



**Fidei Holdings Limited v Kenya Railways Corporation & another; Ethics & Anti-Corruption Commission (Interested Party) (Environment & Land Case 263 of 2019) [2022] KEELC 2207 (KLR) (16 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 2207 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 263 OF 2019**

**JO MBOYA, J  
JUNE 16, 2022**

**BETWEEN**

**FIDEI HOLDINGS LIMITED ..... APPLICANT**

**AND**

**KENYA RAILWAYS CORPORATION ..... 1<sup>ST</sup> RESPONDENT**

**THE NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**ETHICS & ANTI-CORRUPTION COMMISSION ..... INTERESTED PARTY**

**RULING**

1. Vide a Chamber Summons dated 7<sup>th</sup> March 2022, the 1<sup>st</sup> Defendant/ Applicant approached the court seeking the following Reliefs:
  - a. This Honourable Court be pleased to enjoin the Ethics and Anti-Corruption Commission (EACC) as an Interested Party in the Suit.
  - b. In addition to and without prejudice to prayer 1, this Honourable Court be pleased to issue such other or further Directions and/or orders, as regards Amendment and service of the Pleadings already filed by the respective parties herein on the proposed Interested Party.
  - c. This Honourable Court be pleased to make such other and/or further orders, as it may deem fit in the circumstances.
  - d. In any event, this Honourable Court be pleased to make such orders as to costs of the present Application.



2. The subject Application is premised on the various grounds, which have been enumerated in the body thereof and same is further supported by the affidavit of one, Christine Macharia sworn on the 7<sup>th</sup> March 2022 and to which the deponent has attached two (2) annexures.
3. Upon being served with the Application herein, the Plaintiff/Respondent proceeded to and filed Grounds of Opposition dated the 4<sup>th</sup> May 2022, whereby the Plaintiff/Respondent has raised various, albeit numerous grounds in opposition to the application.

### **Deposition by the Parties:**

#### **The 1st Defendant's/Applicant's Case:**

4. Vide Supporting Affidavit sworn by one Christine Macharia, the deponent has averred and contended that the Plaintiff/Respondent herein has filed the subject suit seeking for compensation pertaining to compulsory acquisition over and in respect of L.R No. 15053, hereinafter referred to as the suit property.
5. It is further averred that despite the claim by and/or on behalf of the Plaintiff/Respondent, which amounts to Kes.69, 000, 000/= only, the chairman of the 2<sup>nd</sup> Defendant herein wrote to the 1<sup>st</sup> Defendant/Applicant and advised same to refrain from paying the claimed compensation relating to the SGR Project.
6. Besides, the deponent has also averred that the letter from the chair person of the 2<sup>nd</sup> Respondent, alleged and/or alluded to various and unauthorized persons demanding compensation from the 1<sup>st</sup> Defendant/Applicant herein.
7. On the other hand, the deponent has further averred that vide letter dated the 24<sup>th</sup> September 2018, the EACC had indicated that same were investigating compensation touching on L.R No. 209/12060, with a view to authenticating the legality of the compensation.
8. Further, the deponent has averred that despite the communication from the EACC, relating to the investigations that were being taken as pertains to the propriety of the compensation relating to L.R No. 209 / 12060, the Commission is yet to communicate her findings and / or Recommendations.
9. Based on the foregoing, the deponent has further averred that owing to the investigations that were being carried out by EACC, whose results have not been communicated, it is therefore appropriate to join the EACC as an Interested Party in this matter.
10. On the other hand, the deponent has further averred that the joinder of EACC in the subject matter, would enable the court to effectively and effectually deal with all the issues in controversy, once and for all.
11. Premised on the foregoing, the deponent has therefore implored the court to allow the subject Application and to join the EACC as Interested Party.

#### **Response by the Plaintiff/respondent:**

12. On her part, the Plaintiff/Respondent has filed Grounds of Opposition and same has contended as hereunder;
  - a. This Court has jurisdiction over all and any land related matters as bestowed to it under the constitution, 2010 and same is therefore competent to determine this suit judiciously.



