



REPUBLIC OF KENYA



**Mwongera v Agricultural Development Corporation & another (Constitutional  
Petition 29 of 2021) [2024] KEELC 3641 (KLR) (7 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 3641 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
CONSTITUTIONAL PETITION 29 OF 2021**

**FM NJOROGE, J**

**MAY 7, 2024**

**BETWEEN**

**DR. FRANK KAMUNDE MWONGERA ..... PETITIONER**

**AND**

**AGRICULTURAL DEVELOPMENT CORPORATION ..... 1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The 1<sup>st</sup> respondent's Notice of Motion dated 4<sup>th</sup> March 2024 seeks the following orders:
  - a. That the Honourable Court be pleased to enjoin the Ethics and Anti-Corruption Commission as an Interested Party herein;
  - b. That leave be granted to 1<sup>st</sup> Respondent/Applicant to enjoin Ethics and Anti-Corruption Commission as an Interested Party in the above Petition filed in this Honourable Court;
  - c. That the Proposed Interested Party be granted an opportunity to submit written and oral arguments in the above Petition;
  - d. That the Proposed Interested Party be allowed to submit with leave of court any other information it may deem important and relevant to allow for the just disposition of this matter;
  - e. That the cost and incidental to the application be provided for.
2. The application is premised on the grounds set out on its face and the supporting affidavit of Lillian Kosgei attached thereto. The deponent states that there is need to join the Ethics and Anti-Corruption Commission who have pursuant to its legal and constitutional mandate been conducting investigations on the subject matter herein to the extent that they have placed restrictions on the title. The applicant avers that no party will be occasioned any prejudice by the joinder if effected.



3. The application is opposed. The in petitioner filed his replying affidavit on dated 14/3/2024. He deponed that only the proposed interested party can move the court to have itself joined as an interested party; that the 1<sup>st</sup> respondent lacks legal standing or power to decide on behalf of the EACC; that the petitioner has joined the relevant parties and the 1<sup>st</sup> respondent should not determine which party the petitioner should sue; that perjury has been committed by way of the supporting affidavit and that the application is a mere ruse to delay the just and fair determination of the matter, the petition having been filed in 2021.
4. I have considered the application even though no submissions have been filed in its support by the parties, noting that Order 1 Rule 10(2) under which it is brought also empowers this court to issue orders of joinder suo moto in deserving instances. It states as follows:
  5.
    - “10.
      6. Substitution and addition of parties [Order 1, rule 10]
      7.
        - (1)
          8. 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.
        9.
          - (2)
            10. 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.”
5. The respondent may be right in stating that usually it is the petitioner who should determine who he should sue but in view of the provisions of Order 1 Rule 10(2) the court is empowered to intervene and join the proper parties either suo moto or at the application of a party or parties, and also to strike out parties from proceedings. Joinder or striking out under those provisions depend on whether the parties proposed to be joined or struck out are necessary parties or not. The court may join any person whose presence it deems necessary for the “effectual and complete adjudication and settlement of all questions involved in the suit.” It is the belief of the applicant that the EACC is in a position to offer impartial and expert reports and testimonies in the matter as to whether the suit land is public or private. The reason



for this, states the applicant, is that the EACC has been conducting investigations into the subject matter.

6. The applicant cites the mandate of the EACC pursuant to Article 79 of the *constitution*. It states that the EACC placed restrictions on the suit land during its investigations and that the protection of public utility land is a statutory mandate of the EACC which has the power to uncover illegality or fraud. The respondent has not controverted these averments. I am persuaded that joinder of the Proposed Interested party may be of great benefit for all parties herein and may assist this court in the determination of the issues arising. The application dated 4/3/2024 therefore has merit and it is hereby granted in terms of prayers 2, 3, 4, and 5 thereof.
7. The applicant shall therefore serve the Interested Party copies of all the documents filed in this suit to enable it acquaint itself with the matters at hand and to file relevant papers that may assist the court.
8. The interested party once served shall file the documents it deems necessary and pertinent to this matter and to its legal mandate within 30 days thereof.
9. The costs of the application shall be in the cause. The suit shall be mentioned on 28/6/2024 to confirm compliance and for further directions.

**DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 7<sup>TH</sup> DAY OF MAY 2024.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI**

