



**Okumu v Agricultural Development Corporation (Environment & Land  
Petition E011 of 2024) [2025] KEELC 451 (KLR) (5 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 451 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND PETITION E011 OF 2024**

**A OMBWAYO, J  
FEBRUARY 5, 2025**

**BETWEEN**

**JUMA OKUMU ..... APPLICANT**

**AND**

**AGRICULTURAL DEVELOPMENT CORPORATION ..... RESPONDENT**

**RULING**

- 1 The Petitioner, Juma Okumu (hereinafter referred to as "the Applicant") has come to this court with two applications in this matter. Both applications are dated 4th September 2024. The 1st application seeks orders that the Directions/Orders given by this Honorable Court on 14th October, 2024 be varied and that this matter be resolved by way of viva voce evidence and for avoidance of doubt, all witnesses who have sworn depositions be summoned to attend this Honorable Court during the hearing of this matter for purposes of cross-examination based on the contents of their respective affidavits. The 2nd Application dated 4th September, 2024 seeks Orders that the Ethics and Anticorruption Commission (EACC) be enjoined in the petition filed herein as an interested party or in any other capacity that this Honorable court deems fit in this suit and that upon granting the prayer No 1 above, the Honorable Court do give directions on how the Interested Party -The Ethics and Anti-corruption Commission (EACC) shall participate in the proceedings herein or such other further directions as the court may deem fit to give. The Costs of this Application be in the cause. Both Applications are supported by the Affidavit of Juma Okumu and on grounds on the face of the applications.
- 2 On the issue as to whether this matter can be resolved by way of viva voce evidence, the applicant contends that the doctrine of stare decisis, as enshrined in *the Constitution* and interpreted by superior courts, applies in this matter and that the Supreme Court decision in *Fanikiwa Limited & 3 others v Sirikwa Squatters Group & 17 others* (Petition 32 (E036), 35 (E038) & 36 (E039) of 2022 (Consolidated)) 120231 KESC 105 (KLR) (15 December 2023) (Judgment) is distinguishable. The petitioner's main contention in the petition is that Vide Grant Number 40236 that was registered by



- the Registrar of Titles on April, 1985 the President of the Republic of Kenya on behalf of the Republic Kenya granted the Settlement Fund Trustees, a body corporate established under the Agriculture Act (Cap 319) repealed freehold interest over a parcel of land known as Land Reference Number 13287 that is situated North East of Njoro Town in Nakuru District that measured 2,123.5 Ha.
- 3 The petitioner has disposed that by a transfer instrument that was registered by the Registrar of Titles on 3rd May, 1985 vide presentation book number 43 of even date, interest over Land
  - 4 Reference Number 13287 Grant Number 40236 measuring 5,247.16 acres was conveyed from the Settlement Fund Trustees to the Agricultural Development Corporation, the 1st Respondent herein.
  - 5 The 1st Respondent in exercise of its mandate under the *Agricultural Development Corporation Act*, Cap 444 as an agency of Government sub-divided the parcel of land known as Land Reference Number 13287 Grant Number 40236 measuring 2,123.5 hectares, about 5,247.16 acres, to give rise to a number of parcels including Land Reference Numbers 13287/1, 13287/2 and 13287/88 ("the suit properties"), the subject matter of this public interest litigation and petition.
  - 6 Vide a transfer instrument that was purportedly registered on 3rd March, 1986 interest over L.R No. 13287/1 measuring 276.0 Ha (about 682 acres) was allegedly transferred from the 1st Respondent, ADC to the 4th Respondent herein, General Jackson Mulinge at a purported consideration of KShs.3,425,000.00 that has to date never been paid to the 1st Respondent.
  - 7 On 3rd March, 1986 when interest over L.R No. 13287/1 was transferred from the 1st Respondent to the 4th Respondent without consideration that was purportedly indicated in the transfer and title as KShs.3,450,000.00, the said 4th Respondent was a serving General of the Kenya Defence Forces while the 8th Respondent was a serving officer in the office of H.E the late former President Daniel Toroitich Arap Moi. On 14th October, 2024, this matter came up for hearing of the Petitioner's application dated 18th September, 2024.
  - 8 Upon hearing the parties, the Honorable Court ordered that the Respondents to be served physically at their offices within 5 days and that the Respondents to reply within 14 days of service. The court further ordered that the Applicant to file and serve supplementary affidavit within 14 days of service with submissions. Moreover, that the Respondents to file and serve submissions within 7 days of service. Lastly that highlighting on 27th November. 2024. That the Affidavit of service to be filed. The effect of the said directions was to have this dispute resolved through purely affidavit evidence. The 1st application therefore seeks to vary the Court's directions and orders issued on 14th Day of October, 2024 in order to have this dispute resolved by taking viva voce evidence.
  - 9 According to the Petitioner, he has produced numerous documents in support of his petition. The Respondents have also produced numerous documents in their defence. The said documents therefore require interrogation and would thus humbly invite viva voce hearing so as to prove or disapprove facts in issue. Based on the nature of this case, this Honorable Court is thus invited by the petitioner in the interests of justice to make a special endeavor to unravel all the competing claims and in particular, by allowing the calling for viva voce evidence from witnesses, especially those who have sworn depositions for their cross- examination.
  - 10 The petitioner believes that this is important because this Court's decision would have a far-reaching impact especially upon the party (ies) whose ownership could end up being nullified if this Honorable Court were to allow the Petitioner's Petition.



