



**Commissioner Irene Masit v Muchelule Tribunal (Established pursuant to Article 251 of the Constitution) & another (Petition E089 of 2023) [2024] KEHC 2561 (KLR) (Constitutional and Human Rights) (15 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2561 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS  
PETITION E089 OF 2023  
LN MUGAMBI, J  
MARCH 15, 2024**

**BETWEEN**

**COMMISSIONER IRENE MASIT ..... PETITIONER**

**AND**

**MUCHELULE TRIBUNAL (ESTABLISHED PURSUANT TO ARTICLE 251 OF THE CONSTITUTION) ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Introduction**

1. By a Notice of Motion application dated 30<sup>th</sup> May 2023 the petitioner seeks the orders that:
  - a. Gen. Francis Ogolla, Kennedy Ogetto and Joseph Kinyua be enjoined in this suit as interested parties; and
  - b. Costs be in the Cause.

**The Petitioner's Case**

2. The petitioner deponed that during the proceedings before the Muchelule Tribunal, a delegation that included the proposed interested parties, was mentioned as having visited the Independent Electoral and Boundaries Commission (IEBC) Commissioners at Bomas prior to the announcement of the Presidential Election on 9<sup>th</sup> August 2022. It is stated that this delegation exerted pressure on the Commissioners to change the outcome of the Presidential election.



3. According to the petitioner, joinder of these parties in this suit is crucial for the proposed interested parties to clarify the alleged influence exerted on the Commissioners on the outcome of the Presidential election.

### **The Respondents' Case**

4. In response, the respondent filed grounds of opposition dated 21<sup>st</sup> June 2023 on the basis that:
  - i. The intended interested parties were neither respondents nor witnesses in the Tribunal proceedings of the 1<sup>st</sup> respondent. They also have no claim against either of the parties herein. Their joinder thus serves no purpose in the determination of the issues raised in the instant petition.
  - ii. The Application does not remotely set out any exceptional circumstances that would render non-joinder of the intended interested parties prejudicial to the petitioner's case.
  - iii. The Application does not set out any clearly identifiable interest that the intended interested parties may serve in this matter, proximate enough to be distinguished from anything that it merely peripheral to the issues in dispute so as to assist court reach a just determination.
  - iv. The Application is based on alleged facts that were not subject of determination before the 1<sup>st</sup> respondent and are also not subject of determination in the instant petition.
  - v. The proceedings before the 1<sup>st</sup> respondent were against the petitioner and not the intended interested parties. Their joinder to the instant petition is therefore a non-starter.
  - vi. The appointment of the intended interested parties to their respective positions and the decision rendered by the 1<sup>st</sup> respondent against the petitioner are two separate and unrelated events. The dispute before the court is the legality of the decision of the 1<sup>st</sup> respondent as entered against the petitioner. There is no nexus between the appointment of the intended Interested parties and the decision of the 1<sup>st</sup> respondent so as to make joinder of the intended interested parties relevant to the determination of the issues in the petition.
  - vii. The Application is an ill attempt to impugn the legal appointments of the intended interested parties to their respective positions.
  - viii. By the very definition of an interested party, grant of the Application would result to a misjoinder which may be prejudicial to the hearing and determination of the petition. The definition of an interested party according to the Black's Law Dictionary, 8<sup>th</sup> Edition is;

‘a party who has recognizable stake and therefore a standing in a matter.’

Similarly, Rule 2 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 defines an Interested party as:

“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.”

Remarkably, the Supreme in the case of *Trusted Society of Human Rights Alliance v Mumo Matemu [2014]* eKLR held:

“An interested party is one who has a 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. Such a person feels that his or her interest will not be well articulated unless he himself or herself appears in the proceedings, and champions his or her cause....”

### **The Petitioner’s Submissions**

5. The petitioner through her Counsel, Mr. Simiyu indicated that submissions dated 20<sup>th</sup> September 2023 had been filed in support of the application however this submissions are not in the Court file or CTS.

### **Respondents’ Submissions**

6. The respondents did not file any submissions. They instead sought to rely on the Supreme Court case of *Trusted Society of Human Rights Alliance vs Mumo Matemu*(2014)eKLR which was cited in their grounds of opposition.

### **Analysis and Determination**

7. It is my considered view that only a singular issue arises for determination in this application, namely:

Whether or not this Court should allow the petitioner’s application for joinder of Gen. Francis Ogolla, Kennedy Ogetto and Joseph Kinyua as interested Parties in this Petition.

8. The law on joinder of interested parties in constitutional petitions is set out in *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013. Rule 2 defines an ‘interested party’ 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’.

9. The addition of an interested party is thus provided under Rule 5 (d) (ii) which provides:

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) Order the name of any party improperly joined be struck out, and
- (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.

10. The Supreme Court in *Communications Commission of Kenya & 3 others vs Royal Media Services Limited & 7 others (2014)* eKLR discussed joinder of an interested party as follows:

“(22) In determining whether the applicant should be admitted into these proceedings as an Interested Party we are guided by this Court’s Ruling in the Mumo Matemo case where the Court (at paragraphs 14 and 18) held:

“[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...”

(23) Similarly, in the case of *Meme v. Republic*, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- (i) Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;
- (ii) joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- (iii) joinder to prevent a likely course of proliferated litigation.”

(24) We ask ourselves the following questions: (a) what is the intended interested party’s stake and relevance in the proceedings? and (b) will the intended interested party suffer any prejudice if denied joinder?”

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...”

11. Equally, the applicable principles in an application for joinder of an interested party were set by the Supreme Court in *Francis Kariuki Muruatetu and Another vs Republic & 5 Others (2016)* eKLR where it underscored as follows:

- a. 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.
  - b. 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.
  - c. 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.
12. In an application for joinder of an interested party, it is the responsibility of the applicant to show the stake or interest that the interested Party has that is likely to be affected or prejudiced by the outcome of the proceedings before the Court.
13. In the present case, the Petitioner alleges that the three- named persons are alleged to have visited IEBC where they are said to have ostensibly attempted influence the Commissioners to tamper with



the Presidential election results. Based on that allegation, she then seeks to have them joined for the following reason:

“...That it would be fair and in the interest of justice to enjoin them as interested parties in these proceedings for them to address this Honourable Court on the extent of their alleged influence...”

14. It is evident from the Petitioner’s own deposition that the alleged claim of influence was not made by any of three named persons she wants to join in these proceedings. On what basis therefore would one seek to join them in order ‘to address the Court on the extent of their alleged role’. This is an attempt to engage this Court in an unproductive and speculative action.
15. In any case, the application in itself does not in the remotest sense meet the test of joinder. The Petitioner has not demonstrated how the orders she is seeking will affect the three named persons and hence the need to join them as interested parties in this Petition.
16. The upshot is that this Application fails and is hereby dismissed. Costs in the cause.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15<sup>TH</sup> DAY OF MARCH, 2024.**

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**L N MUGAMBI**

**JUDGE**

