



Matete v Technical University of Kenya; Ethics and Anti-Corruption Commission (Interested Party) (Cause E901 of 2024) [2025] KEELRC 2502 (KLR) (19 September 2025) (Ruling)

Neutral citation: [2025] KEELRC 2502 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E901 OF 2024
SC RUTTO, J
SEPTEMBER 19, 2025**

BETWEEN

STEPHEN MATETE CLAIMANT

AND

TECHNICAL UNIVERSITY OF KENYA RESPONDENT

AND

ETHICS AND ANTI-CORRUPTION COMMISSION INTERESTED PARTY

RULING

1. What comes up for determination is the Claimant/Applicant's Notice of Motion dated 14th April 2025, in which he seeks the following orders;
 1. Spent.
 2. That this Honourable Court be pleased to enjoin the Ethics and Anti-Corruption Commission as an interested party in this claim.
 3. Spent.
 4. That pending hearing and determination of this claim T. Loomu and A. Hussein or employees or agents of the Ethics and Anti-Corruption Commission, be restrained from interviewing, writing a statement from the Claimant/Applicant in respect of a NTSC the subject of this claim for allegedly working for two public institutions.
 5. That costs of this Application be provided for.
2. The Application is premised on the grounds on the face thereof and the Supporting Affidavit of Stephen Matete, the Claimant/Applicant herein. In support of the Motion, the Claimant avers that he is working as an Assistant Lecturer at the Respondent university. That the Respondent unlawfully



issued him with a Notice to Show Cause dated 15th October 2025 (sic) alleging that he is employed by two public institutions, namely, the Respondent and the Ministry of Lands, Public Works, Housing and Urban Development.

3. The Claimant further avers that on about 7th April, 2025, officers from the proposed Interested Party summoned him for an interview and writing of a statement on issues that are competently before this Court for hearing and determination.
4. According to the Claimant, it is premature, unfair and unlawful for the proposed Interested Party to interview and record a statement on matters that are pending hearing and determination in this court.
5. The Respondent and intended Interested Party did not respond to the Application.

Submissions

6. In support of the Application, the Claimant submitted that he has demonstrated that the matters raised by the proposed Interested Party through the summons dated 7th April 2025, are directly related to an employment dispute already pending before this Honourable Court.
7. It is the Claimant's position that the parallel investigations by the proposed Interested Party on the same facts risk prejudicing the ongoing employment proceedings. It is the Claimant's view that this offends the principle of non-interference with active court matters and his right to a fair hearing under Article 50(1) of *the Constitution*.
8. According to the Claimant, it is premature, unfair and unlawful for the proposed Interested Party to interview and record a statement on matters that are pending for hearing and determination in this Honourable Court.
9. The Claimant has further submitted that the proposed Interested Party's role in summoning him for interrogation over the same subject matter that is before this court gives him a legal and factual stake to enjoin it as an interested party.
10. It was his further submission that he has met all the elements that are required for this Honourable court to grant injunctive orders.

Analysis and Determination

11. Having considered the Notice of Motion herein, the grounds in support thereof Court as well as the Claimant's submissions, it is apparent that the issues falling for determination are twofold:
 - a. Whether the Claimant has satisfied the threshold for grant of an interlocutory injunction; and
 - b. Whether the proposed Interested Party ought to be joined in these proceedings.

Whether the Claimant has satisfied the threshold for grant of an interlocutory injunction

12. Through the instant Motion, the Claimant herein seeks an order to restrain the officers of the proposed Interested Party (Ethics and Anti-Corruption Commission) from interviewing or recording statements from him with respect to the allegations that he is an employee of two public institutions pending hearing and determination of the suit herein.
13. The key principles that guide the Court in considering whether to grant an interlocutory injunction are now well settled. In the landmark case of *Giella v Cassman Brown & Co Ltd* (1973) E.A, the



Court established the three-part test to be considered when deciding whether to grant an interlocutory injunction as follows:

“Firstly, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”

14. These fundamental principles must be satisfied in a sequential manner. As such, the applicant must establish a prima facie case and demonstrate that if the orders are denied, he will suffer irreparable injury. Further, and in case of doubt, the issue in contention ought to be decided on the scale of a balance of convenience.
15. Applying the above principles to the case herein, the pertinent question that ought to be determined at the outset is whether the Claimant herein has established a prima facie case with a probability of success.
16. A prima facie case was defined by the Court of Appeal in the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR, as follows: -

