



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION

PETITION NO 23 OF 2018

IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF ARTICLES 1, 2, 10, 22, 23, 24, 28, 29, 50, 157 (11) AND 236

OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF THE LEGALITY AND PROPRIETY OF THE CHARGES AGAINST PETER NG'ANG'A MBURU, CAROLINE NABALAYO KITUYI AND GLADYS MWIKALI MUYANGA VIA ACC. NO 33 OF 2018, CHIEF MAGISTRATE AT MILIMANI

BETWEEN

PETER NG'ANG'A MBURU.....1ST PETITIONER

CAROLINE NABALAYO KITUYI.....2ND PETITIONER

GLADYS MWIKALI MUYANGA.....3RD PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

ETHICS & ANTI CORRUPTION COMMISSION.....INTENDED INTERESTED PARTY

RULING

1. The Ethics and Anti corruption Commission has filed an application dated 8th October 2018 under Article 22 of Constitution, section 3A of the Civil Procure Act, Order 1 Rule 10(2) Civil Procedure Rules. It seeks leave to join these proceedings as an interested party or any other capacity the court may deem fit. It also seeks to have all the pleadings served on it by the Petitioner herein.
2. The application is supported by the grounds on its face and the affidavit of Regina Jemutai. She avers that this matter is of interest to the EACC since it's the one that investigated the case, and filed its report with the DPP under section 33 ACECA.
3. She has referred to some of the reliefs sought by the petitioners namely prayers c, d & e touching directly on the Applicant which is the investigating agency in relation to the Anti-corruption case, the Petitioners are charged with.
4. She reiterates that the Applicant has the mandate to combat and prevent corruption and economic crimes in Kenya through law enforcement and to promote standards and practices of integrity and ethics. This Mandate is anchored in the Ethics and Anti-Corruption and Economic Crimes Act (EACC) No 3 of 2011.
5. That in exercise of this mandate they investigated the matter in which the Petitioners among others have been charged vide Chief Magistrate's Court Milimani ACC No 33 of 2018 **R V Mohammed Abdalla Swazuri & Others.**

6. In her submissions M/s Jemutai reiterated what is contained in her affidavit. She averred that the Petitioners had deliberately left the EACC despite making serious allegations against it. She contended that the prayers sought are meant to stop investigations and the case before the Anti Corruption Court.

7. The DPP (Respondent) fully supported the application. Mrs Obuo submitted that the first declaration and declaration (d) involve the Applicant which investigated the matter. She argued that the decision to prosecute is based on the sufficiency of the evidence. This must be considered by the court she said.

8. She was of the view that EACC being an independent body cannot be represented by the DPP in this matter and it was mischievous of the Petitioners to have left out EACC.

9. Mr Ng'ang'a acting alongside Mr Okubasu for the Petitioners opposed the application arguing that none of the prayers sought touched on the Applicant. That their grievance was not on how the investigations were carried out but the decisions made by the DPP under Article 157(10) and (11).

10. He stressed that the Petitioners were not asking the court to evaluate the evidence and its merits. He argued that any matters which the Applicant may have can be articulated by the DPP who should have filed a replying affidavit.

11. I have considered the application by the EACC, and the submissions by all counsel. There is no dispute that the matter whose charges the Petitioners seeks to have quashed is an anti corruption case which was investigated by the Applicant. Can the Applicant be said to have an interest in it despite not having made the decisions to charge? Who then is an interested party? The Blacks Law Dictionary 10th Edition at pg 1299 defines an interested party as:

“ A party who has a recognizable stake (and therefore standing) in a matter.

12. The supreme Court of Kenya in the case of **Trusted Society of Human Rights v Mumo Matemo & 5 others [2014] eKLR** stated the following in defining who an interested party is:

“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 he himself or she herself appears in the proceedings and champions his or her cause.”

13. Going by the definition cited above plus the definition given by the highest court in this land, the EACC has a stake in this matter having investigated the same. If the orders sought by the Petitioners are granted it will result in the halting of the proceedings against the Petitioners and others in the Magistrates' Anti Corruption Court.

14. Having investigated the case/cases that led to their being charged, the Petitioners cannot be heard to say the EACC should not be enjoined claiming they have no grievance against it. They have not shown that the investigation was initiated by the DPP, who ended up making decisions under Article 157(10) & (11) of the Constitution.

15. I find that the Applicant meets the criteria set out in the Supreme Court case of **Trusted Society of Human Rights** (supra) and its involvement in this suit will enable this court to effectually adjudicate upon this Petition.

16. I therefore allow the application dated 8th October 2018 and make the following orders:-

- a. Leave is granted to the EACC which is hereby enjoined as an interested party in this Petition.
- b. The Petitioners to serve the EACC with all the pleadings and submissions filed herein within the next 3 days.
- c. The EACC to file and serve its response and submissions within 7 days upon service.
- d. The Petitioners will have corresponding leave to file and serve a further affidavit (if need be) within 3 days of service.
- e. Parties to agree on a date for highlighting of submissions after 14 days.

Orders accordingly.

Dated, signed and delivered this 11th day of October 2018 in open court at Nairobi.

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HEDWIG I. ONG'UDI

JUDGE