11 The petitioner submits that it is in the interest of justice that this matter be heard by way of Oral Evidence (viva voce) being an aspect of a fair hearing as guaranteed by Article 50(1) of the Constitution of Kenya hence an opportunity to fully and effectively ventilate the issues in controversy.

12 The petitioner relies on the decision in Attorney General & another v Uasin Gishu Memorial Hospital Limited another [2021] eKLR where the Supreme Court held that where there are highly contested facts, reliance on Affidavit evidence would deny parties the right to be heard. The Apex Court held: "Having found that the High Court failed to execute its constitutional mandate, the learned Judges of Appeal proceeded to address the substantive issues before them. In doing so, the Appellate Court relied on affidavit evidence, without giving parties the opportunity to present and examine evidence."

13 The petitioner invites this Honorable Court to find that the highly contested facts and issues in this suit as is evident from the issues raised in the petition, documents filed in support of petition and the responses filed together with the rebuttal documents cannot be determined by way of affidavit evidence only but would invite an oral hearing. We respectfully submit.

The petitioner submits that the doctrine of stare decisis, as enshrined in the Constitution and interpreted by superior courts, applies in this matter. He argues that Article 163 (7) of the Constitution provides that all courts, other than the Supreme Court, are bound by the decisions of the Supreme Court. The effect of this provision is unequivocal and absolute.

14 The petitioner further relies on the case of Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others [2014] eKLR, where the court held that Article 163 (7) Of the Constitution is the embodiment of the time-hallowed common law doctrine of stare decisis. It holds that the precedents set by the Supreme Court are binding on all other Courts in the land.

15 The petitioner reiterates the determination by the Supreme Court in Fanikiwa Limited & 3 others v Sirikwa Squatters Group & 17 others (Petition 32 (E036), 35 (E038) & 36 (E039) of 2022 (Consolidated)) [2023] KESC 105 (KLR) (15 December 2023) (Judgment) and in Attorney General & another v Uasin Gishu Memorial Hospital Limited another [2021] eKLR to argue that Judgements of courts remain final and binding on all courts below them. They must be deferred to notwithstanding any misgivings that other judges and judicial officers may have, and quite irrespective of the noble aims that may tempt them to do otherwise.

