
**INSIDE
THIS
ISSUE**

PG. 2

"...the court itself possesses the authority to invite individuals with relevant expertise in specific proceedings. Essential to this process is the preparation of an amicus brief, detailing the legal arguments to be presented."

PG. 3

"These principles include the necessity for the lawsuit to be pending before a court of law and the requirement for the applicant to have a legitimate interest in the case."



**BEYOND PLAINTIFFS AND DEFENDANTS: THE
INFLUENCE OF AMICI AND INTERESTED PARTIES**

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Disclaimer: This Article does not form part of a Legal Opinion and is purely informative.*

INTRODUCTION

In the realm of Kenyan legal proceedings, the conventional adversarial paradigm, wherein a party initiates a claim against an opposing party, is well-established. However, the intricacies lie in the less conspicuous yet equally consequential participation of Amici and interested parties. These entities, encapsulating the concept of "friend of the court" and those with a direct stake in litigation, respectively, wield considerable influence on the trajectory of legal disputes. Within the constitutional framework, Amici, driven by a commitment to legal principles, offer amicus briefs that augment the court's understanding of complex issues, reflecting the constitutional emphasis on public participation. Meanwhile, interested parties navigate a delicate balance, seeking court leave to join proceedings, with their involvement hinging on the court's evaluation of factors such as the nature of their interest and potential impact on involved parties. This nuanced interplay between constitutional principles, procedural mechanisms, and the role of external participants illuminates the multifaceted nature of legal discourse in Kenya, characterized by a commitment to fairness, transparency, and a comprehensive exploration of legal complexities.

Legal Framework for Amici Curiae Participation

The constitutional underpinnings for the admission of amici curiae, or "friends of the court," into legal disputes in Kenya are meticulously outlined in the Constitution of Kenya (COK) 2010. Article 20(3), in conjunction with Article 22(3)(e), establishes a robust framework emphasizing the centrality of constitutional interpretation, particularly concerning the Bill of Rights, in fostering the enforcement and development of individual rights.



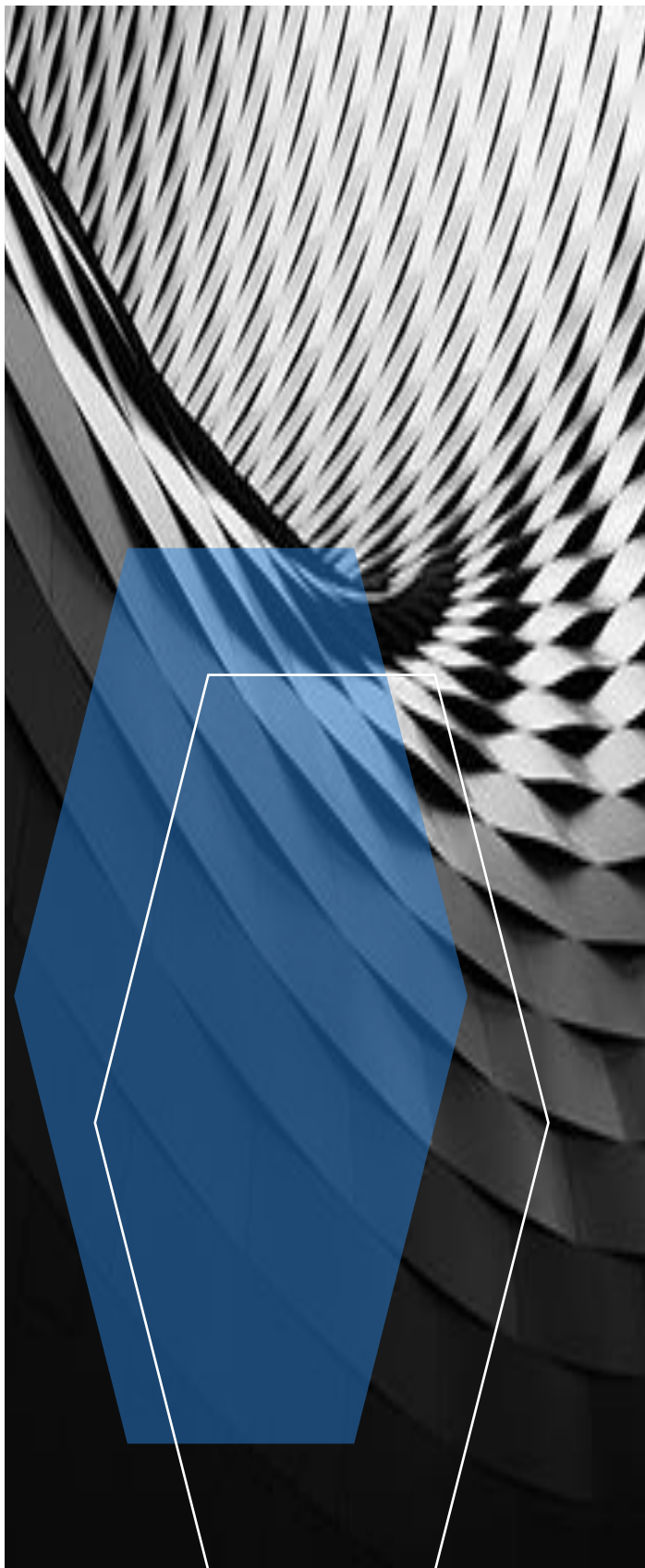
Notably, Section 19 of the Supreme Court Rules 2020 provides a procedural scaffold within which both individuals and organizations may engage as amici before the Supreme Court of Kenya. This rule delineates the court's discretionary authority, either at its own initiative or upon a party's request, to permit individuals possessing specific expertise to appear as "friends of the court." The stipulations within this provision necessitate a meticulous evaluation by the court of the individual's demonstrated expertise, independence, impartiality, and the broader public interest, thereby ensuring a judicious and discerning approach to the incorporation of external perspectives in the adjudicative process.

