevant in that it played a role in process of his nomination. The applicants have thus demonstrated in clear-cut interest in seeking to join this Petition because the final determination by the Court could have a direct impact on their interests. The allegation that the application is brought in bad must fail as the Applicants have demonstrated they have a definite interest will and will suffer prejudice if they are not heard.

30. I am satisfied applicants have satisfied the requirements to be joined as interested parties in this Petition. Allowing them will give the Court an opportunity to determine substantially all the issues in dispute and forestall a possibility of multiple future Petitions on the same subject matter.
31. The Notice of Motion Application dated 15<sup>th</sup> October, 2023 is thus allowed. Costs shall be in the cause.
32. I consequently order the 1<sup>st</sup> and 2<sup>nd</sup> Proposed Interested Parties be joined as 1<sup>st</sup> and 2<sup>nd</sup> interested Parties respectively. They shall proceed to file their responses to the Petition within the next seven (7) days.
33. Costs shall be in the cause.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF FEBRUARY, 2024.**

**L N MUGAMBI**

**JUDGE**