- b. The application seeks to join a party, namely EACC, which has not declared any interest in the suit property nor have they sought out any party herein.
- c. The subject application is peculiar to the Plaintiff/Respondent as the Plaintiff/Respondent is only claiming for compensation for L.R No. 15053, whereas the Defendant/Applicant is claiming that there is a pending investigation over L.R No. 209/12060.
- d. The proposed interested party will only muddy the proceedings in this matter and therefore its addition is not in the interest of justice and moreover same is an abuse of the due process of the court.
- e. The court process cannot be held hostage on the basis that it is awaiting determination by a non-judicial body.
- f. That should there be any wrong doing on the part of any party, the EACC, is at liberty to commence separate and distinct proceedings before the Anti-corruption court and not otherwise. In any event, the matter herein is concerning land and not corruption.
- g. It is only fair and just that the 1<sup>st</sup> Defendants/Applicants application be dismissed.

### **Submissions by The Parties:**

- 13. The subject Application came up for hearing on the 23<sup>rd</sup> March 2022, when directions were given that same be canvassed and/or disposed of by way of written submissions.
- 14. On the other hand, the court proceeded to and directed the Parties to file and exchange their written submissions within stipulated timelines.
- 15. Pursuant to the directions on the filing of submissions, the 1<sup>st</sup> Defendant/Applicant herein proceeded to and indeed filed her written submissions on the 9<sup>th</sup> May 2022, whereas the Plaintiff/Respondent filed her submissions on the 17<sup>th</sup> May 2022. For clarity, both sets of written submissions are on record.,
- 16. Briefly, the 1<sup>st</sup> Defendant/Applicant has submitted that the EACC had written a letter dated the 24<sup>th</sup> September 2018 addressed to the chair person of the 2<sup>nd</sup> Defendant herein and in respect of which the EACC intimated to the 2<sup>nd</sup> Defendant that same was carrying out and/or undertaking investigations on allegations of irregular compensation touching on L.R No. 209/12060.
- 17. It is further submitted by the Applicant that as a result of the investigations that were intimated by the EACC, the 2<sup>nd</sup> Defendant herein wrote the 1<sup>st</sup> Defendant/Applicant to halt payment of compensation, relating to L.R No. 209/12060, pending the outcome of the investigation.
- 18. Further, the Applicant has also submitted that the investigations which were alluded to by the EACC were affecting various parcels of lands and hence the suit property herein is also affected.
- 19. Based on the intimated investigations by the EACC, the Applicant herein now contends that it would be appropriate and/or necessary to join the EACC as Interested Party, to enable same to help the court to understand all the issues in dispute.
- 20. Finally, the Applicant herein has submitted that the EACC is an Interested and necessary Party and that same has an interest/stake in respect of the subject matter.
- 21. In support of her submissions to warrant joinder of the EACC, the Applicant has alluded to the decisions in the cases of *[John Harun Mwau v Simone Haysom & 2 Others; Attorney General & 2 Others](#)*



(interested parties) (2021)eKLR and Marilyn Muthoni Kamulu & 2 Others v Attorney General & Another (2016)eKLR.

22. On her part, the Plaintiff/Respondent herein has contended that the suit herein relates to payment of compensation money, amounting to Kes.69, 000, 000/= Only, which is premised upon an award arising from compulsory acquisition in respect of L.R No. 15053, belonging to and registered in the name of the Plaintiff/Respondent.
23. Secondly, the Plaintiff/Respondent has further submitted that the letter by the Anti-corruption dated the 24<sup>th</sup> September 2018, which the 1<sup>st</sup> Defendant/Applicant alludes to, was explicit in its content and same indicated that the impugned investigations were being carried out in respect of L.R No. 209/12060, which is separate and distinct from L.R No. 15053, belonging to the Plaintiff/Respondent.
24. Further, the Plaintiff/Respondent has also submitted that the issue of whether the investigations being carried out by the EACC relates to and/or concerns the suit property was the subject of the ruling of this court delivered on the 10<sup>th</sup> February 2022, wherein this court found and held that the impugned investigations have no bearing on the subject suit.
25. Besides, the Plaintiff/Respondent has submitted that if the EACC are interested in carrying out any investigations in respect of the subject matter, which is not the case, same are at liberty to do so and thereafter commence appropriate suit in line with the provisions of the Anti-Corruption and Economic Crimes Act and any other enabling provisions of the Law.
26. Finally, the Plaintiff/Respondent has submitted that the EACC have no interests or stake in the subject matter, which essentially touches on compensation arising from compulsory acquisition, which was carried out by the authorized bodies.
27. In any event, the Plaintiff/Respondent has further pointed out that the determination or the decision of the court herein would not affect or otherwise impact on the EACC in any manner whatsoever and howsoever. Consequently, it has been pointed out that the intended proposed Interested party has no identifiable stake or interests in the subject matter.
28. In support of her submissions, the Plaintiff/respondent has relied on the decisions in the case of Trusted Society of Human Rights Alliance v Mumo Matemu & Others (2014)eKLR and David Ngunyi Kimani & 3 Others v The County Government of Machakos & Another, Petition No. 63 of 2013.