“So, what is a “prima facie case” I would say that in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the Applicant’s case upon trial. That is clearly a standard, which is higher than an arguable case.”
17. In essence, the applicant is required to show that his right has been violated or is threatened with violation by the opposite party, in which case, the burden would shift to the opposite party to explain or rebut the applicant’s claim.
18. In the present case, the Claimant has contended that the Ethics and Anti-Corruption Commission (EACC) served him with summons for an interview and writing of a statement on issues that are competently before this Court for hearing and determination.
19. In support of his assertion, the Claimant annexed to his affidavit a copy of a letter from the EACC dated 7th April 2025, in which he was asked to appear for an interview and recording of his statement with respect to the allegations of double employment.
20. A cursory look at the Statement of Claim reveals that the Claimant has sought to challenge the disciplinary proceedings commenced against him by the Respondent on the basis that the reasons for the said action are not provided for under his terms of service. Therefore, the Claimant’s claim before Court revolves around his contract of service with the Respondent vis a vis Sections 41,43 and 45 of the *Employment Act*. Fundamentally, it is a pure employment dispute challenging the basis of the disciplinary process initiated by the Respondent against the Claimant.
21. On the other hand, it is apparent that in summoning the Claimant for interview and statement recording, the EACC is undertaking its constitutional and statutory mandate with respect to investigations of violations of ethical conduct by public officers.



22. In view of the foregoing, the Court is of the respectful view that the proceedings herein and the investigation process by the EACC, albeit arising from the set of facts and circumstances, are distinct.
23. What's more, the Claimant has not demonstrated before this Court the manner in which the investigations by the EACC may interfere with the proceedings herein or compromise the integrity of the proceedings herein.
24. In any event, there has been no finding or determination by the EACC on the matter under investigation that would be deemed to amount to an interference with the proceedings herein.
25. Flowing from the foregoing, the Court is not persuaded that the Claimant has disclosed a right that is threatened with violation, thus necessitating the Court's intervention by way of restraining the EACC from interviewing and recording a statement from him with respect to the allegation that he is employed by two public institutions.
26. Further, the Claimant has not demonstrated that he will suffer irreparable damage should the Court decline to grant the orders sought.
27. Needless to say, the Court is not persuaded that the Claimant has satisfied the threshold for grant of an interlocutory injunction.

Whether the proposed Interested Party should be joined in the proceedings

28. On this issue, the Claimant has submitted that the EACC's role in summoning him for interrogation on the same subject matter that is before this court gives him a legal and factual stake to enjoin it as an interested party.
29. The Black's Law Dictionary (9th Edition p. 1232) defines an interested party as a party who has a recognizable stake (and therefore standing) in the matter.
30. Order 1 Rule 10(2) of the Civil Procedure Rules grants the court the discretion to remove an improperly joined party or add a necessary or proper party to a suit at any stage of the proceedings.
31. In addition, Rule 7 of *the Constitution* of Kenya (Protection of Rights & Fundamental Freedoms) Practice & Procedure Rules 2013 provides that an interested party can apply to be enjoined or the Court can move suo moto and enjoin a party to proceedings before it. Rule 2 thereof defines an interested party as 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.
32. In the case of *Communications Commission of Kenya & 4 others v Royal Media Services Limited & 7 Others* [2014] eKLR, the Court held as follows;

“In determining whether the applicant should be admitted into these proceedings as an Interested Party we are guided by this Court's Ruling in the *Mumo Matemo* case where the Court (at paragraphs 14 and 18) held: An interested party is one who has a stake in the proceedings, though he or she was not 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 interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause...”



33. In the case herein, the Claimant has posited that the basis for seeking to enjoin the EACC as an interested party is that it has a stake in these proceedings as they have summoned him over the same subject matter before Court.
34. As the Court has found herein, the EACC in summoning the Claimant for an interview and statement recording is exercising its constitutional and statutory mandate. The Court has further found that the proceedings herein and the investigations by the EACC are distinct processes. Therefore, on the face of it, the Claimant has not demonstrated that the EACC has an identifiable stake in the proceedings before this Court as to be joined as an interested party.

Orders

35. In the end, the Court declines to grant the orders sought in the Application dated 14th April 2025. Consequently, the Application is dismissed with an order that costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF SEPTEMBER 2025.

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STELLA RUTTO

JUDGE

In the presence of

For the Claimant/Applicant No appearance

For the Respondent No appearance

For the proposed Interested Party No appearance

Millicent Court Assistant

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