Procedure for Becoming an Amicus Curiae

Within the framework of the Constitution of Kenya (COK), the Protection of Rights and Fundamental Freedoms Practice and Procedure Rules of 2013 offers a nuanced perspective on the engagement of amici curiae. The rules delineate a dual approach to amicus participation: an individual may autonomously seek the court's permission, either orally or through a written application, or the court itself, recognizing the need for expertise, retains the authority to invite individuals into specific proceedings. Central to these mechanisms is the imperative for amici to prepare comprehensive amicus briefs, outlining the legal arguments they intend to present. Legal precedents, such as the significant cases of [Attorney General v Ndii & 73 others and Raila Odinga & 5 others vs. Independent Electoral and Boundaries Commission & 3 others \[2013\]](#), have crystallized foundational principles governing amicus briefs. These principles pivot on the imperative to restrict amicus submissions to legal arguments, emphasizing neutrality, adherence to legal norms, timely submission, addressing legal facets inadequately covered by other litigants, and a categorical avoidance of any semblance of bias or partisanship. This judicious balance, as delineated by precedent and procedural rules, ensures that amici contribute meaningfully to legal discourse while upholding the integrity and impartiality of the judicial process.

Amicus Participation at the Magistrates Court

A noteworthy milestone in the evolution of amicus curiae participation within the Kenyan legal landscape unfolded in March 2022 during the proceedings of Francis Edward Otieno v Jared Agawa Ochieng and Another Civil Suit No. E013 at the Rongo Law Courts. In a display of judicial openness and foresight, a Magistrate in this case admitted the [Initiative for Strategic Litigation in Africa](#) (ISLA) as a "friend of the court." While the case ultimately concluded through an out-of-court settlement, the court's acknowledgment of the Initiative for Strategic Litigation in Africa as an amicus signifies a substantive stride in recognizing the potential advantages of external contributions even within subordinate courts. This development underscores a growing awareness of the value that amici curiae can bring to legal proceedings, not only in higher echelons of the judiciary but also in forums where cases may be resolved through different procedural trajectories. It sets a precedent for a more inclusive and expansive approach to legal discourse, emphasizing the adaptability and applicability of amicus involvement across various tiers of the judicial system.



Interested Party: Protecting Individual Interests

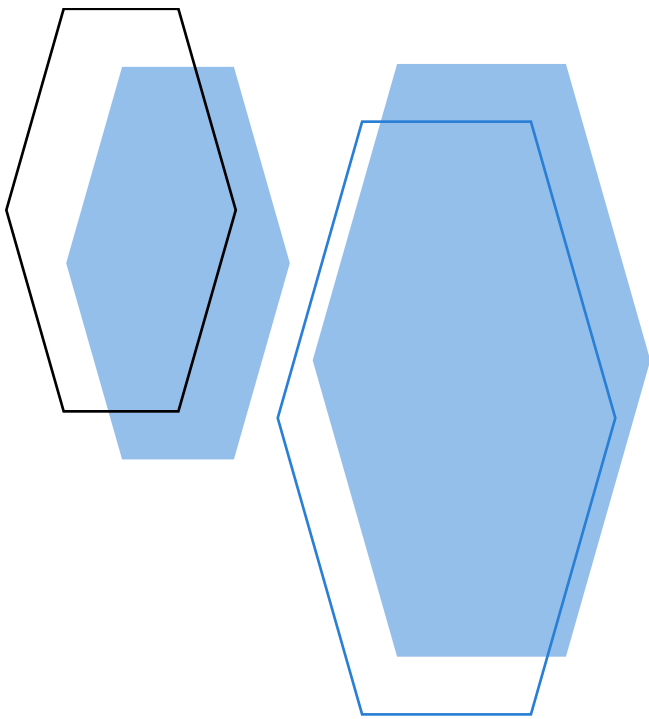
Within the legal framework, the notion of an "Interested Party" assumes pivotal significance as it encapsulates individuals or entities whose direct interests are intricately entwined with the subject matter of a lawsuit. These parties, perceiving a potential impact on their rights or interests stemming from the court's decision, actively seek participation in the legal proceedings. The definitional clarity provided by Section 2 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules of 2013 illuminates the concept of an interested party. According to this provision, an interested party is characterized as an individual or entity possessing a discernible stake, legal interest, or duty in the ongoing proceedings, even if they stand outside the direct purview of the litigation. This definition underscores the inclusive nature of the legal system, recognizing that certain stakeholders may possess a legitimate interest in the litigation's outcome, thereby justifying their involvement in the adjudicative process. The nuanced understanding of interested parties not only safeguards individual interests but also reinforces the broader principles of fairness, transparency, and comprehensive consideration of all relevant perspectives within the legal arena.