#### **Issues for Determination:**

29. Having reviewed the subject application, the supporting affidavit and the ground of opposition filed by the Plaintiff/Respondent and having similarly considered the written submissions filed on behalf of the Parties, the following issues do arise and thus germane for determination;
  - a. Whether the Application for joinder of the EACC as Interested Party ought to be mounted by the 1<sup>st</sup> Defendant/Applicant or by the proposed Interested Party.
  - b. Whether the Proposed Interested Party has any stake and/or identifiable Legal Interest in the subject dispute to warrant the Intended Joinder.



## Analysis and Determination

### Issue Number 1

Whether the Application for Joinder of the EACC as Interested Party ought to be mounted by the 1<sup>st</sup> Defendant/Applicant or by the proposed Interested Party.

30. Before venturing to consider whether the 1<sup>st</sup> Defendant/Applicant herein, is disposed to file the application and seek the joinder of the EACC as an interested party herein, it is appropriate to discern the nature of the dispute beforehand. In this regard, it is worthy to note that on or about the 14<sup>th</sup> October 2016 the 2<sup>nd</sup> Defendant herein in exercise of her constitutional mandate, carried out and undertook compulsory acquisition in respect of inter-alia L.R No. 15053, belonging to and registered in the name of the Plaintiff/Respondent.
31. Following the process of compulsory acquisition, the 2<sup>nd</sup> Defendant generated and issued an award in the sum of Kes.69,000,000/= Only, to and in favor of the Plaintiff/Respondent.
32. Suffice to note that having issued an award to and in favor of the Plaintiff/Respondent, the 2<sup>nd</sup> Defendant as well as the acquiring entity, in this case, the 1<sup>st</sup> Defendant/Applicant, were obliged to pay out the compensation money timeously, promptly and without undue delay. See the provisions of Article 40 (3) of *the Constitution* 2010.
33. However, in respect of the subject matter, it appears that the compensation money was not paid, either in accordance with the law or at all. Consequently, the Plaintiff/Respondent has therefore approached the court seeking for the payment of compensation.
34. Upon the filing of the subject suit, the 1<sup>st</sup> Defendant/Applicant filed a Statement of Defense and thereafter same filed an application dated the 25<sup>th</sup> October 2021, in respect of which same sought to stay the proceedings.
35. However, the said Application dated the 25<sup>th</sup> October 2021 was heard and disposed vide ruling rendered on the 10<sup>th</sup> February 2022, whereupon same was dismissed.
36. Now, the 1<sup>st</sup> Defendant/Applicant has sought to join the EACC as an Interested Party in the subject matter. In this regard, the question that begs the answer is whether the applicant herein is legally disposed to seek for the joinder of a proposed interested party, who has shown no interest, to be joined in the subject dispute.
37. In this regard, it is therefore imperative to consider the provisions of Order 1 Rule 10 of the *Civil Procedure Rules* 2010.
38. For convenience the provisions are reproduced as hereunder;

10. Substitution and addition of parties [Order 1, rule 10.]

- (1) Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit.



- (2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.
- (3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent in writing thereto.
- (4) Where a defendant is added or substituted, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendants.

