



Ethics and Anti-Corruption Commission v Ogoda & another t/a Source Enterprise Company & 8 others (Civil Suit E026 of 2024) [2025] KEHC 17020 (KLR) (Anti-Corruption and Economic Crimes) (19 November 2025) (Ruling)

Neutral citation: [2025] KEHC 17020 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
CIVIL SUIT E026 OF 2024
LM NJUGUNA, J
NOVEMBER 19, 2025**

BETWEEN

ETHICS AND ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

SILVAN ONYANGO OGODA & PAMELA ACHOLA MUDHA T/A SOURCE ENTERPRISE COMPANY 1ST DEFENDANT

MAURICE ODHIAMBO ORONGO T/A KOMALA CONSTRUCTION 2ND DEFENDANT

NYANGINJA ENTERPRISE COMPANY 3RD DEFENDANT

ACCURATE CONSTRUCTIONS COMPANY 4TH DEFENDANT

FERDINAND MASHA 5TH DEFENDANT

JECINTA OKOTH OPONDI 6TH DEFENDANT

PAMELA ACHOLA MUDHA 7TH DEFENDANT

SILVAN ONYANGO OGODA 8TH DEFENDANT

ELIZABETH ONGORO 9TH DEFENDANT

RULING

1. The applicant herein has moved this court by way of an application dated the 8th July, 2025 brought under Order 1 Rules 10(2), (4), 14 and 25 of the Civil Procedure Rules and Sections 1A, 1B and 3A of the *Civil Procedure Act*. The application is premised on the grounds set out on the body of the same, and it is supported by the annexed affidavit sworn by Elizabeth Ongoro.



2. Through the application, the applicant has sought for the following Orders;
 1. Spent.
 2. That constituency Development Fund Board, the National Government Constituency Development Fund Board, Ruth Kitonyi, Mwalimu Mrafi and Washington Gimona be added as Defendants to these proceedings as the court may direct.
 3. That the Honourable court does make any orders that it deems fit and just to grant.
 4. That the costs of this application be provided for.
3. The applicant was the Member of Parliament, Kasarani Constituency between January, 2008 and August, 2013. She states that though it has been claimed that she misappropriated public funds disbursed under the Constituency Development fund, parties who were crucial during administration of the said fund have not been enjoined in the suit.
4. It is her contention that their joinder is necessary in this case due to their role in the administration and oversight of the fund since, the fund manager is the representative of the regulator at the Constituency level while the A.I.E holder is a mandatory signatory and therefore, their presence in the suit is crucial.
5. She avers that the said parties should be joined to these proceedings to ensure efficient adjudication of the issues in this matter and bring the matter to finality.
6. The application is opposed by the Plaintiff/respondent vide a replying affidavit sworn by Nancy Chepchieng who is an investigator with the Plaintiff. She avers that the intended parties are not necessary as one Washington Gimona is currently seeking medical attention in the U.S.A, and is the Commission's witness in both Civil and Criminal cases and if he is joined as a Defendant, it will prejudice the Commission's case.
7. She states that since the suit was instituted by the plaintiff, it is the Plaintiff to choose which party to sue or add, and not the defendant, and that right ought to be respected. Reliance was placed on the case of Joseph Leboo & 2 Others Vs Director of Forest Services & Another (2013) eKLR.
8. She avers that the plaintiff has no reasonable cause of action and relief against the proposed defendant and that the ultimate Decree can be enforced without the presence of the proposed defendants since the 1st to 9th defendants benefitted from the loss of public funds in this matter. Further, that the 9th defendant has not demonstrated how he will suffer prejudice if the proposed defendants are not joined in the suit.
9. The application was disposed of by way of written submissions.

Applicant's Submissions

10. The applicant submits that it shall be prudent to know from the Constituency Development Fund Board and its successor and the National Government Constituency Development Fund Board exactly how much was disbursed, when it was disbursed and for what purpose. That it is also prudent to know whether there was impropriety as far as they are concerned since the matter still forms the subject in criminal proceedings and it was as a direct result of the said allegations the 9th defendant was charged in Criminal Case Number 29 of 2019 which case is still pending.
11. The applicant further submits that she was initially charged alongside Mwalimu Mrafi, a fund manager and Ruth Kitonyi, the then Authority to Incur Expense (A.I.E) holder who were crucial in the administration of the fund. That the said Mwalimu Mrafi and Ruth Kitonyi were subsequently



discharged from the criminal proceedings whereas Ruth Kitonyi is a witness in the case. The applicant made reference to Section 2 of the Constituency Development Fund Act, 2003 and Section 23 of the same Act which is on composition of the Constituency Development Fund Committee.

Plaintiff/Respondent's Submissions

12. The respondent relied on Order 1 Rule 10(2) of the Civil Procedure Rules which is on joinder of parties and on the case of Joseph Leboo Vs Director of Forest Services & Another (2023) eKLR and that of Emfil Limited vs Attorney General & 423 others; Maluti & 6 others (proposed defendant) (Environment & Land case 113 of 2015 (2024) KEELC 1274 (KLR).
13. The respondent submitted that the suit is by the Commission and it is the Commission to choose which party to sue or add and the same ought to be respected. Further, that if the applicants are enjoined the Commission's case will be prejudiced and public funds will not be recovered.
14. That the 9th defendant has failed to demonstrate how the presence of the said parties is necessary to enable the court to effectively and completely adjudicate upon and settle all the questions involved in the suit.