Procedure for Becoming an Interested Party

The procedural intricacies governing the status of an Interested Party in legal proceedings demand a meticulous and formal approach. To attain the designation of an interested party, an individual or entity is required to submit a formal application or motion, providing a clear and comprehensive elucidation of their interest and the rationale for intervention. This procedural mechanism is delineated by Rule 7 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules of 2013, which endows individuals, subject to the court's leave, with the authority to present either oral or written applications seeking inclusion as interested parties. Moreover, the procedural architecture is augmented by Order 1 Rule 10 of the Civil Procedure Rules of 2010, which introduces the concept of a "necessary" party. This rule confers upon the court the discretionary power to mandate the inclusion of individuals whose presence is considered indispensable for the effective and comprehensive adjudication of the issues entangled in the lawsuit. The amalgamation of these rules not only facilitates the judicious inclusion of parties with legitimate interests but also underscores the court's commitment to ensuring a holistic, fair, and thorough exploration of the legal matters at hand.

Requirements for admission as an Interested Party

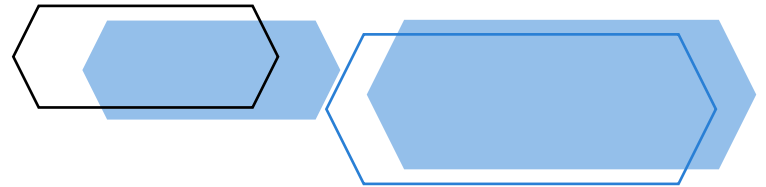
The elucidation of the requirements for admission as an Interested Party, as articulated in the case of [Francis Kariuki Muruatetu & another v Republic Petition No. 15 of 2015; \[2017\]](#), by the Supreme Court represents a seminal jurisprudential contribution to the nuanced landscape of legal interventions. The court, in its wisdom, established guiding principles that serve as benchmarks for applicants aspiring to be joined as interested parties. Notably, the court mandated that the lawsuit in question must be actively pending before a court of law, underscoring the necessity for the legal proceedings to be in progress to warrant the inclusion of additional parties. Additionally, applicants are obliged to demonstrate a legitimate interest in the case, implying a direct and substantive connection between their interests and the subject matter under adjudication. These principles, rooted in the imperative of procedural integrity and substantive relevance, elevate the standards for admission as an Interested Party, ensuring that only those with a genuine stake in the litigation are afforded the opportunity to intervene, thereby preserving the integrity of the judicial



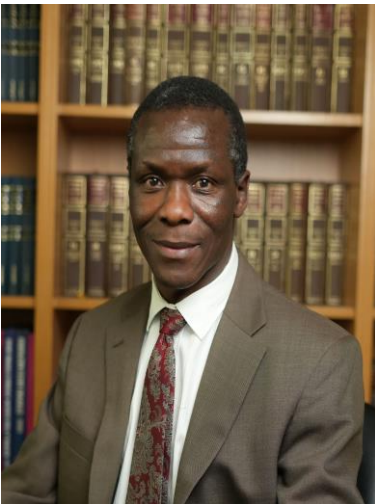
process and fortifying the principles of fairness and precision in legal proceedings.

Conclusion: Enriching the Legal Discourse

The involvement of amici curiae and interested parties in legal proceedings serves as a substantive and indispensable facet of the judicial process, markedly enriching the broader legal discourse. Amici curiae, by virtue of their legal expertise, bring a dimension of specialized knowledge and analytical acumen to the court, offering perspectives that may escape the purview of the primary litigants. On the other hand, interested parties inject a crucial element of personal and direct stakeholding, underscoring the potential impact of legal decisions on individual rights and interests. This dual participation not only fosters a more comprehensive understanding of complex legal issues but also underscores the multifaceted nature of justice. The inclusion of these external contributors not only enhances transparency but also elevates the overall integrity of the judicial process. Recognizing the significance of amici and interested parties is not merely a procedural formality; rather, it is an essential stride towards cultivating a legal system in Kenya that is not only robust but also accountable, thereby ensuring the equitable dispensation of justice.



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