16 In its decision, the court relied on the dictum in the case of Camps Bay Ratepayers and Residents

17 Association & Another vs Harrison & Another [2010] ZACC 19; 2011 (2) BCLR 121 CC; 2011 (4) SA 42 (CC), where the court pronounced itself on the doctrine as follows; What boils down to, according to the authors, is; certainty, predictability, reliability, uniformity, convenience; these are the principal advantages to be gained by the legal system from the principle of stare decisis. Observance of the doctrine has been insisted upon. The doctrine of precedent not only binds lower courts but also binds courts of final jurisdiction to their own decisions. Stare decisis is therefore not simply a matter of respect for the courts of higher authority. It is a manifestation of the rule of law itself, which in turn is the founding value of our constitution.

18 The petitioner argues that the law guides that there is a duty imposed upon courts to respect and uphold judicial precedents from the established principle of stare decisis. Allowing the hearing to proceed by way of viva voce evidence is therefore justified in the interest for sound administration of justice. It is on this ground that he invites this Honorable Court to allow the Application. The applicant cites the case of National Bank of Kenya Ltd v Wilson Ndolo Ayah Civil Appeal No. 002; [2009] KLR 762 where it was held:



“It is good discipline in courts for the proper smooth and efficient administration of justice that the doctrine of precedent be adhered to. If for any reason a Judge of the High Court does not agree with any particular decision of the Court of Appeal, it has been the practice that one expresses his views but at the end of the day follows the decision which is binding on that court. The High Court has no discretion in the matter.”

19 On the 2nd application for joinder of the EACC, The petitioner contends that this Honorable Court has power to order and/or direct joinder of a party to the Proceedings and that this Honorable should join the Ethics and Anti-Corruption Commission (EACC) in the petition filed herein as an interested party or in any other capacity that his honorable court deems fit in this suit. The petitioner submits that The Black’s Law Dictionary, 9th Edition at page 1232 defines an interested party as a party who has a recognizable stake and therefore standing in the matter. The petitioner admits that the Civil Procedure Act, Cap 21 is silent on the concept of “interested party but adds that Order 41 Rule 5 of the Civil Procedure Rules 2010, makes a reference to the term interested party and states; The court either or not its own motion or on application by any interested party, remove a receiver appointed pursuant to this order on such terms as it thinks fit.

20 The petitioner submits that Court has power to order and/or direct joinder of a party to the Proceedings before it and the court can also on its own motion admit an interested party to a suit to enable it completely adjudicate over the issues before it. According to the petitioner, It is not in dispute that The Ethics and Anti-Corruption Commission (EACC) is established under Article 79 of the Constitution and the Ethics and Anti-Corruption Commission Act.

The petitioner cites Section 11 of the Act that describes the functions of the Ethics and AntiCorruption Commission thus 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 bestpractices in integrity and anticorruption;
- 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 ofcorruption, 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 alleged to haveengaged in unethical conduct.

21 Ultimately, the petitioner argues that from the foregoing and based on its functions, The Ethics and Commission (EACC) has an identifiable legal interest in the matter. That this is a matter of public interest which is likely to have an impact in the implementation of Chapter Six of the Constitution of Kenya,2010, the Leadership and Integrity Act and Public Officer Ethics Act and other integrity laws noting the functions of the Commission.

22 The petitioner submits that there is a need to join the Commission to these proceedings with a view to assisting this Court to effectually and completely adjudicate upon and settle all questions arising in the Petition. No prejudice will be occasioned to any party by reason of joinder and It is in the best interest of justice, Public Interest and national interest to join the Commission to these proceedings.



