



**THE REPUBLIC OF KENYA**

**IN THE SUPREME COURT OF KENYA**

*(Coram: Ibrahim, Ojwang, Wanjala, Njoki, Lenaola, SCJJ)*

**PETITION NO 22 OF 2017**

**THE COUNTY ASSEMBLIES FORUM.....PETITIONER**

**VERSUS**

**HON ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT**

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION.....2<sup>ND</sup> RESPONDENT**

**ANDREW KIPLIMO SANG MUGE.....3<sup>RD</sup> RESPONDENT**

**RICHARD OUMA OGINDA.....4<sup>TH</sup> RESPONDENT**

**PARLIAMENTARY SERVICE COMMISSION.....PROPOSED INTERESTED PARTY/APPLICANT**

**RULING**

**A. INTRODUCTION**

[1] The Applicant's Notice of Motion under Certificate of Urgency dated 19<sup>th</sup> October 2018, filed on 31<sup>st</sup> October 2018, is anchored on Articles 25(c), 50(1), 127 (1), 6(e) (i) of the Constitution of Kenya; Sections 3 and 24 (1) of the Supreme Court Act, 2012 and Rules 3 and 25(1) of the Supreme Court Rules 2012.

[2] The Applicant seeks joinder in *Petition No 22 of 2017, The County Assemblies Forum vs Hon. Attorney General & 2 Others* in the capacity of Interested Party.

[3] The Applicant thus seeks to move the Court for orders THAT:

1. *This Honourable Court do grant leave to the Applicant to be enjoined as an interested party to these proceedings.*
2. *This Honourable Court be pleased to make such order(s) and/ or directions(s) as it may deem necessary in the circumstances.*

**B. THE APPLICANT'S CASE**

[4] The Application is premised on the supporting affidavit of Jeremiah Nyegenye, the Clerk of the Senate of Kenya and Secretary

of the Applicant, the Parliamentary Service Commission, sworn on 19<sup>th</sup> October 2018.

[5] The Applicant anchors his application on the ground that the Parliamentary Service Commission is a constitutional commission established pursuant to Article 127(1) of the Constitution of Kenya and is charged with performing the functions necessary for the well being of Members and staff of Parliament, and is required under Article 127(6)(a) and (e) of the Constitution of Kenya to provide services and facilities to ensure the efficient and effective functioning of Parliament and to perform other functions necessary for the well being of the Members of staff and Parliament.

[6] The Applicant also supports its application on the ground that on the 27<sup>th</sup> of April 2017, the High Court of Kenya delivered its decision in *Andrew Kiplimo Sang Muge & 2 others v. the IEBC and anor* [2017] eKLR, and declared that the terms of office of Members of the first County Assemblies under the Constitution of Kenya is five years and shall expire on the 3<sup>rd</sup> of March 2018. Furthermore, that they are entitled to payment of their salaries and other applicable emoluments for the period of 8 months by which their constitutional tenure shall be prematurely reduced as a result of the date of the 8<sup>th</sup> of August 2017 general elections.

[7] Another ground advanced by the Applicant in support of its application is that following the foregoing High Court decision, the Parliamentary Service Commission, on the 21<sup>st</sup> of June 2017, filed **Reference Number 3 of 2017 Parliamentary Service Commission v The Attorney General** seeking this Honourable Court's advisory opinion on among others, the terms of office of the members of the 11<sup>th</sup> Parliament under the Constitution of Kenya and the effect of the 8<sup>th</sup> of August 2017 General Election on their term of office.

[8] It is further alleged by the Applicant that on 17<sup>th</sup> July 2018 when the Reference came up for hearing, the Court stayed proceedings pending the outcome of **Supreme Court Petition Number 22 of 2018: Andrew Kiplimo Sang Muge v The Hon. Attorney General & others** directing that the Applicant was at liberty to make an application to be enjoined as an Interested Party in that Petition.

[9] It is the Applicant's case that the allegations and reliefs sought in the instant Petition directly affect the Applicant's Reference because both matters seek an interpretation of the correct term of office of elected Members of County Assembly and Members of Parliament in first post-2010 Constitution, the first County Assemblies and the 11<sup>th</sup> Parliament respectively.

[10] Finally, the Applicant urges that no prejudice shall be occasioned to the Petitioner and the Respondents if the orders sought in this Application are granted. On the other hand, the Applicant and Members of the 11<sup>th</sup> Parliament stand to be condemned unheard if the Applicant does not participate in these proceedings in light of this Honourable Court's directions made on the 17<sup>th</sup> of July 2018 in **Reference Number 3 of 2017; Parliamentary Service Commission v the Attorney General**.

[11] The Application is unopposed as the Respondents have not filed responses to it.

### C. ANALYSIS

[12] The provisions of the law for enjoinder of an interested party are found in Section 23 of the Supreme Court Act, 2011 in the following terms:

*“(1) Any person entitled to join as a party or liable to be joined as a party in any proceedings before the Court may, on notice to all parties, at any stage of the proceedings, apply for leave to intervene as a party.*

*“(2) An application under this Rule shall contain information on—*

*(a) the identity of the person interested in the proceeding;*

*(b) a description of that person's interest in the proceeding;*

*(c) any prejudice that the person interested in the proceeding would suffer if the intervention were denied; and*

*(d) the grounds or submissions to be advanced by the person interested in the proceeding, their relevance to the proceeding and the reasons for believing that the submissions will be useful to the Court and different from those of the other parties”.*

[13] These provisions have been previously considered by the Court and the Court has pronounced itself on its discretionary power to admit an interested party. The principles set out in paragraph 37 of *Francis Kariuki Muruatetu & Another v Republic & 5 others, Petition 15 as consolidated with 16 of 2013; [2016] eKLR* thus demonstrate elements applicable where a party seeks to be enjoined in proceedings in that capacity. They are, that;

(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.*

[14] **Applying the above elements to the present Application and noting that the same is not opposed, we are satisfied that the Application is merited and the Applicant ought to be admitted as an interested party.**

#### **D. ORDERS**

[15] Consequently, we make the following Orders:

(i) *The Application dated 19<sup>th</sup> October 2018 seeking joinder of the Parliamentary Service Commission as an Interested Party be and is hereby is allowed.*

(ii) *Each Party shall bear their own respective costs.*

**DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF JANUARY 2020.**

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**M.K. IBRAHIM**

**JUSTICE OF THE SUPREME COURT**

.....

**S. C. WANJALA**

**JUSTICE OF THE SUPREME COURT**

.....

**I. LENAOLA**

**JUSTICE OF THE SUPREME COURT**

.....

**J. B. OJWANG**

**JUSTICE OF THE SUPREME COURT**

.....

**NJOKI NDUNGU**

**JUSTICE OF THE SUPREME COURT**

**I certify that this is a true copy of the original**

**REGISTRAR**

**SUPREME COURT OF KENYA**



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