



**Republic v Ministry of Sports, Culture and Arts & 2 others; Gregori International (Ex parte Applicant); Ethics and Anti-Corruption Commission (Proposed Interested Party) (Judicial Review Application E172 of 2022) [2025] KEHC 8959 (KLR) (Judicial Review) (23 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8959 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW**

**JUDICIAL REVIEW APPLICATION E172 OF 2022**

**RE ABURILI, J**

**JUNE 23, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**MINISTRY OF SPORTS, CULTURE AND ARTS ..... 1<sup>ST</sup> RESPONDENT**

**PRINCIPAL SECRETARY, STATE DEPARTMENT OF SPORTS**

**DEVELOPMENT ..... 2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**GREGORI INTERNATIONAL ..... EX PARTE APPLICANT**

**AND**

**ETHICS AND ANTI-CORRUPTION COMMISSION .... PROPOSED  
INTERESTED**

**PARTY**

**RULING**

1. Before me for consideration and determination is an application dated 27<sup>th</sup> May 2025 by the Ethics and Anti-Corruption Commission (EACC) seeking two primary orders:
  - a. That it be enjoined as an interested party in these judicial review proceedings; and
  - b. That there be a stay of the ongoing enforcement proceedings, including contempt proceedings, arising from a mandamus order issued by this Court, pending the hearing and determination



of an application to set aside the judgment and partial decree issued in Nairobi HCCC Commercial Case No. E100 of 2020.

2. The brief background to the application as supported by the grounds and affidavit sworn by Arero Abdi Jillo the investigating officer appointed under section 23 of the *Anti-Corruption and Economic Crimes Act* (ACECA) is that the EACC received a report of alleged procurement irregularities at the 1<sup>st</sup> respondent Ministry in the award of tender No. MOSCA /CHAN/002/2017-2028 for design, mobilization, grass removal, irrigation, levelling, soil preparation and fertilization and installation of Bermuda/Pasalum grass and installation of sports equipment in five stadia and 10 training centres in Kenya in preparation for the Africa Nations Championships (CHAN) 2018. That the total contract was for EUROS 8,117.869 equivalent to approximately Kshs 950,000,000 which tender was awarded to the exparte applicant herein Gregori International.
3. That the EACC commenced its independent investigations into the report and established, inter alia, that there were breaches of the procurement law the award of the said tender to the exparte applicant. That there were acts of corruption on the part of public officers involved in the said award of the said tender.
4. Further, that the accounting officer of the Sports Ministry failed to follow the traditional procurement cycle as provided for in the law; that after budget approval, no procurement plan was prepared and approved as required by section 53 of the *Public Procurement and Asset Disposal Act*; that the procurement was not initiated through an approved purchase requisition as required by section 73 of the *Public Procurement and Asset Disposal Act* as read with regulation 22 of the 2006 regulations made under the repealed Act.
5. That direct procurement procedure was not followed as required under section 104 of the PPADA as no tender documents were issued, ad hoc evaluation committee was not in place and approval was not granted by the National treasury.
6. That the direct procurement was done against the advice of the Public Procurement Regulatory Authority and the said procurement was not reported to the Authority within 14 days as required under regulation 62 (3) of the 2006 Regulations.
7. That the bidder provided the financial offer of the contract sum stated above without the Ministry carrying out any negotiations contrary to section 104 of the Act and regulation 62 (4) &(5).
8. That there were no Bills of quantities, blank tender document, detailed specifications, designs and drawings for the tender developed by the user department and that instead, the bidder is the one who provided own specifications, designs and drawing.
9. That no tender documents were prepared, no bid bond provided, no ad hoc evaluation committee was appointed and no professional opinion was rendered on the procurement process.
10. That the principal Secretary for Sports then, ignored the advise and comments by the Attorney general on the contract between the Ministry and the exparte applicant herein.
11. That there were no detailed cost estimates from the engineers from state Department of Public Works or a market survey for the said tender to establish the bills of the items procured.
12. That no due diligence on legal, financial and technical capacity of the contractor to deliver was done, for instance, the company was issued with certificate of registration/ compliance at the Business Registration Services on 31<sup>st</sup> October 2017 while the Ministry entered into a contract with the company on 31<sup>st</sup> September, 2017, way before it's purported registration in Kenya.



