



Ethics and Anti-Corruption Commission v Hartland Enterprises Limited & 4 others; Homabay County Assembly Service Board (Intended Interested Party) (Anti-Corruption and Economic Crimes Civil Suit E030 of 2022) [2024] KEHC 12560 (KLR) (Anti-Corruption and Economic Crimes) (17 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12560 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
ANTI-CORRUPTION AND ECONOMIC CRIMES CIVIL SUIT E030 OF 2022
EN MAINA, J
OCTOBER 17, 2024**

BETWEEN

ETHICS AND ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

HARTLAND ENTERPRISES LIMITED 1ST DEFENDANT

JAMES MUMALI OYUKAH 2ND DEFENDANT

MARY PAULINE ODUOR 3RD DEFENDANT

FAITH ADHIAMBO APUKO 4TH DEFENDANT

PATRICK TONUI 5TH DEFENDANT

AND

**HOMABAY COUNTY ASSEMBLY SERVICE BOARD INTENDED
INTERESTED PARTY**

RULING

1. The application before me is the Plaintiff's Notice of Motion dated 12th July 2024 which seeks the leave of this court to file and serve a supplementary list and bundle of documents.
2. The gravamen of the application as can be discerned from the grounds on its face thereof and in the supporting affidavit is that during the hearing the Plaintiff's advocate noted that the Plaintiff inadvertently omitted critical appendices to a report it intends to produce as an exhibit; that the omission most likely occurred during the compilation of the Plaintiff's bundle of documents; that the



appendices were referenced in the body of the report but were unfortunately omitted and that the inadvertent error on the part of the advocates ought not to be visited on the Plaintiff. Further that allowing the inclusion of the Appendices will aid in the just determination of this case and further that no prejudice shall be occasioned to the Defendants as they will have an opportunity to controvert that evidence whereas rejection of the application will prejudice the Plaintiff as it shall not be able to discharge its mandate under the [Anti-Corruption and Economic Crimes Act](#) and the [Ethics and Anti-Corruption Commission Act](#).

3. The 2nd Defendant opposed the application through a replying affidavit sworn by himself on 23rd September 2024 while the 5th Defendant filed Grounds of Opposition dated 12th September 2024. What runs through the Defendants' pleadings is that this application is res judicata as this court had earlier pronounced itself on a similar application made orally by Learned Counsel for the Plaintiff. The Defendants also argue that this application is unprocedural as it seeks to introduce new documents after close of pleadings whereas the Plaintiff had ample opportunity to include the documents at the time of filing the Plaint; that the Plaintiff has not explained why it did not include the appendices; that it is obvious the same were deliberately separated from the report or else they were prepared long after the case had started. It is also argued that allowing the application will prejudice the Defendants as they have already prepared their defence based on the documents that were originally filed and introducing new evidence at this stage would unfairly burden the Defendants and would violate the principles of natural justice.
4. Lastly, the Defendants argue that the Plaintiff is guilty of undue delay in bringing the application; that the same is frivolous, vexatious and an abuse of the court process as the Plaintiff deliberately kept the appendices away from the court and the parties in order to steal a march on the Defendants.

Analysis and Determination

5. Parties canvassed the application by way of written submissions. I have considered the application, the grounds thereof, the affidavits in support and in reply the grounds of opposition, the rival submissions, the cases cited therein and the law. The only issue that bears determination is whether or not this court ought to allow the introduction of the impugned appendices at this stage of the case.
6. Whether or not to allow additional evidence is in the discretion of the court. It is the Plaintiff's contention that granting the application shall be in exercise of this court's discretion under Section 95 of the [Civil Procedure Act](#), Order 50 Rule 5 of the [Civil Procedure Rules](#) and Section 59 of the [Interpretation and General Provisions Act](#) which all stipulate that where the time for doing something is prescribed the court can extend the time. While this court appreciates that its discretion to extend time is unfettered, it is also alive to the principle that it must, under all circumstances, exercise its discretion judicially.
7. It is instructive that Learned Counsel for the Plaintiff first made this application orally in court on 24th June 2024 after Mr. Ayieko, Learned Counsel, for the 1st, 2nd and 3rd Defendants canvassed an application dated 21st June 2024, which sought to strike out the same evidence for being filed without the leave of this court. In his submissions at that time, Mr. Mwongela, Learned Counsel for the Plaintiff/Applicant, indicated that the documents were already on record but were scattered. He contended that they were not new documents and filing them was just for good order as they would now be together with the Report. After considering the application by the 1st, 2nd and 3rd Defendants and submissions of all Counsel this court came to the conclusion that the documents were not properly on record and struck them out.



8. My finding in that application, was informed by two reasons; firstly, that the documents could not remain on record as they were filed out of time without leave. Secondly because Mr. Mwangela himself told this court that the documents were already on record and the reason they had filed a new document was just to place them and the report together for good order. I do not see what has now changed. Mr. Mwangela seems to be approbating and reprobating and this is impermissible. Either the appendices were already on the record or they were not. It cannot be both. Moreover, this court having dealt with the application in its ruling delivered on 24th June 2024 it cannot revisit the issue. In the premises, it is my finding that the application dated 12th July 2024 has no merit. The same is dismissed. However, the costs thereof shall be in the cause.

SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 17TH DAY OF OCTOBER, 2024.

E. N. MAINA

JUDGE