- The 1st to 3rd and 7th respondents have not responded to the petition and the applications by way of affidavits. The 4th respondent filed a replying affidavit. The 5th, 6th and 8th respondents argue that this application is a blatant abuse of court process ill-conceived and an attempt by the Petitioner to direct an independent commission on how to carry out its mandate in clear violation of *the Constitution*.
- 23 The 5th, 6th and 8th respondents argue that Article 248 of *the Constitution* establishes Independent Commissions and Offices which are mandated under Article 249 to execute the mandate only under the prescription and direction of *the Constitution* and no other person or organ.
- 24 The respondents contend that Section 28 of the *Ethics and Anti-Corruption Commission Act*, Cap 70 of the Laws of Kenya establishes the independence of the Commission in the terms that except as provided in *the Constitution* and this Act, the Commission shall, in the performance of its functions, not be subject to the direction or control of any person or authority
- 25 According to the respondents, it is not for the Petitioner or this Honorable Court to direct the EACC on which matters to join as an interested party or not. It is the sole mandate of the Commission to make an application to court to be joined in suits.
- 26 The respondents argue that the EACC is not subject to the directions or control by any person or authority. By seeking to make the decision for the Commission to be joined in the suit, the Petitioner is seeking to direct and/or control the Commission, albeit contrary to Articles 248 and 249 of *the Constitution* and that if the court grants the orders sought in the Application dated 4th November 2024, it shall do so in violation of Article 249 of *the Constitution* as read with Section 28 of 'the *Ethics and Anti-Corruption Commission Act* Cap 7H of the Laws of Kenya.
- 27 The respondents contend that Order 1 Rule 10(2) of the Civil Procedure Rules requires an applicant seeking to join an interested party to a suit to demonstrate that the party he seeks to join has an identifiable stake in the suit. In this instance, the Petition revolves around an alleged failure by the Respondents to pay the consideration to the Agricultural Development Corporation for the acquisition of L.R Nos. 13287/1, 13287/2 and 13287/88, thus making the Petitioner claim purely contractual, albeit erroneously couched as constitutional petition. The Applicant has not satisfactorily established whether or not there was a failure to pay consideration such as to support his claim that "public" property was acquired illegally.
- 28 The respondents argue that land held by the 1st Respondent is not necessarily public land as understood by the Petitioner. For the avoidance of doubt, the land is used by the 1st Respondent to carry out farming of different crops, for purposes of selling to the public. The Petitioner erroneously attempts to link the alleged failure to receive consideration for the stated parcels, to an alleged public loss of funds despite the fact that if at all there was a loss occasioned by the alleged failure to pay consideration, such loss would be suffered by the 1st Respondent, which has the capacity to sue and be sued in its own name.
- 29 The respondent contends that any loss suffered by the 1st Respondent is suffered personally and can be advanced by it for its personal benefit. In the absence of any benefit meant to be conferred to the public, one cannot claim public loss and therefore hoodwink the court into directing and/or controlling an independent commission to join a suit seeking private interests. According to the respondent, the decision as to whether or not to join the commission as a party can only be taken by the commission and not by the Petitioner.
- 30 On the application that this matter proceeds by way of viva voce evidence, the 5th 6th and 8th Respondents pray that the same be dismissed with costs for lack of merit as there is no real, substantial



and material dispute of fact which would make it impossible to determine the Petition through Affidavit evidence and submissions. Moreover, that the Petitioner has not indicated the nature and type of witnesses he intends to call and that the Petitioner has not demonstrated any prejudice he shall suffer if trial proceeds through Affidavit evidence and submissions. The respondents rely on the decision of the Court of Appeal (Honorable Justices Asike-Makhandia, Kiage and Odek JJA presiding) in *Kibos Distillers Limited & 4 others v Benson Ambuti Adegga & 3 others* [2020] eKLR while determining whether or not viva voce evidence is a matter of necessity noted that:-

“As in general rule, there is no automatic right to an oral hearing. Procedural fairness does not require and oral hearing in all circumstances. In determining the form of a hearing the critical question is whether meaningful participation was allowed by the process chosen by the decisionmaker”

31 The respondents cite a decision of the Supreme Court of Canada that had occasion to answer the same question in *Baker v Canada (Minister of Citizenship and Immigration)*. (1999) 2SCR 817 where it was held that:-

“..... it also cannot be said that an oral hearing is always necessary to ensure a fair hearing and consideration of the issues involved. The flexible nature of the duty of fairness recognizes that meaningful participation can occur in different ways in different situations....”

