



Scanad Kenya Limited v Kenya Power & Lighting Company Limited; Ethics and Anti-Corruption Commission (EACC) (Intended Interested Party) (Commercial Case E106 of 2022) [2026] KEHC 857 (KLR) (Commercial and Tax) (29 January 2026) (Ruling)

Neutral citation: [2026] KEHC 857 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E106 OF 2022
AA VISRAM, J
JANUARY 29, 2026**

BETWEEN

SCANAD KENYA LIMITED PLAINTIFF

AND

KENYA POWER & LIGHTING COMPANY LIMITED DEFENDANT

AND

ETHICS AND ANTI-CORRUPTION COMMISSION (EACC) INTENDED INTERESTED PARTY

RULING

Introduction and Background

1. The Defendant, through its application dated 20th February, 2024, seeks to enjoin the Intended Interested Party (“the EACC”) as an Interested Party in these proceedings and that the Court should order EACC to provide it with copies of specific original documents held by it, having been taken away for criminal investigations in respect of this matter. The Defendant also seeks that the EACC be prohibited from refusing to return those documents to the Defendant.
2. The Defendant supports its application through the grounds on its face and those set out in the supporting affidavit of its employee, Joseph Muchai, sworn on 20th February, 2024. The Plaintiff has opposed the application through the Grounds of Opposition dated 4th March, 2024. The parties have supplemented the arguments in their pleadings by filing written submissions that I have considered and together with the said pleadings, I will be making relevant references to in my analysis and determination below.



Analysis and determination

3. From the application and the parties' submissions, two issues arise for the Court's determination:
 - i. Whether the Defendant has satisfied the criteria for the joinder of the EACC as an interested party in these proceedings; and
 - ii. Whether the Defendant has exhausted the procedures and processes of compelling production of documents.

Joinder of the EACC

4. The Defendant states that the Plaintiff has sued it for alleged breach of two advertising/media services contracts, claiming a total of approximately Kshs. 476,074,271.00/- in unpaid invoices and even though the Defendant has filed its defence, it is unable to comply with pre-trial disclosure requirements because key original documents, specifically local purchase/service orders, delivery notes, and invoices, were taken by the EACC for criminal investigations and have not been returned.
5. That between 2019 and 2020, the Defendant submitted numerous original documents to the EACC for investigations into the same contracts but from the documents returned in July 2023, the originals of the purchase orders, delivery notes, and invoices were missing. The Defendant avers that it cannot finalise its witness statements and document bundles for trial without these records, hindering its right to a fair hearing, and that this suit involves large sums of public money, making timely resolution a matter of public interest. As such, the Defendant urges the Court to compel the EACC to provide copies of the missing documents, return all original records taken from it and that the EACC be joined as a party to ensure compliance.
6. In response, the Plaintiff avers that the Defendant has not shown sufficient grounds for joinder as set out in various decisions including those of the Supreme Court in *Muruatetu & another v Republic*; *Kenya National Commission on Human Rights & 2 others (Interested Parties)*; *Death Penalty Project (Intended Amicus Curiae)* [2016] KESC 12 (KLR) and *Communications Commission of Kenya & 3 others v Royal Media Services Limited & 7 others*; *Nature Foundation Limited (Proposed Interested Party)* [2014] KESC 52 (KLR)] requiring a personal interest or stake in the matter and a likelihood of being affected by the Court's decision.
7. The Plaintiff states that the EACC has no such interest or stake in the contractual dispute between the Plaintiff and the Defendant and that the EACC is not privy to the contracts in dispute and will not be affected by the outcome of this case. That joining the EACC would introduce separate issues such as criminal investigation matters unrelated to the contractual dispute, thereby muddling the real issues and delaying resolution. It further contends that the EACC is not a necessary party for the fair and effective determination of the dispute between the Plaintiff and the Defendant and that the Defendant has not demonstrated any prejudice it would suffer if the EACC is not joined.
8. As submitted by the parties, superior courts have set out the principles and factors to be considered in an application seeking to enjoin an interested party. In *Communications Commission of Kenya*(supra) and *Muruatetu*(supra) it was stated that an interested party must demonstrate a stake in the proceedings, that it will not be affected by the decision of the Court when it is made, either way and that it feels that its interest will not be well articulated unless it appears in the proceedings, and champion its cause by simply being an interested party.
9. It was further held that a formal application must be filed, joinder is at the court's discretion, not a right, and sufficient grounds must be laid, the party's personal interest or stake must be clearly



identifiable, proximate, and not merely peripheral, prejudice suffered due to non-joinder must be demonstrated to the Court's satisfaction and clearly outlined and lastly, the party must present the case and/or submissions it intends to make, demonstrating their relevance and ensuring they are not merely a replication of other parties' submissions.

10. Having gone through the application and the submissions, I find that the Defendant has not made out a case for enjoining the EACC in these proceedings as an interested party as it has failed to satisfy the threshold set out above. One, the EACC is investigating possible criminal conduct, but this is separate from the contractual dispute between the Plaintiff and the Defendant. The EACC's interest is investigative and I believe it has no interest as to who between the parties breached the contract between them. Therefore, any outcome in this case will not directly affect the EACC's constitutional or statutory mandate. Two, I am also of the view that it is the intended interested party to apply to the court and demonstrate its interest in the matter and not another party to apply on its behalf. Having perused the pleadings and the issues in dispute vis-à-vis the statutory mandate of the EACC, it would have been prudent for the said EACC itself, if interested in the suit, to file an application for its joinder. However, in this matter, it is the Defendant that is seeking to enjoin the EACC as an interested party, yet the EACC has not expressed any interest in being joined and/or included in the suit (See *Okumu v Agricultural Development Corporation* [2025] KEELC 451 (KLR))
11. Three, while the Defendant claims prejudice being its inability to defend the case, I find that this is prejudice from lack of documents, not from the EACC's non-joinder. I am in agreement with the Plaintiff that the Defendant has in its disposal various legal avenues of seeking these documents including under Section 22 of the *Civil Procedure Act*, Order 16, rules 1&2 of the Civil Procedure Rules and Section 8(1) of the *Access to Information Act*, in respect of seeking documents from public institutions. I find that the Defendant's real need is access to documents, not the joinder of the EACC as a party and that this can be achieved through other legal means and not necessarily through the joinder of the EACC.

Conclusion and Disposition

12. In the foregoing, I find that the Defendant has not satisfied the legal principles and threshold for joinder of the EACC as an interested party and its application dated 20th February, 2024, is dismissed with costs.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 29TH DAY OF JANUARY, 2026

ALEEM VISRAM, FCIArb

JUDGE

In the presence of;

Court Assistant: Lispa

.....for Plaintiff

.....for Defendant

.....for Interested Party

