



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

PETITION NO. 8 OF 2021

HILLARY MWAITA KIPKORIR.....PETITIONER

VERSUS

KENYA NATIONAL HIGHWAYS AUTHORITY.....RESPONDENT

RULING

1. The applicant, the Ethics and Anti-Corruption Commission, brought a Notice of Motion dated 25/11/2021 which seeks the following orders:

- a. **The Honourable court be pleased to enjoin the Ethics and Anti-Corruption Commission (Applicant herein) as an interested party herein.**
- b. **That upon joinder the interested party be granted leave to file its responses and/or pleadings as may be necessary for effectively adjudicating upon the issues in controversy.**
- c. **Costs be in the cause.**

2. The respondent who is the petitioner in the main petition objected to the joinder of the applicant. In his replying affidavit dated 20/12/2021 he stated that the petition concerns a private matter seeking declaration of violation of rights of the petitioner, a permanent injunction, restitution and compensation; that the inclusion of the proposed interested party would be a waste of valuable judicial time; that the petitioner holds a valid title deed to the property; that the petition is not the proper forum to challenge the validity of title to the suit property; that the proposed interested party has not exhibited any investigation report on the suit property; that the introduction of that report would obscure the real issues in the main petition and prejudice the petitioner's constitutional rights under **Articles 47 & 50** as read together with **Section 12** of the **Ethics And Anti-Corruption Commission Act** regarding fair administrative action, natural justice and impartiality and that the proposed interested party is a partisan witness; that joining it to the current petition would create confusion yet the petition is not public interest litigation.

3. The applicant filed submissions on the application on 11/1/2022. I have perused the court record and found no submissions filed on behalf of the respondents.

4. In its submissions the applicant avers that it has established through investigations that the suit property was not available to the respondent as it was public property. Citing **Black's Law Dictionary 8th Edition** and the **Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules Legal Notice No 117 of 2013**, the applicant states that an "*interested party*" is a person who has an identifiable stake in the proceedings. The **Civil Procedure Rules** are also cited.

5. The applicant relies on the Supreme Court decision in the case of **Communication Commission Of Kenya & 4 Others Vs Royal Media Services Ltd & 7 Others 2014 eKLR** and the High Court decision in **Kenya Medical Laboratory Technicians And Technologists Board And 6 Others Vs The Attorney General & 4 Others 2017 eKLR** in support of its application. The principle evident in those decisions is that the test as to whether one should be joined as an interested party is whether he has an identifiable stake or a legal interest or duty in the proceedings.

6. In the present application the Ethics and Anti-Corruption Commission is the applicant. It is a body corporate formed under the provisions of **Section 3** of the **Ethics and Anti-Corruption Commission Act, 2011**. The provisions of **Section 11** of the said Act provide as follows:

"11. (1) In addition to the functions of the Commission under Article 252 and Chapter Six of the Constitution, the Commission shall—

(a) in relation to State officers—

(i) develop and promote standards and best practices in integrity and anti-corruption;

(ii) develop a code of ethics;

(b) work with other State and public offices in the development and promotion of standards and best practices in integrity and anti-corruption;

(c) receive complaints on the breach of the code of ethics by public officers;

(d) investigate and recommend to the Director of Public Prosecutions the prosecution of any acts of corruption, bribery or economic crimes or violation of codes of ethics or other matter prescribed under this Act, the Anti-Corruption and Economic Crimes Act or any other law enacted pursuant to Chapter Six of the Constitution;

(e) recommend appropriate action to be taken against State officers or public officers alleged to have engaged in unethical conduct;

(f) oversee the enforcement of codes of ethics prescribed for public officers;

(g) advise, on its own initiative, any person on any matter within its functions;

(h) raise public awareness on ethical issues and educate the public on the dangers of corruption and enlist and foster public support in combating corruption but with due regard to the requirements of the Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003), as to confidentiality;

(i) subject to Article 31 of the Constitution, monitor the practices and procedures of public bodies to detect corrupt practices and to secure the revision of methods of work or procedures that may be conducive to corrupt practices; and

(j) institute and conduct proceedings in court for purposes of the recovery or protection of public property, or for the freeze or confiscation of proceeds of corruption or related to corruption, or the payment of compensation, or other punitive and disciplinary measures including proceedings for the recovery of property or proceeds of corruption located outside Kenya.

7. The provisions in **Section 11(1)(d) and (j)** above are of significance in this matter as they touch on matters of public property. In addition the provisions of section 11(3) -11(5) of the Act are as follows:

“(3) The Commission may cooperate and collaborate with other State organs and agencies and any foreign government or international or regional organisation in the prevention and investigation for corruption.

(4) The Commission shall have all powers necessary or expedient for the efficient and effective execution of its functions, under the Constitution, this Act or any other written law.

(5) The Commission may request and obtain professional assistance or advice from such persons or organizations as it considers appropriate.”

8. Section 11 (3) of the Act particularly provides for its collaboration with other state organs of which I believe the respondent is one. From a perusal of the foregoing provisions of statute, it can not be gainsaid that the duties of the applicant duties involve protection of public interest.

9. The suit land in the petition is claimed by a public body, the Kenya National Highway Authority who is the respondent, as part of its portfolio of properties and that it measures **3.114 acres** and currently hosts both permanent and semi-permanent buildings that were constructed by the former Ministry Of Public Works. It further states that the suit property was originally being used by the roads camp by the former Ministry Or Public Works but upon the establishment of roads authorities under the law, it was taken over by KeNHA, who have used it ever since as a storage site for their construction material among other things; they intend to construct their regional office on the said land and have contracted services for the works. It claims that it has established that notwithstanding the respondent’s claim the Nakuru District Land Registrar has verified that a part development plan (PDP) (which tallies with the actual layout of the suit land) had been made and the suit land had been reserved for the Rural Access Roads camp.

10. This court is convinced that notwithstanding the claim by the petitioner that the petition amounts to proceedings of private nature for declaration of violation of constitutional rights, there is already sufficient material on the record to suggest that some public interest element may be involved.

11. It has not been denied by the petitioner that the applicant has legal mandate to investigate or take measures for recovery of illegally obtained public property.

12. Consequently, I find that the applicant has an identifiable stake in the proceedings and I allow the application dated **25/11/2021** as prayed in **prayers Nos (a), (b) and (c)** thereof. The instant suit shall be mentioned on **2/2/2022** for further directions.

DATED, SIGNED AND ISSUED AT NAKURU VIA ELECTRONIC MAIL ON THIS 26TH DAY OF JANUARY, 2022.

MWANGI NJOROGE

JUDGE, ELC, NAKURU