13. That the contract was skewed and unfair towards the Ministry as the advance payment was pegged on the signing of the contract yet the payment schedule did not specify the deliverables or certified works on the side of the contractor. That the advance payment guarantee did not cover the period of the contract and was pegged at 1% of the contract.
14. That the Secretary for Works reported that the Ministry was never supplied with tender documents, specifications, Bills of quantities and annexures to the contract for purposes of project management.
15. The exparte applicant company was never registered with the National Construction Authority as required under section 15 of the [National Construction Authority Act, 2011](#).
16. That the initial contract signed on 14<sup>th</sup> September, 2017 was varied on 18<sup>th</sup> January 2018 in complete disregard of section 139 of the PPADA.
17. That there was no project implementation committee in place nor inspection and acceptance committee as required under the law.
18. That the Ministry did not involve the officials of the Ministry of Public Works in the procurement, inspection, supervision or valuation of the said works.
19. EACC the applicant has annexed a bundle of documents gathered in support of the investigations and asserts that arising from the identified legal breaches, it reasonably believes that there was loss of public funds because payment was not based on the value of the work done noting that no inspection was done for the alleged works carried out by the contractor hence the value for money could no be guaranteed.
20. Further, the evidence needed for setting aside the judgment in the Commercial Court could not be reasonably secured and furnished by the Attorney General and the Ministry of Public Works as the same arose from an investigation.
21. That the EACC has good grounds for setting aside of the partial judgment entered by the Commercial Division of the High Court hence this court should stay these proceedings which are at the contempt stage to enable the EACC prosecute the application before the Commercial Court, which latter proceedings have a direct bearing on this case and the orders made.
22. That no prejudice will be occasioned to the exparte applicant since it will have an opportunity to be heard in the Commercial Case and that the matter involves fraudulent acquisition of public funds.
23. That the application has been brought timeously after the applicant EACC completed its investigations.
24. According to EACC, the Ministry of Sports overpaid the exparte applicant Euros 1,950,763.35 which it will be seeking to recover upon successfully applying to set aside the judgment and that those involved in the alleged illegal procurement process be brought to account, among other recommendations, following the investigations revelations.
25. In the oral submissions, the EACC Counsel reiterated the depositions in the affidavit of the investigator as reproduced above.
26. The Attorney General does not oppose the prayers sought by the EACC.
27. The exparte applicant opposes the application by EACC and filed grounds of opposition dated 28<sup>th</sup> May 2025 contending that the application is incompetent, misconceived and devoid of any merit in the view of its own contents together with the supporting affidavit; that the application is an a grave of



abuse of due process of this court and is due for dismissal; that the orders sought are untenable and are based on misconception of the law and fact; that the orders sought are unsustainable and unavailable ; that the application is an abuse of court process and contrary to public policy and amounts to trifling the court.

### **Oral submissions**

28. The application was argued orally. In the oral submissions by counsel for the exparte applicant, it was contended in opposition that EACC is not a necessary party and that the investigation report proposes to take action against Engineer John. That the proceedings in HCCOM E100 of 2020 were determined in 2022 and that EACC had not shown any interest or stake in the matter. That the application seeks to scuttle the exparte applicant's fruits of its judgment lawfully obtained. The exparte applicant urged the court to dismiss the application with costs.
29. In a rejoinder, the EACC maintained that it has a stake and that it has a duty to recover public funds. That it had been investigating and given time, it will demonstrate that public funds were lost.

### **Analysis and determination**

30. I have considered the application for joinder and stay of these proceedings which are at advanced stage. Mandamus order was issued by this court and what was pending hearing and determination was the contempt of court application against the accounting officer of the Ministry of Sports.
31. These proceedings arose from HCCOM E100 of 2020 where the exparte applicant sued the Ministry of Sports and the Attorney General for recovery of the contract sum as described in the affidavit sworn by EACC investigator and reproduced above.
32. The ex parte applicant obtained a judgment on admission in the commercial division of the High Court, and a partial decree for a substantial sum running into hundreds of millions was issued following the ruling of 30<sup>th</sup> June, 2022 by Majanja J, (RIP) in favour of the exparte applicant herein Gregori International, in the sum of Euros 2,232,500.
33. the applicant then approached this court by way of chamber summons dated 21<sup>st</sup> November, 2022 upon which leave to apply was granted on 23<sup>rd</sup> January, 2023 and the substantive motion was filed and heard and determined vide judgment rendered on 18<sup>th</sup> July 2023 compelling the respondents to settle the partial decree dated 30<sup>th</sup> June 2022 issued by the commercial court Division of the High Court on 18<sup>th</sup> August 2022. certificate of order against the government was issued on 7<sup>th</sup> October, 2022.
34. This Court (Ngaah J) subsequently granted an order of mandamus compelling the 1st Respondent, as the government's accounting officer, to settle the decree. That mandamus decree remains unexecuted, and contempt proceedings are pending.
35. The EACC now contends that following investigations, it has reason to believe that the said claim may have been fully or substantially settled, and that the ex parte applicant may be seeking double payment. It further alleges that there was overpayment and that the procurement process was laced with illegalities and that there may have been collusion in the process of admitting the claim that formed the basis of the commercial court judgment. EACC has filed an application in the commercial court seeking to set aside the judgment and decree, and prays that it be enjoined to these proceedings and that this Court stay the enforcement proceedings herein, pending the outcome of that application.
36. The ex parte applicant opposes the application. It argues that the decree is valid and binding; that mandamus was lawfully granted; and that the EACC's application is both misplaced and designed to delay the enforcement of lawful court orders.



37. The respondents do not oppose the application for joinder and stay of enforcement proceedings by way of contempt of court.

