

REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
PETITION NO. 19(E027) OF 2021

(Coram: Mwilu; DCJ & VP, Wanjala, Njoki, Lenaola, Ouko, SCJJ)

BETWEEN

THE SENATE OF THE REPUBLIC OF KENYA.....1ST APPLICANT
THE SPEAKER OF THE SENATE.....2ND APPLICANT
SENATE MAJORITY LEADER.....3RD APPLICANT
SENATE MINORITY LEADER.....4TH APPLICANT

AND

THE SPEAKER OF THE NATIONAL ASSEMBLY
OF THE REPUBLIC OF KENYA.....1ST RESPONDENT
THE NATIONAL ASSEMBLY.....2ND RESPONDENT
THE COUNCIL OF COUNTY GOVERNORS.....3RD RESPONDENT
THE ATTORNEY GENERAL.....4TH RESPONDENT
KENYA MEDICAL SUPPLIES AUTHORITY.....5TH RESPONDENT
INSTITUTE FOR SOCIAL ACCOUNTABILITY.....6TH RESPONDENT
MISSION FOR ESSENTIAL
DRUGS AND SUPPLIES.....7TH RESPONDENT
KATIBA INSTITUTE.....8TH RESPONDENT
PHARMACEUTICAL SOCIETY OF KENYA.....9TH RESPONDENT
ELIAS MURUNDU.....10TH RESPONDENT
THE COMMISSION ON REVENUE ALLOCATION...11TH RESPONDENT

**THE NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT
FUND BOARD.....APPLICANT/INTENDED INTERESTED PARTY**

(Being an application by the Intended Interested Parties/Applicants seeking to be enjoined as Interested Party and to respond to the application for stay in the appeal)

RULING OF THE COURT

[1] UPON perusing the Notice of Motion application dated 31st January 2022, filed under Article 159 of the Constitution, Sections 3, 23 and 24 of the Supreme Court Act and Rules 24 and 32 of the Supreme Court Rules, 2012 where the applicant seeks to be admitted as an interested party to the appeal, and to respond to the application for stay dated 11th January 2022 (***application for stay***); and

[2] UPON reading the Affidavit in support of **Simon Ndweka**, the Corporation Secretary of the Applicant, sworn on 31st January 2022; and

[3] NOTING the grounds adduced in support of the application, and the submissions made by the applicant in support of the orders for admission as interested party namely, that the applicant has an identifiable stake in the appeal before us; that the orders sought in the application for stay, if granted, will expose the intended interested party to constitutional challenges to its continued operations; the application for stay will affect the passage of the National Government Constituencies Development Fund (Amendment) Bill, 2021 that is pending before the National Assembly; that the applicant was an active party at the High Court and at the Court of Appeal, only that their appeal has not finalized as those of the appellants herein; that it has a stake in the proceedings herein as its outcome will affect its operations; that there are statutory functions that are being carried out as part of day to day activities in execution of their mandate that will be affected without their input in the appeal; and that the applicant will make submissions related to its constitutive Act; and

[4] UPON CONSIDERING the submissions by the 1st and 2nd respondents where they submit that the applicant has identified its interest noting that the outcome of the appeal would affect the Bill pending before the National Assembly; that the applicant should stand assured that the 1st and 2nd respondents will safeguard its mandate to pass legislation within its constitutional limits; that the Bill does not affect counties, that it is squarely within the mandate of the National Assembly and that the 1st and 2nd respondents will articulate that position before us; that the applicant has failed to set out the grounds or submissions it seeks to make and their relevance to the proceedings; and

[5] NOTING the submissions by the 3rd respondent urging that the applicant was never a party to the proceedings before the superior courts; that that application is bad in law as it is premised on Rule 24 and 32, 2012 which were revoked by Rule 67 of the Supreme Court Rules, 2020; that the application has not met the threshold set under Rule 24 of the Supreme Court Rules, 2020 and the decisions of this Court; that the applicant has failed to demonstrate its stake in the proceedings before the Supreme Court; that the applicant has failed to disclose the alleged constitutional challenges in a precise manner to warrant its joinder its to the case; that the applicant has not explained its relevance to the proceedings and how it will be useful to the Court in making its determination on the issues raised; and that the applicant has no identifiable stake in this suit that is proximate enough to occasion any prejudice to it because its rationale to be joined in the suit is insufficient; and

[6] UPON CONSIDERING the provisions of Section 23 of the Supreme Court Act, Rule 24 of the Supreme Court Rules, 2020, and the principles set out in this Court's decisions in *Trusted Society of Human Rights Alliance v. Mumo Matemu & 5 Others*, Supreme Court Petition No. 12 of 2013, [2014] eKLR (an application by the Law Society of Kenya); *Francis Kariuki Muruatetu & another v Republic & 5 others*; Petition No. 15 of 2015 as consolidated with

petition No. 16 of 2015 [2016] eKLR; and *Methodist Church in Kenya v Mohamed Fugicha & 3 others* [2019] eKLR; and

[7] Having perused High Court Petition No. 284 & 353 of 2019(consolidated) *Senate of the Republic of Kenya & 4 others v Speaker of the National Assembly & another; Attorney General & 7 others (Interested Parties)* [2020] eKLR, and *Speaker of the National Assembly of the Republic of Kenya & another v Senate of the Republic of Kenya & 12 others* (Civil Appeal E084 of 2021) [2021] KECA 282 (KLR) (Civ) (19 November 2021) (Judgment) and noting that, contrary to the applicant's submissions, the applicant was never a party before the superior courts; and

[8] **CONSIDERING** that the applicant has failed to clearly identify its interest in the appeal, the case it intends to urge, and the prejudice if any, it will suffer if they are not admitted as interested party, by a unanimous decision of this Court, we find that the prayer to have the intended interested party/applicant enjoined as an interested party lacks merit and is consequently disallowed; and

[9] **FURTHER**, noting that the intended interested party/applicant has also prayed and submitted that they be allowed to respond to the application for stay; and

[10] Having considered the said prayer, we find that a party yet to be enjoined in a matter such as the present appeal, lacks the capacity to pray for interlocutory orders in it, and that the prayer is therefore disallowed.

[11] For reasons aforesaid, we now make the following orders under Rule 24 of the Supreme Court Rules, 2020:

ORDERS:

- a. *The Application dated 31st January 2022 and filed on 1st March 2022 seeking joinder of the National Government Constituencies Development Fund Board as Interested*

***Parties to the Reference herein be and is hereby disallowed;
and***

***b. The applicant shall bear the costs of the 1st & 2nd respondents,
and the 3rd respondent.***

[12] Orders accordingly.

DATED and DELIVERED AT NAIROBI this 19th day of May 2022.

.....
P.M MWILU

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

.....
S.C. WANJALA
JUSTICE OF THE SUPREME COURT

.....
NJOKI NDUNGU
JUSTICE OF THE SUPREME

.....
I. LENAOLA
JUSTICE OF THE SUPREME COURT

.....
W. OUKO
JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR

SUPREME COURT OF KENYA