



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND ADMIRALTY DIVISION

CIVIL SUIT NO. 224 OF 2017

AERO DISPENSER VALVES LIMITED.....PLAINTIFF

VERSUS

KENYA PIPELINE COMPANY.....DEFENDANT

ETHICS & ANTI-CORRUPTION

COMMISSION.....INTENDED INTERESTED PARTY/APPLICANT

RULING

1. This matter was coming up for a Ruling in respect of a Notice of Motion dated 8<sup>th</sup> February, 2021 filed by EACC. In the said application EACC is seeking orders, *inter alia*, to be enjoined in these proceedings as an Interested Party and stay of the proceedings herein pending the hearing and determination of its application dated 13<sup>th</sup> August, 2020 filed in *ACEC No. 8 of 2020 EACC v Charles Ndiritu Maitai & 13 others*.

2. However, the court has since learnt that on 26<sup>th</sup> May, 2021, Hon. Mumbi Ngugi, J (as she then was) delivered a Ruling in *ACEC No. 8 of 2020 EACC v Charles Ndiritu Maitai & 13 others* which means that EACC's prayer for stay of proceedings as sought in the application filed herein is already spent. Notably, the learned judge found EACC's prayer for consolidation of the ACEC Suit and the instant suit to be merited but could not make an order to that effect because the Defendant herein is not a party in the ACEC Suit. The learned judge ordered that the file for *ACEC No. 8 of 2020 EACC v Charles Ndiritu Maitai & 13 others* be transferred to this court for directions regarding consolidation, and any other directions it deems fit as to the hearing and determination of the two matters.

3. I also align myself with the learned judge's finding that the validity of the contract arising out of the procurement process that led to the award of the subject contract to the Plaintiff should be addressed first before determining the contractual issues raised by the Plaintiff in the instant suit to avoid any injustice that may be occasioned to the taxpayer.

4. Accordingly, and in the interest of justice, I make the following orders:

a. I direct that *ACEC No. 8 of 2020 EACC v Charles Ndiritu Maitai & 13 others* be transferred back to the Anti-Corruption Division and Economic Crimes Divisions for hearing and determination.

b. In the meantime, there shall be a stay of proceedings in the instant suit initially for a period of six (6) months.

c. This matter shall be mentioned after the said six (6) to confirm the progress of *ACEC No. 8 of 2020 EACC v Charles Ndiritu Maitai & 13 others* and/or for further orders and directions.

d. Each Party shall bear its own costs of this application.

DATED AND DELIVERED AT NAIROBI THIS 15<sup>TH</sup> JULY, 2021.

G.W.NGENYE-MACHARIA

**JUDGE**

**In the presence of:**

1. *Mrs. Litoro for the Intended Interested Party/Applicant.*
2. *Ms Rita Joyce h/b for Ahmed Nasir and Odhiambo for the Plaintiff/Respondent.*
3. *Mr. Mogire for the Defendant/Respondent.*