32 The respondent argues that the right to fair hearing under Article 50 of *the Constitution* is not limited to having an oral hearing only. The same can also include Affidavit and documentary evidence, as well as submissions as the court herein directed. The Respondents submit that the Petitioner has not sufficiently demonstrated that there is a need for viva voce evidence in the current circumstances, such that a failure to allow the same shall fall short of the requirements for fair hearing.

34 The respondent contends that the substratum of the Petitioner’s claim is that the 4th, 7th and 8th Respondents acquired title to L.R No. 13287/1, 13287/2 and 13287/88 respectively without paying a consideration of Kshs.3,425,000, Kshs279,960; and Kshs24,000.00 respectively to the 1st Respondent more than ten years ago. The dispute therefore is whether or not the said consideration was paid by the said Respondent and received by the 1st Respondent. There is no other issue that the Petitioner has shown to this court; other than peripheral allegations of fraud, to warrant the calling of witnesses.

35 The Respondent submit that the issue of payment of consideration can only be determined through documentation presented by the Respondents as proof of payment and the 1st Respondent as proof of receipt. Nothing, other than a waste of precious judicial time will come out of calling the 1st respondent witness to ascertain whether in deed they received the payment, when in fact they were not part of the Corporation at the time of the transactions.

36 The respondents argue that the transactions that anchor the Petition are agreed by the parties herein, that is the sale and transfer of L.R No, 13287/1, 13287/2 and 13287/88 to the 4th, 7th and 8th Respondents respectively, by the 1st Respondent. The issue as to whether consideration was paid is an issue that is best determined through documents filed by all parties.

Similarly, the Petition before this Honorable Court revolves around the actions of a public entity, the 1st Respondent, in selling and transferring the suit property to the Respondents. Receipts, transfers, allotment letters and any other acquisition document prepared by it fall squarely under the definition of a public document under section 79 of the *Evidence Act* Cap 80.



- 37 The documents therefore are capable of speaking for themselves and are presumed to be authentic. The Respondents submit that the papers filed by; 1st Respondent are enough in this case and there is no need for viva voce hearing of the same.
- 38 The respondent submits that for the court to exercise its discretion in allowing the present application, it must be equipped with sufficient information to determine whether a viva voce hearing is necessary. Such information includes the nature and type of witness the Petitioner intends to call. The respondents argue that simply casting a wide net and hoping to catch something is not sufficient to convince the court of the need to call witnesses. According to the respondents, the Application was made by an individual who was never present during the transactions between the 1st, 4th, 5th and 8th Respondents.
- 39 The respondent submits that the petitioner does not name individual working for the 1st Respondent that allegedly conspired with the 8th Respondent to influence allocation of the suit properties. The Respondents submit that the circumstances appertaining are not for an oral hearing. The Petitioner, without indicating the intends to call, is sending the court on a wild goose chase that shall only serve to abuse the court process and waste judicial time.
- 40 The Respondent reiterate that the petitioners proceeding on; a misguided notion that income received by the 1st Respondent is used by the public. This argument is misplaced and misguided for the simple fact that the 1st Respondent, as established, has the power to sell, lease or in any way deal with agricultural land under its control, including but not limited to planting various crops for purposes of sale to the public and revenue collection for its own use. Therefore, the presumption that the public has a stake in the sales conducted by the 1st Respondent is wholly false and that Petitioner has not demonstrated any prejudice that shall be suffered by the said public if hearing of the Petition is not done in viva voce. Given that the crux of the Petition is nonpayment of consideration, which issue can be resolved through affidavit evidence, the public cannot be said to stand to suffer prejudice. Instead it shall suffer a delay in justice, if any, and a further loss of funds if a matter that can simply be resolved through documentary evidence is subjected to an unnecessary, and winded hearing process.
- 41 The respondents further contend that the Petitioner has not shown any Prejudice, that he is likely to suffer personally if the court does not allow the Application. The respondents believe that the Petitioner is a third party that cannot speak to the purely contractual transaction leading up to the acquisition of the suit properties. If at all there was a breach, it would not be him that suffered prejudice, instead it would be either the 1st, 4th, 5th or 7th.
- 42 The Respondents submit that the Application is for nothing but dismissal with costs as the Petitioner simply seeks to prolong a matter that can be resolved expeditiously to save public resources, The respondents in conclusion submit that the Application dated 4th November 2024 is an attempt by the Petitioner to hoodwink this Honorable Court into allowing viva voce hearing, of a claim that is brought by an individual who is not competent to be a witness that speaks to the acquisition of the suit properties. The right to fair hearing must not only be limited to oral hearing. Affidavit and documentary evidence, together with submissions are sufficient to resolve a dispute where a public entity is in control of documentation showing that that which is said to have not happened actually happened. The Respondents pray that this Honorable Court find favor in the decision of the Court of Appeal and comparative jurisdiction, and dismiss the Application with costs.