39. Given the nature of the issues in dispute and coupled with the statutory mandate of the EACC, it would have been the said EACC, if interested in the subject suit to file and/or mount an application for her joinder and/or inclusion into the subject suit.
40. However, in this matter it is the 1<sup>st</sup> Defendant/Applicant that is seeking to implead and or join the EACC as an interested party, yet the said commission has not shown and/or expressed any interest in being joined and/or included in the subject suit.
41. In my humble view, it does not fall in the mouth and/or province of the 1<sup>st</sup> Defendant/Applicant herein to determine for and/or on behalf of the EACC what matter to join or otherwise.
42. In any event, it is worthy to recall that the EACC is an Independent constitutional commission established pursuant to the provisions of Articles 79, 248 and 249 of *the Constitution*, 2010 and therefore her Constitutional mandate is well provided for and circumscribed.
43. Nevertheless, as concerns the subject matter and in particular the intended joinder, it is imperative to take cognizance of the provisions of Article 249 (2) of *the Constitution* 2010, which provides as hereunder;
  - (2) The commissions and the holders of independent offices—
    - (a) are subject only to this Constitution and the law; and
    - (b) are independent and not subject to direction or control by any person or authority.
  - (b) are subject only to this Constitution and the law; and
  - (b) are independent and not subject to direction or control by any person or authority.
44. By dint of the foregoing provisions, it is apparent that by virtue of being an independent constitution commission, the EACC is not subject to the directions or controlled by any person or authority. For clarity, by seeking to make the decision for the commission to be joined in the subject matter, the 1<sup>st</sup> Defendant/Applicant is seeking to direct and/or control the commission, albeit contrary to the provisions of the constitution.



45. In a nutshell, it is my finding and holding that irrespective of the provision of Order 1 Rule 10 (2) of the *Civil Procedure Rules* 2010, the decisions on whether or not to join the commission as an Interested Party can only be taken by the commission and not by the 1<sup>st</sup> Defendant/Applicant.
46. In the premises, I further find and hold that the grant of the subject application would run contrary to the letter and spirit of Article 249 (2) (b) of *the Constitution* 2010. Consequently the subject application Fails on the first Huddle.

## **Issue Number 2**

Whether the Proposed Interested Party has any stake and/or identifiable legal Interest in the subject dispute to warrant the Intended Joinder.

47. Having found and held that the EACC is not under the control and or directions of the 1<sup>st</sup> Defendant/Applicant herein, so as to enable the 1<sup>st</sup> Defendant/Applicant to make a determination on her behalf, the next issue is whether the commission has any identifiable interests or stake in the subject matter.
48. Before endeavoring to answer the question, it is appropriate to state here and now that by dint of Article 79 as read together with Article 249 (1), the EACC are authorized to carry out and/or undertake investigations in designated areas and also to recover public properties where necessary and/or appropriate.
49. On the other hand, it is also appropriate to state that in the execution and/or exercise of her mandate, the EACC makes independent decisions, in accordance with the constitution and the parent Act.
50. Be that as it may, the subject proceedings relate to recovery of compensation monies, arising out of compulsory acquisition, undertaken by the 2<sup>nd</sup> Respondent, albeit on behalf of the 1<sup>st</sup> Defendant/Applicant.
51. Based on the nature of the subject suit, the critical question and/or issue is what is the stake and/or interest if any, of the EACC in the subject matter.
52. To my mind, the EACC has no stake and/or identifiable legal interest in the subject matter and perhaps, this explains why the EACC has not by itself applied to be joined as an Interested Party or otherwise.
53. Notwithstanding the foregoing, it is important to point out that insofar as the application for joinder has been made by and/or on behalf of the 1<sup>st</sup> Defendant/Applicant, it was incumbent upon the Applicant to underscore the nature of interest and/or identifiable stake that the proposed interested party has in the subject suit.
54. Unfortunately, the 1<sup>st</sup> Defendant/Applicant has not pointed out and/or established the stake and identifiable interests that the EACC has in the subject matter to warrant her joinder as an Interested Party.
55. Suffice it to note, that the cornerstone to joining a person and/or a party is whether or not the intended/ proposed interested party has an interest and or identifiable stake in the dispute, such that his/her participation, is necessary, to enable the court to effectively and effectually deal with all the issues in controversy.
56. Contrarily, before a Party/Person is joined as Interested Party, the person seeking such joinder, in this case the 1<sup>st</sup> Defendant/Applicant, must show that the proposed Interested Party's interest/cause shall not be well articulated unless same is joined or appears in the proceedings.