### Issues for Determination

38. The key issues for determination are:
- a. Whether the EACC should be enjoined as an interested party; and
  - b. Whether enforcement of the mandamus order should be stayed pending the outcome of the set-aside application in the commercial Division of this Court.
39. On Joinder of the EACC as an interested party, the EACC is established under Article 79 of *the Constitution* and the *Ethics and Anti-Corruption Commission Act*, and is mandated to investigate corruption, unethical conduct and protect public funds.
40. The threshold for joinder is well articulated in the case of Communications Commission of Kenya and 4 others Vs Royal Media Services Limited and & others Petition NO. 15 of (2024) eKLR where the Supreme Court relying on its earlier decision in the Mumo Matemu case which defined an interested party as follows:
- “An interested party is one who has a stake in the proceedings though he or she was not a 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 interests will not be well articulated unless himself or she herself appears in the proceedings and champions his or her cause.”
41. Similarly, in the case of Meme v Republic (2004) EA 124 it was held that a party could be enjoined in a matter for the reasons that:
- i. Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings.
  - ii. Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law.
  - iii. Joinder to prevent a likely course of proliferation of litigation.
42. In Francis Kariuki Muruatetu & Another v Republic & 5 Others [2016] eKLR, the Supreme Court held that an interested party must demonstrate a stake or identifiable legal interest in the matter.
43. Rule 2 of *the Constitution* of Kenya (Protection of rights and fundamental freedoms) Practice and Procedure rules 2013 defines an interested party as :
- Interested party means 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.
44. EACC has deposed an affidavit by its investigator to the effect that it has investigated the circumstances surrounding the procurement contract which is the subject of the proceedings herein and established that public funds were lost and that it seeks to recover the same while holding those involved in the allegedly illegal procurement to account. The investigations re[port is filed here in court. The EACC has also embarked on the process of applying to set aside the judgment which gave rise to these proceedings for mandamus by the exparte applicant contractor/bidder.



45. EACC opines that no prejudice will be occasioned if it is enjoined to these proceedings and the proceedings be stayed until the Commercial Court application is prosecuted.
46. In my humble view, EACC has demonstrated that it has a direct and legitimate interest in these proceedings. Its investigations touch on the legitimacy, legality and integrity of the judgment whose enforcement is being pursued before this Court. It would therefore be just and appropriate to grant the joinder. The EACC is properly suited to be enjoined as an interested party in the limited scope of monitoring and participating in these proceedings to protect public interest and report on the legality of public expenditure.
47. On the prayer for stay of these proceedings, the ex parte applicant is seeking to enforce an order of mandamus, already issued by this Court, which compels the settlement of a court decree. Under ordinary circumstances, such an order which is not appealed against is final, binding and must be executed in accordance with the *Government Proceedings Act*.
48. However, the Court also recognizes that new and credible allegations of fraud, duplicity, or collusion, particularly where public funds are at stake, may justify a temporary stay of enforcement, in the public interest. If true, enforcing the decree without determining the legality of the payment would occasion substantial loss to public funds, contrary to the principles of accountability and integrity under Articles 10, 201, and 232 of *the Constitution*.
49. The EACC has placed before this Court sworn statements and preliminary material suggesting that the underlying claim may have been settled previously through an overpayment and that the judgment on admission may have been irregularly obtained. It has also demonstrated that it has taken active steps to challenge that judgment before the commercial division of the High Court.
50. While this Court will not usurp the jurisdiction of the commercial court in determining the validity of that judgment, it must weigh the public interest, particularly the need to safeguard public resources, against the finality of court orders which are under challenge before they are fully enforced.
51. This Court cannot ignore serious allegations of fraud or duplicity in financial claims against the State, particularly where there is an ongoing attempt to set aside the foundational judgment.
52. The balance of convenience and public interest lies in avoiding illegal or duplicated payments. I am therefore persuaded that this is an exceptional case where a limited stay is warranted, not to nullify the mandamus order, but to allow the commercial court a reasonable opportunity to interrogate and determine the integrity of the judgment and decree which form the foundation of these proceedings.
53. I further find that there is no irreparable prejudice to the ex parte applicant as it will be actively involved in the Commercial Court defending the application to set aside the judgment on admission, subject of the partial decree which is before this court for enforcement and should the application by EACC be dismissed, the ex parte applicant will still be welcome to this court to continue with the enforcement of the mandamus decree.
54. Accordingly, I allow the application dated 27<sup>th</sup> May 2025 and order as follows:
  - a. The application dated 27<sup>th</sup> May, 2025 by the Ethics and Anti-Corruption Commission (EACC) for joinder as an interested party to these proceedings is hereby allowed.
  - b. There is hereby granted a stay of further enforcement proceedings, including contempt, in these judicial review proceedings for a period of 90 days from the date hereof, to allow the commercial division of the High Court to determine the EACC's application for setting aside the judgment and partial decree.



- c. The EACC shall file a status update after 90 days, indicating the progress of the said application in the Commercial Court..
- d. The matter shall be mentioned on the 29<sup>th</sup> September, 2025 for to report on the status of the Commercial case HCCOM E100 of 2020.
- e. I make no orders as to costs.

55. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23<sup>RD</sup> DAY OF JUNE 2025**

**R.E. ABURILI**

**JUDGE**

