



REPUBLIC OF KENYA

IN THE ENVIRONMENTAL AND LAND COURT AT MOMBASA

CASE NO 180 OF 2015

KENYA RAILWAYS CORPORATION.....PLAINTIFF/RESPONDENT

VERSUS

1. ZAHARIA MOHAMMED MAWI.....DEFENDANT/RESPONDENT

2. COUNTY GOVERNMENT OF MOMBASA.....DEFENDANT/RESPONDENT

3. REGISTRAR OF LAND,

MOMBASA LAND REGISTRY.....DEFENDANT/RESPONDENT

4. CYKA HOLDING LIMITED.....DEFENDANT/RESPONDENT

5. HUSSEIN A. ABDIRAHMAN.....DEFENDANT/RESPONDENT

AND

ETHICS AND ANTI CORRUPTION

COMMISSION.....INTENDED CO-PLAINTIFF/APPLICANT

RULING

1. This Ruling is in respect to the Application dated 2nd February 2019 filed by the Ethics and Anti-Corruption Commission and is supported by the Affidavit of Bonface Waweru and it seeks the following orders:

i. Spent

ii. The EACC be enjoined as co-plaintiff in the present suit before this Honorable Court and it be granted leave to file its Plaint and necessary pleadings in accordance with the Civil Procedure Act and Civil Procedure Rules, 2010.

iii. Spent

iv. The cost of the Application be provided for.

2. The Applicant is brought under **Section 1A, 1B, 3A and 63 (e) of the Civil Procedure Act and Order 1 Rules 1 and 10, Order 51 Rule (1) of the Civil Procedure Rules, 2010, Section 11 (1) (j) of the Ethics and Anti-Corruption Commission Act**. The Applicant submitted that **Section 23 of the Anti-Corruption and Economic Crimes Act** gives it statutory mandate to conduct investigations over allegations of corruption.

3. The Applicant stated that **Section 11 (j) of the Ethics and Anti-Corruption Act** gives the Applicant powers to institute and conduct proceedings in Court for recovery of public property, confiscation of proceeds of corruption and payment of compensation. The Applicant further states that it has investigated allegations regarding illegal alienation of parcels of land described as MOMBASA/BLOCK 1/525 and MOMBASA/BLOCK 1/526 with the view of recovering the same in accordance with the law. The said parcels of land are alleged to be public property that have been corruptly and fraudulently alienated from the Plaintiff.

4. In the Supporting Affidavit of Bonface Waweru the Applicant stated that its participation is necessary as it will enable Court to effectually and completely adjudicate and settle all questions involved in the amended plaint. It would also be in the public interest and administration of substantive justice to allow the Application.

5. The 1st Respondent opposed the Application vide Grounds of Opposition dated 20th February 2020 stating that the Applicant has not demonstrated any interest in the suit and has not raised any issue that the Plaintiff is not capable of raising. The grounds further stated that the Applicant has failed to demonstrate any special skill, expertise or material they will bring to the suit.

6. The 4th Respondent also opposed the Application vide a Replying Affidavit of Dennis Mithamo Kariuki dated 17th January 2020 and stated that the Application is a non-starter, an abuse of the Court process and a deliberate attempt to delay the hearing. That the Applicant should have moved to the Anti-Corruption Court to institute a suit for recovery proceedings as provided by the law. They further argue that the Applicant has not adduced any new material to warrant a joinder.

7. In its submissions, the 5th defendant states that the Applicant has no legal standing to be a co-plaintiff and that the suit before Court can be resolved without the presence of the Applicant.

8. The plaintiff supports the Application as stated by its advocate in Court on 21st January 2020

9. Having considered the Application and its supporting affidavit and the grounds of opposition, replying affidavit and written submissions from the Respondents, the issue for consideration is:

Is Whether the Applicant can be joined in the suit.

Order 1 Rule 10 (2) of the Civil Procedure Rules gives Court the discretion at any stage of the proceedings to join a party (in this instance a plaintiff) to a suit. The party will be added if its addition will enable Court to effectually and completely adjudicate upon and settle all the questions in the suit.

10. The **Court of Appeal in JMK V MWM & MFS CACA15/2015** referred to the learned authors of **Sarkar's Code of Civil Procedure (11th Ed. Reprint, 2011, Vol. 1 P. 887)**, which state that:

“The section should be interpreted liberally and widely and should not be restricted merely to the parties involved in the suit, but all persons necessary for a complete adjudication should be made parties.”

11. The Court of Appeal adopted the same approach in **CENTRAL KENYA LTD. V. TRUST BANK & 4 OTHERS, CA NO. 222 OF 1998**, when it affirmed that the guiding principle in amendment of pleadings and joinder of parties is that:

“All amendments should be freely allowed and at any stage of the proceedings, provided that the amendment or joinder as the case may be, will not result in prejudice or injustice to the other party which cannot properly be compensated”

12. I am also persuaded by the case of **Altana Corporations Limited v Clarence Matheny Leadership Training Institute, National Land Commission (Garnishee), Ethics and Anti-Corruption Commission (Intended Interested Party) [2019] eKLR** where Court held:

“That Court has a fundamental duty to do whatever it thinks appropriate in the interest of justice. In doing so the Court analysis of the evidence before it is to determine whether the dominant purpose of the proposed interested party is to serve a collateral purpose or it is for the enforcement of the Rule of Law.”

13. In this case, the Applicant has a demonstrated a direct and substantial interest in the matter. Its participation in the proceedings as plaintiff is a matter of necessity by virtue of their statutory mandate. **Section 11 (j) of the Ethics and Anti-Corruption Commission Act** confers the intended co-plaintiff with the recovery mandate of public property thus the need of enjoiner.

14. In conclusion I agree with the Applicant and state that the intended co-plaintiff has a stake and value addition in this case and ought to be given a chance to come and present its case.

15. Having been satisfied by the Application I give the following orders;

i. Leave is granted to the Ethics & Anti-Corruption Commission to join in these proceedings as co-plaintiff.

ii. Ethics and Anti-Corruption Commission to file and serve all parties with all their necessary pleadings within 14 days from the date of this ruling.

iii. The corresponding parties have 14 days from the date of service to file their responses and the Ethics and Anti-Corruption Commission has corresponding leave to file a reply within 14 days from the date service.

iv. Cost will be in the cause.

DATED, SIGNED and DELIVERED at MOMBASA this 10th day of February, 2021

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C.K. YANO

JUDGE

IN THE PRESENCE OF:

Yumna Court Assistant

C.K. YANO

JUDGE