## Determination

43 I have considered the two applications and will begin with the application seeking to cross –examine the deponents of affidavits.

*The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (the Mutunga Rules) make various provisions with respect to parties to constitutional petitions, and with regard to whom may be joined as an interested party or as a friend of the Court.

44 It also contains definitions at section 2 thereof.

45 The Mutunga Rules define a friend of the court as “an independent and impartial expert on an issue which is the subject matter of proceedings but is not party to the case and serves to benefit the court with their expertise,” while an interested party is defined as “a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation.

46 With respect to joinder of amicus curiae, rule 6 provides that:

- a. The Court may allow any person with expertise in a particular issue which is before the Court to appear as a friend of the Court.
- b. Leave to appear as a friend of the Court may be granted to any person on application orally or in writing.
- c. The Court may on its own motion request a person with expertise to appear as a friend of the Court in proceedings before it.

47 Rule 7 provides as follows with respect to joinder of interested parties:

1. A person, with leave of the Court, may make an oral or written application to be joined as an interested party.
2. A court may on its own motion join any interested party to the proceedings before it.

In its decision in *Trusted Society of Human Rights Alliance vs Mumo Matemu and 5 Others, Petition No. 12 of 2013* the Supreme Court addressed the question of who an amicus and an interested party are and their role. The court opined as follows:

“[16] ... An amicus ought not to be partisan. This is a ‘neutral’ party admitted into the proceedings so as to aid the Court in reaching an ‘informed’ decision, either way.

17. Suffice it to say that while an interested party has a ‘stake/interest’ directly in the case, an amicus’s interest is its ‘fidelity’ to the law: that an informed decision is reached by the Court having taken into account all relevant laws, and entertained legal arguments and principles brought to light in the Courtroom.

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.”

48 In *Judicial Service Commission vs Speaker of the National Assembly and Another* (2013) eKLR, the Court, referring to the definition of an interested party under the Mutunga Rules as defined above stated that:-

“From the foregoing it is clear that an interested party as opposed to an amicus curiae or a friend of the court may not be wholly indifferent to the outcome of the proceedings in question. He is a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly non-partisan as he is likely to urge the court to make a determination favourable to his stake in the proceedings.”

49 Amicus curiae on the other hand is defined as “an expert on an issue which is the subject matter of proceedings but is not a party to the case and serves to benefit the court with their expertise.” Amicus curiae is therefore a person who shows that he is possessed of some expertise relevant to the matters for determination before the court. Such a person as is expected of experts is required to be non-partisan and his role is meant to enable the court get a clearer picture of the issues in dispute in order for the court to arrive at an informed and just decision.”

50 The Supreme Court in the case of *Francis Kariuki Muruatetu & Another v Republic & 5 others* Petition 15 as consolidated with 16 of 2013 [2016] eKLR set forth the elements applicable as follows: ...One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:

- (i) The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
- (ii) The prejudice to be suffered by the intended interested party in case of non-joinder must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote. (iii) Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.

