



Case Number:	Election Petition 2 of 2017
Date Delivered:	14 Nov 2017
Case Class:	Civil
Court:	Supreme Court of Kenya
Case Action:	Ruling
Judge:	David Kenani Maraga, Jackton Boma Ojwang, Isaac Lenaola, Philomena Mbeti Mwilu, Smokin C Wanjala, Susanna Njoki Ndungu
Citation:	John Haron Mwau v Independent Electoral and Boundaries Commission & 3 others [2017] eKLR
Advocates:	-
Case Summary:	<p style="text-align: center;"><u>Legal requirements to be enjoined as an interested party in Supreme Court Proceedings</u></p> <p style="text-align: center;">-</p> <p style="text-align: center;">John Haron Mwau v Independent Electoral and Boundaries Commission & 3 Others (2017) eKLR</p> <p style="text-align: center;">Presidential Election Petition 2 of 2017 <i>(Application for Joinder as an Interested Party)</i></p> <p style="text-align: center;">Supreme Court of Kenya</p>

**D. Maraga, CJ, P. Mwilu, DCJ, M. Ibrahim,
J. B. Ojwang, S. Wanjala, N. Ndung'u and
I. Lenaola, SCJJ**

November 14, 2017

Reported by Chelimo Eunice

Civil Practice & Procedure – parties – parties to a suit – joinder as an interested party - where Applicant applied to be admitted as an interested party in the proceedings before the Supreme Court – circumstances which a party can be admitted as an interested party in a matter – whether the Applicant could be admitted as an interested party in the circumstances –Supreme Court Rules, 2012, rule 25; Supreme Court (Presidential Election Petition) Rules, 2017, rule 4 (2).

Brief facts:

Ben Caleb Wamaya made an Application for joinder as an interested party in the Presidential Election Petition No. 2 of 2017. He contended that he was a registered voter, who wished to cast his vote in the October 26, 2017 repeat presidential election but he was denied his right to do so due to the unavailability of election staff and materials and the actions of the Police chasing away

people from the polling station.

Issues:

- i. What were the legal requirements governing applications for parties to be enjoined as interested parties in Supreme Court Proceedings?
- ii. Whether the Applicant satisfied the legal requirements governing applications for parties to be enjoined as interested parties in Supreme Court Proceedings.

Relevant Provisions of the Law

The Supreme Court Rules, 2012;

Rule 25; Interventions;

(1) A person may at any time in any proceedings before the Court apply for leave to be joined as an interested party.

(2) an application under this rule shall include:-

(a) a description of the interested party;

(b) any prejudice that the interested party would suffer if the intervention was denied; and

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

(4) An application under this rule shall be determined on the basis of written submissions. Provided that the Court may, where the applicant is unrepresented, direct that submissions may not be made orally.

The Supreme Court (Presidential Election Petition) Rules, 2017;

Rule 4 (2);

4(2) Where there is no applicable provision in the Act or in these Rules, the procedures set out in the Supreme Court Rules, 2017 in so far as they are not inconsistent with the Act or these Rules, shall apply to an election petition.

Held:

1. The Applicant had not demonstrated that he had an identifiable stake in the instant petition neither had he demonstrated that he would have been prejudiced if he was not enjoined as a party taking into consideration the issues he raised had already been addressed by the parties.
2. The Applicant did not qualify to be joined as an interested party and disallowed the application under Rule 25 of the Supreme Court Rules as read with Rule 4(2) of the Supreme Court (Presidential Election Petition) Rules 2017.
3. The application did not meet the principles laid out in ***Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others***, (Supreme Court Petition No. 12 of 2013), [2015] eKLR and ***Francis Kariuki Muruatetu & another v Republic & 5 others***, (Supreme Court Petition No. 15 & 16 of 2015 (consolidated)) [2016] eKLR, in that the Applicant did not intend to make submissions before the Court that were not already presented by the rest of the parties.

	<i>Application disallowed.</i>
Court Division:	Civil
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	Petition dismissed
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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THE REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Maraga: CJ & President, Mwilu; DCJ & V-P, Ibrahim, Ojwang, Wanjala, Njoki & Lenaola, SCJJ)

PRESIDENTIAL ELECTION PETITION NO. 2 OF 2017

(APPLICATION FOR JOINDER AS INTERESTED PARTY)

BETWEEN

HON. JOHN HARON MWAU.....PETITIONER

AND

INDEPENDENT ELECTORAL AND BOUNDARIES

COMMISSION.....1ST RESPONDENT

THE CHAIRPERSON OF INDEPENDENT

ELECTORAL AND BOUNDARIES COMMISSION.....2ND RESPONDENT

H.E UHURU MUGAI KENYATTA3RD RESPONDENT

AND

BEN CALEB WAMAYA.....APPLICANT/ INTERESTED PARTY

RULING

(An application for joinder as an interested party under Rule 25 of the Supreme Court Rules, 2012 as read with Rule 4 (2) of the Supreme Court (Presidential Election Petition) Rules, 2017)

1. UPON perusing the application dated 7th November, 2017 and filed on even date by **Ben Caleb Wamaya** for joinder as an interested party in **the Presidential Election Petition No. 2 of 2017** and;

2. UPON reading: **the affidavit of Mr. Ben Caleb Wamaya** (registered to vote at Carwash Polling Station code No.015, in Kisumu Central Constituency, Kisumu County), sworn on the 7th November, 2017;

3. UPON considering the arguments made therein, in which **the applicant contended that he is a Registered Voter, who wished to cast his vote in the 26th October, 2017 repeat Presidential election but he was denied his right to do so due to the unavailability of election staff and materials and the actions of the Police chasing away people from the polling station.**

4. The applicant has not demonstrated that he has an identifiable stake in the present petition neither

has he demonstrated that he will be prejudiced if he is not enjoined as a party taking into consideration the issues he raises have already been addressed by the parties.

5. Having considered the application, by a unanimous decision of the Court, we find that the applicant does not qualify to be joined as an interested party and make the following orders under Rule 25 of the Supreme Court Rules as read with Rule 4(2) of the Supreme Court (Presidential Election Petition) Rules 2017.

6. ORDERS

REASONS

The application is disallowed.

The application does not meet the principles laid out in *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others*, Supreme Court Petition No. 12 of 2013, [2015] eKLR and *Francis Kariuki Muruatetu & another v Republic & 5 others*, Supreme Court Petition No. 15 & 16 of 2015 (consolidated); [2016] eKLR in that the applicant does not intend make submissions before the Court that are not already presented by the rest of the parties.

DATED and DELIVERED at NAIROBI this 14th Day of November, 2017.

.....

D. K. MARAGA

**CHIEF JUSTICE & PRESIDENT
OF THE SUPREME COURT**

.....

J.B. OJWANG

JUSTICE OF THE SUPREME COURT

.....

P. M. MWILU

**DEPUTY CHIEF JUSTICE &
VICE-PRESIDENT OF THE SUPREME COURT**

.....

S. C. WANJALA

JUSTICE OF THE SUPREME COURT

.....

S. N. NDUNGU

JUSTICE OF THE SUPREME COURT

.....

I. LENAOLA

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

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SUPREME COURT OF KENYA



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