



Case Number:	Petition 22 of 2017
Date Delivered:	23 Jan 2020
Case Class:	Civil
Court:	Supreme Court of Kenya
Case Action:	Ruling
Judge:	Jackton Boma Ojwang, Isaac Lenaola, Mohammed Khadhar Ibrahim, Smokin C Wanjala, Susanna Njoki Ndungu
Citation:	County Assemblies Forum v Attorney General & 3 others; Parliamentary Service Commission (Proposed Interested Party/Applicant) [2020] eKLR
Advocates:	-
Case Summary:	<p>Legal requirements to be met for purposes of a party being enjoined as an interested party to a Supreme Court petition.</p> <p>County Assemblies Forum v Attorney General & 3 others; Parliamentary Service Commission (Proposed Interested Party/Applicant)</p> <p>Petition No 22 of 2017</p> <p>Supreme Court of Kenya</p> <p>MK Ibrahim, JB Ojwang, SC Wanjala, NS Ndungu & I Lenaola, SCJJ</p> <p>January 23, 2020</p> <p>Reported by Beryl Ikamari</p>

Civil Practice and Procedure - parties to a suit - joinder of parties - joinder of an interested party to a Supreme Court petition - requirements to be met by a party that sought to be enjoined to a petition as an interested party - whether the court would allow an application for joinder of an interested party - Supreme Court Act, No 7 of 2011, section 23.

Brief facts

The applicant sought joinder in the petition as an interested party. The basis of the application was that the allegations and reliefs sought in the petition had a direct impact on a reference filed at the Supreme Court by the applicant. Both matters were about the effect of the general elections of August 8, 2017 on the tenure of the 11th Parliament and the first County Assemblies whose membership was elected as a result of the March 4, 2013 general elections. The elections of August 8, 2017 had an effect of shortening their tenure in office by eight months. An interpretation of the correct tenure had been sought but there were orders for a stay of proceedings in the reference pending the outcome in the petition. In issuing orders for the stay, the court directed the intended interested party to seek to be enjoined to the petition as an interested party.

Issue

What were the legal requirements to be met by a party that sought to be enjoined, to a Supreme Court petition, as an interested party?

Held

1. Section 23 of the Supreme Court Act provided for joinder of an interested party to proceedings. A party seeking to be enjoined to the proceedings had to demonstrate the existence of the following elements:-

- a. The personal interest or stake that the party had in the matter had to be set out in the application. The interest had to be clearly identifiable and had to be proximate enough, to stand apart from anything that was merely peripheral.
 - b. The prejudice to be suffered by the intended interested party in case of non-joinder, had to also be demonstrated to the satisfaction of the court. It had to be clearly outlined and not something remote.
 - c. A party had to, in its application, set out the case and/or submissions it intended to make before the court, and demonstrate the relevance of those submissions. It should also demonstrate that the submissions were not merely a replication of what the other parties would be making before the court.
2. The application was merited and the applicant ought to be admitted as an interested party.

Application allowed. Each party was to bear its costs.

Cases

East Africa

1. *County Assemblies Forum v Attorney General & 2 others* Petition No 22 of 2017; [2020]–(Explained)

2. *Muge, Andrew Kiplimo Sang & 2 others v Independent Electoral and Boundaries Commission & another* Petition 22 of 2017; [2017] eKLR –(Explained)

3. *Muruatetu, Francis Karioki & another v Republic & 5 others*, Petition 15 as consolidated with 16 of 2013; [2016] eKLR –(Followed)

4. *Parliamentary Service Commission v Attorney General* Reference No 3 of 2017; [2019] eKLR–(Explained)

Statutes

	<p>East Africa</p> <p>1. Constitution of Kenya, 2010 articles 6(e) (i); 25(c); 50(1); 127 (1) (6)(a) (e) –(Interpreted)</p> <p>2. Supreme Court Act, 2011 (Act No 7 of 2011) sections 3, 23,24 (1) –(Interpreted)</p> <p>3. Supreme Court Rules, 2012 (Act No 7 of 2011 Sub Leg) rules 3, 25(1) –(Interpreted)</p> <p>Advocates</p> <p>None Mentioned</p>
Court Division:	Civil
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application allowed
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: Ibrahim, Ojwang, Wanjala, Njoki, Lenaola, SCJJ)

PETITION NO 22 OF 2017

THE COUNTY ASSEMBLIES

FORUM.....PETITIONER

VERSUS

**HON ATTORNEY GENERAL.....1ST
RESPONDENT**

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

ANDREW KIPLIMO SANG MUGE.....3RD RESPONDENT

**RICHARD OUMA OGINDA.....4TH
RESPONDENT**

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

RULING

A. INTRODUCTION

[1] The Applicant's Notice of Motion under Certificate of Urgency dated 19th October 2018, filed on 31st 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 19th 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 27th 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 3rd 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 8th 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 21st 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 11th Parliament under the Constitution of Kenya and the effect of the 8th of August 2017 General Election on their term of office.

[8] It is further alleged by the Applicant that on 17th 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 11th 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 11th 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 17th 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 joinder 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 19th 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

J. B. OJWANG

JUSTICE OF THE SUPREME COURT

JUSTICE OF THE SUPREME COURT

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S. C. WANJALA

NJOKI NDUNGU

JUSTICE OF THE SUPREME COURT

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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