



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION  
CONSTITUTIONAL PETITION NO. 464 OF 2018

PROF. TOM OJIENDA SC.....PETITIONER

VERSUS

ETHICS AND ANTI-CORRUPTION COMMISSION.....RESPONDENT

RULING

1. The Respondent in the petition, the Ethics and Anti-Corruption Commission (“the EACC”) through the notice of motion dated 29<sup>th</sup> January, 2019 seek the transfer of this petition to the Anti-Corruption and Economic Crimes Division (“the AC & EC Division”) of this Court for hearing and determination.
2. The Petitioner, Prof. Tom Ojienda SC, oppose the application through grounds of opposition dated 20<sup>th</sup> February, 2019. The application is premised on the Practice Directions for the Anti-Corruption and Economic Crimes Division of the High Court (“the Practice Directions”) published through Kenya Gazette Notice No. 10263 of 9<sup>th</sup> December, 2016.
3. Among the matters reserved for the AC & EC Division in the Practice Directions are “**petitions and Judicial Review applications on claims of infringement of constitutional rights relating to corruption and/or economic crimes related matters**” – see Rule 5(a).
4. The case of the Respondent/Applicant is that the core subject matter giving rise to this petition relates to misuse of a government vehicle and the issue falls within the provisions of the Anti-Corruption and Economic Crimes Act, Cap. 65 and the Leadership and Integrity Act, Cap. 182. On the other hand, he Petitioner/Respondent contends that the petition involves the use of a government vehicle and has nothing to do with corruption or economic crime.
5. I have perused the submissions filed by the parties in this case. In my view the only question is whether this is a matter for the AC & EC Division.
6. The Petitioner is correct that the question of jurisdiction does not arise in this matter. In **Civil Appeal No. 62 of 2016 (Malindi), Christopher Orina Kenyariri t/a Kenyariri Associates Advocates v Salama Beach Hotel Limited & 3 Others**, the Court of Appeal did indeed confirm that “**the High Court of Kenya remains one and the same court, only that it sits at different locations of the country**” and “**where it sits cannot therefore affect its jurisdiction.**”
7. A judge of the High Court does indeed have jurisdiction to hear all matters in which the High Court has been granted jurisdiction by the Constitution and the laws of the land. The creation of divisions of the High Court is meant to ensure that matters are heard and disposed in an efficient and effective manner.
8. In **Christopher Orina Kenyariri t/a Kenyariri Associates Advocates** (supra), the Court of Appeal appreciated that the practice and requirements that suits be filed at particular stations of the High Court “**are purely for administration and convenience in the hearing and determination of suits.**” The Court went ahead and held that such mechanisms reduce costs and expedite hearing and determination of suits.
9. In **Ondieki Nyairo v Paul Chepkwony & 2 others** [2017] eKLR. Mumbi Ngugi, J observed that:-

“As is evident from the Practice Directions issued by the Chief Justice regarding the mandate of the Anti-Corruption and Economic Crimes Division, all matters “*relating to corruption and economic crimes*” filed under any of the Acts enumerated in Rule 5 fall within the mandate of the Division. In my view, the petition before me is one such matter. It would defeat the purpose of the establishment of the Division if we were to engage in a splitting of hairs and argue that the matter does not fall within its mandate because it does not involve a prosecution for corruption, yet it seeks the orders and sanctions that are within the mandate of the court when dealing with cases initiated under the Acts enumerated in the Practice Direction.”

10. In my decision in **Ethics and Anti – Corruption Commission & another v William Baraka Mtego & 4 others, Malindi High Court Constitutional Petition No. 1 of 2017; [2017] eKLR**, I held that:-

**“The question therefore is whether the Chief Justice has taken away the constitutional mandate of the High Court through the Practice Directions. In my view, he has not done so. The Practice Directions are aimed at promoting efficient and timely disposal of matters touching on corruption and economic crimes. There must have been reasons that informed the establishment of the Division. That is not to say that by establishing the Division, the Chief Justice took away the jurisdiction of the other judges of the High Court to hear the cases listed in the Practice Directions. All judges of the High Court are still at liberty to hear the matters listed in the Practice Directions.”**

11. In matters reserved for a particular division of the High Court, there should be no good reason for a judge to decline an application for transfer of a matter to the correct station or division once the application is made. Where a matter is fresh, like in the case before me, there is no plausible reason why an application for transfer should be rejected.

12. The Petitioner’s case is that this case does not concern corruption or economic crimes and is therefore not a matter for the AC & EC Division. The answer lies in the pleadings. The Petitioner came to this court when he received summons from EACC asking him to present himself before its officers for purposes of shedding light and recording a statement on the use of an official vehicle assigned to him. The introductory part of the letter or summons stated that:-

**“The Commission pursuant to its constitutional and statutory mandate as set out under Article 252(1)(a)(d) of the Constitution, Section 11 of the EACC Act, 2011 and Section 4(2) and 42(10) of the Leadership and Integrity Act, 2012 is investigating allegations of unethical conduct against you.”**

13. According to the Respondent, its *raison d’etre* is to investigate matters relating to corruption, unethical conduct and economic crimes. The Respondent submits that the summons to the Petitioner relates to actions involving misuse of public resources to wit a government vehicle and the matter falls within its mandate.

14. Rule 5(d) of the Practice Directions provides that the matters to be heard by the AC & EC Division are cases relating to corruption and economic crimes filed under the various Acts of Parliament listed thereunder. Two of the Acts listed therein are the Anti-Corruption and Economic Crimes Act, Cap.65 and the Leadership and Integrity Act, Cap. 182.

15. Even though the particular provisions of the law allegedly violated by the Petitioner are not disclosed in the summons, the Respondent was exercising powers reserved for it by laws over which the AC & EC Division is mandated by the Practice Directions to deal with. It would therefore be inappropriate for this court to claim authority to hear the petition when there is a division that has been created to hear and determine such matters.

16. In short, I find merit in the Respondent’s application. The application is therefore allowed so that this file is transferred to the Anti – Corruption and Economic Crimes Division of this Court in Nairobi. The parties shall take a date in the AC & EC Division within two weeks from the date of this ruling for purposes of mentioning the matter before the Presiding Judge or the Duty Judge for taking directions on the hearing and disposal of the petition. The costs for the application shall abide the outcome of the petition.

**Dated, signed and delivered at Nairobi this 30<sup>th</sup> day of January, 2020.**

**W. Korir,**

**Judge of the High Court**