Analysis and Determination

15. The court has considered the application together with all the materials that has been placed before it both in support of and in opposition to the application. The only issue for determination is whether the proposed parties should be added as defendants in this matter.
16. The application has mainly been brought under Order 1 Rule 10(2) of the Civil Procedure Rules which provides as follows;

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as the plaintiff or defendant, or whose presence before the court may be necessary to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

17. The court in shedding more light on an application of this nature had this to say, in the case of Emfil Limited (supra) in which the court adopted the approach in the Court of Appeal case of EG Vs Attorney General; David Kuria Mbote & 19 Others (interested parties) (2021) eKLR;
 1. The core of the court's power to join a party to any proceedings, including at the appellate stage, is to bring on board a necessary party for purposes of determining the real issue(s) in dispute. Also, a joinder of a party is not an automatic right, but one which is granted upon exercise of the discretion of the court concerned. Nonetheless, the court exercises such discretion under defined parameters, that is, it must be satisfied: -
 - a. The intended party has a personal interest or stake in the matter in question, and that interest is clearly identifiable and proximate enough and not merely peripheral.
 - b. The intended party's presence would enable the court to resolve all the matters in the dispute.
 - c. The intended party would suffer prejudice in case of non-joinder.



- d. The joinder of the intended party will not vex the parties or convolute the proceedings with unnecessary new matters and grounds not contemplated by the parties or envisaged in the pleadings.
18. When dealing with an application for joinder, the courts need to be careful before making an order for a person to be joined as a defendant where the application for such joinder is not emanating from the plaintiff. This is to avoid thrusting upon the plaintiff a party against whom the plaintiff does not intend to sue, or the plaintiff feels he has no cause of action against, or even if he does, has opted not to pursue the action. It is important, unless there will be great prejudice to an existing party or a clear lacuna in the proceedings, for the courts not to seem to be choosing a defendant for the plaintiff. This is because, the choice of whom to sue is that of the plaintiff, and there may be cogent reasons as to why a litigant has opted not sue some other persons. Even in the absence of any reason, the choice to sue ought to be left to the litigant, and this choice ought not to be disturbed without the presence of compelling reasons. Joining a defendant to the proceedings on an application that is not coming from the plaintiff may also compel the plaintiff to pursue a cause of action that the plaintiff, for his own reasons, or lack of any, of which there is perfect freedom, the plaintiff has opted not to pursue” – see Joseph Leboo (Supra).
19. Where there is an application for a person to be joined as a defendant, and the plaintiff objects to such joinder, the court should be even more cautious before making an order for such joinder. It ought to be clear that the remedy sought by the plaintiff in the proceedings actually ought to be directed against the party sought to be enjoined, or that the remedy the plaintiff seeks cannot be granted, or the proceedings cannot be properly conducted without the person sought to be enjoined being a party. See the case of Joseph Leboo (supra).
20. The applicant herein contends that the parties she is seeking to have enjoined were crucial during the administration of the Constituency Development Fund and it is important to know from them exactly how much was disbursed, when it was disbursed and the purpose for which it was disbursed, and whether there was impropriety as far as they are concerned.
21. The applicant has also contended that she was initially charged alongside Mwalimu Mrafi and Ruth Kitonyi both of whom were subsequently discharged from the criminal proceedings and Ruth Kitonyi is a witness in the same case. That Washington Gimona who was her personal assistant is a witness in the criminal case and he has claimed he gave her Ksh.4,000,000 the subject matter of these proceedings.
22. The plaintiff/respondent has objected to the joinder of the proposed defendants and has averred that one of those parties namely Washington Gimona is their witness in both the civil and the criminal matters, and his joinder will prejudice its case. The respondent has further stated that there is no reasonable cause of action against the proposed defendants, and that, the ultimate decree can be enforced without their presence since the 1st to 9th defendants ultimately benefitted from the loss of the public funds in this matter.
23. Being guided by the principles on joinder of parties as espoused herein above, and applying the same to the facts and circumstances of this case, the court finds that the proposed interested parties have no legal interest in the matter. The plaintiff/respondent has indicated that they do not have any cause of action against them and any decree that may be obtained in this case can be enforced without their presence.
24. The case herein was instituted by the plaintiff/respondent and being its case, it is for it to choose which party to sue or add and the court cannot not impose a party on the plaintiff if in the first place, it did not find it necessary to sue them as parties. Further, the plaintiff has stated that these parties are witnesses



in the case herein and in the criminal case, in which case, the applicant will have an opportunity to cross examine them at the appropriate time when they will be testifying.

25. On the assertions that Ruth Kitonyi and Mwalimu Mrafi were discharged from the criminal proceedings and are now witnesses in this case, that is not a ground to support her application for joinder. The plaintiff has a discretion to choose who to call as witnesses in any criminal or civil matter and the court cannot decide for it how it should conduct its proceedings or which witnesses to call.
26. In view of the foregoing, and for the reasons that the court has given, it is my finding that the application has no merits and it is hereby dismissed with costs to the plaintiff/respondent
27. It is so ordered.

SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 19TH DAY OF NOVEMBER 2025.

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L.M. NJUGUNA

JUDGE

In the presence of:-

Miss Kenduiwa holding brief for Miss Ochola for the Plaintiff

Mr. Kitheka for the 1st, 7th and 8th defendants and holding brief for all the other counsel

Court assistant - Adan