51 The EACC is established under the *Ethics and Anti-Corruption Commission Act*. Section 11 of this act describes its functions as follows:

52 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 anticorruption;(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)... “



- 53 This court is of the view that the above provisions envisage the position that it is the intended interested party to apply to the court and demonstrate its interest in the matter and not another party to apply on its behalf. In this case, the Ethics and Anti -Corruption Commission should demonstrate by way of affidavit that the Commission has an identifiable stake or legal interest or duty in the matter. Moreover, the applicant has not demonstrated to the court that he wrote to the Ethics and Anti -Corruption Commission requesting for an investigation into the matter.
- 54 I have perused the pleadings and the issues in dispute vis a vis the statutory mandate of the EACC, it would have been prudent for the said EACC, if interested in the subject suit to file an application for her joinder into the subject suit. However, in this matter it is the petitioner that is seeking to enjoin the EACC as an interested party, yet the said commission has not expressed any interest in being joined and/or included in the subject suit.
- 55 This court finds that the non-joinder of the Ethic and Anti -Corruption Commission does not prejudice the petitioner because the petitioner relies on public documents that are available before the 1st to 3rd respondents.
- 56 On the issue as to whether the court should review its decision made on 14th October 2024 this court has considered the rival submissions and the starting point is whether there are sufficient reasons for review of the said decision to allow parties to prosecute the petition via viva voce evidence. Counsel for the petitioner argues that there are sufficient reasons to warrant a review of this court's orders issued on 14th October 2024. In my view, a Court may review its decision where there is evidence of sufficient cause as seen in *Nuh Nassir Abdi v Ali Wario & 2 Others* [2013] E KLR EP NO. 6 of 2013, G.V Odunga J. stated that: -
- “A decision whether or not to vary, set aside or review earlier orders was an exercise of judicial discretion and the Court could only exercise such discretion if so to do would serve useful purpose....”
- 57 It is my finding that this matter ought to be concluded expeditiously. It would be subject to inordinate delay were the court to allow the application by the petitioner for the matter to be heard orally. I dismiss this application and order that this petition shall be canvassed by way of affidavit and written submissions. The mode for hearing constitutional petitions is stipulated under Rule 20 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013. It is either by affidavits, written submissions or oral evidence. However, the Court may upon application or on its own motion direct that the petition or part thereof be heard by oral evidence. In my view, the Court's choice on the mode of hearing is purely a discretionary issue, and the reasons for adopting the hearing by way of Affidavit were elucidated as captured earlier in this ruling.
- 58 In *National Bank of Kenya Ltd v Ndungu Njau* [1996] KLR 469 (CAK) at Page 381
- “In my discernment, an order cannot be reviewed because it is shown that the judge decided the matter on a foundation of incorrect procedure and or that his decision revealed a misapprehension of the law, or that he exercised his discretion wrongly in the case. Much less could it be reviewed on the ground that the other judges of coordinate jurisdiction and even the judge whose order is sought to be reviewed have subsequently arrived at different decisions on the same issue? In my opinion the proper way to correct a judge's alleged misapprehension of the procedure or the substantive law or his alleged wrongful exercise of discretion is to appeal the decision unless the error be apparent on the face of the record and therefore requires no elaborate argument to expose.”



59 Applying the principles laid down in the above precedents, I decline the invitation to set–aside and/or review the Court’s order issued on 14th October 2024. The application dated 4th of September 2024 is not allowed. Accordingly, I dismiss it with no orders as to costs. Ultimately, both applications are dismissed. No order as to costs. The petition to proceed by way of written submissions. The petitioner to file and serve submissions within 21 days. The respondents to file and serve submissions within 21 days of service. Highlighting on 24 March 2025.

**SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO**

**THE JUDICIARY OF KENYA.**

**NAKURU ENVIRONMENT AND LAND COURT**

**ENVIRONMENT AND LAND COURT DATE: 2025-02-06 13:00:09**

The Judiciary of Kenya

Doc IDENTITY: 3305878177852031552718933845 Tracking Number:OOHQR92025