57. However, in respect of the subject matter the 1<sup>st</sup> Defendant/Applicant has not been able to meet and/or surmount the statutory threshold for the joinder of the proposed interested Party.

58. In support of the foregoing observation, it is appropriate to take cognizance of the decision of the Supreme Court of Kenya in the case of *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others* [2015] eKLR, where the court stated as hereunder;

[18] Consequently, an interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. On the other hand, an amicus is only interested in the Court making a decision of professional integrity. An amicus has no interest in the decision being made either way, but seeks that it be legal, well informed, and in the interest of justice and the public expectation. As a 'friend' of the Court, his cause is to ensure that a legal and legitimate decision is achieved.

59. Other than the foregoing and explicit exposition of the law by the Supreme Court, it is also worthy to take note of the decision in the case *David Ngunyi Kimani & 3 others v County Government of Machakos & another* [2014] eKLR, where the court stated as hereunder;

13. In my view, Applicants' interest is totally different from the proceedings herein. The Applicants' subject matter and that of the Petitioners are as different as day and night. The Petitioners' interest is specifically on the license/permit fees in respect of transportation of sand. The Applicants' interest as described above is not on the amount charged for the obtaining of the license. The Applicants therefore have no identifiable stake or legal interest on the issue of amount paid for the licenses for the transportation of and that can be said to be over and above any person would have in litigation which is of a public nature. The Applicants will not be directly affected by the prayers sought in the petition. Since the subject matter of the petition and the Applicants' interest are unrelated, enjoining the Applicants will prejudice the hearing of the petition as it would change the course of litigation, cause delay and bring in additional costs. The best way forward is for the Applicants, if they are so inclined, to file separate proceedings.

60. To my mind, if there any aspects in the compensation sought by the Plaintiff/Respondent herein, which would attract the interest of the EACC, then such aspects can only be addressed and/or ventilated in separate and distinct proceedings originated by the commission and not otherwise.

61. Finally, it is also worthy to point out that even if the court was inclined to join the EACC, based on the contents of the letter dated the 24<sup>th</sup> September 2018, it is imperative to note that the impugned title, namely L.R No. 209/12060, which was/is the subject of investigations is separate and distinct from the suit property herein.

62. In any event, the issue as to the distinction between the suit property and L.R No 209/12060, the latter which was the subject of the letter of the EACC was dealt with in the ruling of this court rendered on the 10<sup>th</sup> February 2022, which has not been appealed against and/or reviewed.



63. In the premises, I find and hold that the Applicant herein has not exhibited and/or established any stake and/or identifiable interest to warrant the joinder of the proposed Interested Party.
64. Consequently and in the premises, the intended joinder of the proposed Interested Party, would be an act in futility and otherwise same shall merely operate to delay and/or defeat the expeditious hearing and disposal subject of the dispute.

**Final Disposition:**

65. Whereas a court of law should be disposed to join or admit all parties, whose presence are necessary to warrant a determination of all the issues in controversy, such joinder must be informed by the existence of identifiable interest and/or stake, if any, exhibited by the proposed Interested Party.
66. However, where the proposed interested party has no known interest and/or stake in the matter under dispute, the proposed joinder, shall militate against the constitutional dictate, which requires expeditious hearing and disposal of disputes. See Article 159 (2) (b) of *the Constitution* 2010.
67. Premised on the foregoing, I come to the conclusion that the subject Application is Devoid and or Bereft of merits.
68. Consequently and in the premises, the Application dated the 7<sup>th</sup> March 2022 be and is hereby Dismissed with costs.
69. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF JUNE 2022.**

**HON. JUSTICE OGUTTU MBOYA**

**JUDGE**

**In the Presence of;**

Kevin Court Assistant

N/A for the Plaintiff/Respondent

N/A for the 1st Defendant/Applicant

N/A for the 2nd Defendant

