



1. *Constitution & Judicial Review Division*
2. *Constitution Law*
3. *Subject of Main Petition*

I. *Anti Corruption and*

Economic Crimes Act 2003

II. *Ethics and Anti-Corruption Commission Act 2011*

III. *Petition seeks declaratory orders that there was no public participation. That the provision of section 34 (1) of EACC are null and void; discriminatory to the interested party.*

That there is a conflict of section 34 (1) of EACC and the constitution and ACEC act.

Permanent orders of stay.

4. *Application 7.9.2011*

a) *Application for orders of injunction and or parliament to restrain the Kenya-anti-corruption Board from removing the 1st interested party until the hearing and determination of the Petition.*

b) *Orders of injunction and or prohibition do issue from appointing or deputizing any persons to act in Succession of the Interested parties or purport to fill the position.*

c) *An interim order of stay do issue staying the operation and or effort of part of section 34(1) of Ethics and Anti-Corruption Commission act 2011 purporting to name the Director and Deputy Director till the hearing of the Petition.*

5. *Application granted to be argued ex parte 8.9.2011*

6. *Ex parte orders issued.*

7. *Case law*

8. *Advocates*

M Muriithi instructed by the firm of M/s Mbugua Mureithi & Co. Advocates present

K. O. Onyiso present during ruling for Attorney General.

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CONSTITUTIONAL AND JUDICIAL REVIEW DIVISION

CONSTITUTIONAL PETITION NO. 155 OF 2011

**OLEKINA.....LADAMA.....PET
ITIONER**

VERSUS

**GENERAL.....ATTORNEY.....1ST
RESPONDENT**

**THE MINISTER FOR JUSTICE, NATIONAL COHESION & CONSTITUTIONAL
AFFAIRS.....2ND RESPONDENT**

AND

- 1. PROF. P.L.O. LUMUMBA**
- 2. PROF. JANE KERUBO ONSONGO**
- 3. DR. JOHN PARMENUS MUTONYI**
- 4. WILSON KIPROTICH SHOLLEI**
- 5. PRAVIN**

**BOWERY.....INTERESTED
PARTIES**

**IN THE MATTER OF ARTICLES 1(1), (2), 2(2), 3, (4), 10, 22(2) (C), 23(3), 27(1), (2), (4), 28, 73,
75(1), 79, 118, 159(1), (2), 165(3), 201, 258(1) (2) (C) & 262 OF THE CONSTITUTION OF KENYA
2010 & SECTION 31(2) OF THE SIXTH SCHEDULE OF THE CONSTITUTION OF KENYA,
2010**

AND

IN THE MATTER OF THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT, 2003

AND

IN THE MATTER OF THE ETHICS AND ANTI-CORRUPTION COMMISSION ACT, 2011

RULING

I Introduction & Procedure

1. This is a Constitution matter. On 8th September 2011, a petition was filed in this court dated the 7th September 2011 on matters pertaining the Anti Corruption and Economic Crimes Act 2003 and the Ethics and Anti-Corruption Commission Act 2011.
2. The Petitioner, Ladama Ole Kina filed the said Petition in exercise of his Constitutional obligation to defend the Constitution in the Public Interest.
3. Together with filing of the Petition, he filed a Chamber Summons seeking orders of injunction and or prohibition against the Kenya Anti-Corruption Advisory Board (inter alia).
4. As it is the Court vacation, an application was filed to be heard during the vacation. That the substantive application be heard ex-parte in the first instance.
5. This court, noting the enormous importance and urgency of the application, granted orders for leave to be heard during the vacation.
6. This court accordingly heard the Chamber Summons 7th September 2011 application ex-parte.

II Application 7th September 2011

7. The Republic of Kenya had an Anti-Corruption and Economic Crimes Act of 2003. It was expedient that this Act be replaced by a new one being the Ethics Anti Corruption Commission Bill, 2011. Whereas the applicant states the bill was published on 19th August 2011 (Kenya Gazette supplement No. 85 (Bill No. 36)) Parliament reduced the period of publication of the bill from 14 days to 4 days (moved by the Hon. Vice President of Kenya).
8. The applicant felt aggrieved as he was not accorded public participation. The bill was amended and provided for five of the interested parties out of statutory employment of the former commission.
9. This touched on Section 34(1) of the EACC Act. This section was amended. The original bill had read:-
Section 36(1)

Subject to subsection (4) a person who immediately before the commencement of this act was serving on contract as a member of staff of the Kenya Anti Corruption Commission shall, at the commencement of this act, be deemed to be an employee of the commission for the unexpired period, if any, of the term.”

The Act was amended, after debate by parliamentarians, to read:-

Section 34(1)

Subject to subsection (4) (dealing with vetting of staff)

A person who immediately before the commencement of this act was serving on contract as a member of staff of the Kenya Anti-Corruption Commission, other than the Director and Deputy Director shall at the Commencement of this act, be deemed to be an employee of the commission for the unexpired period of any of the term.

10. The amendment of this provision was not in line and spirit of the original intention of the former Act and the Constitution of Kenya.

11. The Petition will look into the issue of Public participation of the Act, the conflict of the section with the constitution.

12. The legislation of the amendment of section 34(1) of the EACC may have been so done with other interest instead of the good of the Kenyan people.

13. The removal of the five interested parties by way of enactment of the section 34(1) though the Act begs to question section 8 of the former Act dealing with the removal of the said officers. This was to be by way of a tribunal alone. Would the amendment to the section 34(1) of the Act contravene this section or the security of tenure of the interested parties? These are questions to be determined during the main hearing of the Petition.

14. The issue of transiting of the five interested party requires to be looked at as contemplated by Article 79 on the enactment of an EACC Commission.

III Orders

15. I would grant the application before me ex-parte. That the issues raised are of Monumental, National and of public interest and are to be determined forthwith.

14. The prayers of Prohibition No. 2, 3 and 4 be and are hereby granted.

15. That there will be orders of stay to be and is duly granted.

16. There will be inter-parte hearing of this application on a date set convenient to parties.

17. That the Hon. The Chief Justice do choose a bench for the Inter-parte hearing and for the Petition.

Dated this 9th day of September 2011 at Nairobi.

M. A. ANG'AWA

JUDGE

9TH SEPTEMBER 2011

Advocates:

M Muriithi instructed by the firm of M/s Mbugua Mureithi & Co. Advocates present

K. O. Onyiso present during the ruling for the Attorney General