

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT GARISSA**  
**HIGH COURT PETITION NO. E017 OF 2025**

**COUNTY ATTORNEY, COUNTY  
GOVERNMENT OF MANDERA.....1<sup>ST</sup>  
PETITIONER  
HUSSEIN SOMO.....2<sup>ND</sup>  
PETITIONER**

**VS**

**ETHICS AND ANTI - CORRUPTION COMMISSION .....1<sup>ST</sup>  
RESPONDENT  
AUDITOR GENERAL.....2<sup>ND</sup>  
RESPONDENT  
SENATE OF THE REPUBLIC OF KENYA.....3<sup>RD</sup>  
RESPONDENT  
ATTORNEY GENERAL.....4<sup>TH</sup>  
RESPONDENT**



**AND**

**COUNCIL OF COUNTY GOVERNORS.....1<sup>ST</sup>  
INTERESTED PARTY  
COUNTY GOVERNMENT OF MOMBASA.....2<sup>ND</sup> P/  
INTERESTED PARTY  
COUNTY GOVERNMENT OF NAIROBI.....3<sup>RD</sup> P/  
INTERESTED PARTY  
COUNTY GOVERNMENT OF TURKANA.....4<sup>TH</sup>  
P/INTERESTED PARTY**

**COUNTY GOVERNMENT OF KAKAMEGA.....5<sup>TH</sup> P/  
INTERESTED PARTY  
COUNTY ATTORNEY COUNTY  
GOVERNMENT OF NAKURU.....6<sup>TH</sup>  
P/INTERESTED PARTY  
COUNTY GOVERNMENT OF BUNGOMA.....7<sup>TH</sup>  
P/INTERESTED PARTY  
COUNTY ATTORNEY COUNTY  
GOVERNMENT OF KISUMU.....8<sup>TH</sup>  
P/INTERESTED PARTY  
COUNTY GOVERNMENT OF KISUMU.....9<sup>TH</sup>  
P/INTERESTED PARTY  
COUNTY GOVERNMENT OF THARAKA NITHI.....10<sup>TH</sup>  
P/INTERESTED PARTY  
COUNTY ATTORNEY COUNTY.  
GOVERNMENT OF BUSIA.....11<sup>TH</sup>  
P/INTERESTED PARTY  
COUNTY GOVERNMENT OF KIAMBU.....12<sup>TH</sup>  
P/INTERESTED PARTY  
COUNTY GOVERNMENT OF KISII.....13<sup>TH</sup>  
P/INTERESTED PARTY  
COUNTY GOVERNMENT OF NYAMIRA.....14<sup>TH</sup>  
P/INTERESTED PARTY**

**RULING**

1. The applicants/petitioners herein via a petition dated 28.10.2025 moved to this court seeking the following orders:

- i. That a declaration be issued that Section 16 (1) of the Office of the County Attorney Act, Chapter 265E is inconsistent and incompatible with section 7 and 22 of the Office of the County Attorney.**
- ii. That a declaration be issued that the decision of Ethics and Anti-Corruption Commission to commence criminal investigations against the County Attorney of Mandera based on the recommendations of Auditor General and the Senate which patently misapprehend the meaning of section 16 (1) of the County Attorney Act, is unlawful and unconstitutional.**
- iii. That the order of prohibition be issued to restrain the prosecution or taking of any administrative action against the County Attorney of Mandera solely based on the recommendations of the Auditor General and the Senate which patently misapprehend the meaning of section 16 (1) of the County Act.**
- iv. That the High Court issues an order directing the Kenya Law Reform Commission and Attorney General to develop legislative amendment proposal to harmonize the inconsistency and incompatibility of section 16 (1) of the Office of the County Attorney Act.**
- v. The respondents to bear the costs of the petition.**

2. Contemporaneously filed with the petition is a notice motion of even date seeking the following orders:

**i. Spent.**

**ii. Pending the hearing and determination of this application *inter partes*, conservatory orders be issued prohibiting the Senate, Auditor General and Ethics & Anti-Corruption Commission from taking any precipitate legal or administrative action against the County Attorney of Mandera solely based on the interpretation of section 16 (1) of the Office of the County Attorney Act.**

**iii. Pending the hearing and determination of this application *inter partes*, conservatory orders be issued prohibiting the Ethics and Anti-Corruption Commission from making any recommendation for the prosecution of the County Attorney of Mandera - solely on the interpretation of section 16 (1) of the Office of the County Attorney Act.**

**iv. Pending the hearing and determination of this petition, conservatory orders be issued prohibiting the Senate, Auditor General and Ethics & Anti-Corruption Commission from taking any precipitate legal or administrative action against the County Attorney of Mandera solely based on the interpretation of section 16 (1) of the Office of the County Attorney Act.**

v. **Pending the hearing and determination of this petition, conservatory orders be issued prohibiting the Ethics and Anti-Corruption Commission from making any recommendation for the prosecution of the County Attorney of Mandera - solely based on the interpretation of section 16 (1) of the Office of the County Attorney Act.**

vi. **Costs of this application be provided for.**

3. The application is supported by the affidavit of Hussein Somo, County Attorney of Mandera who deponed *inter alia*, that a major dispute has arisen between the County Attorney of Mandera, the Auditor General and the Senate regarding the interpretation of **section 16(1) of the County Attorney Act, Cap 265E of the Laws of Kenya**. That the Auditor General and the Senate have purported to interpret **section 16(1) of the County Attorney Act** as applying to prohibit the office of a County Attorney from engaging external legal services without the written approval of the County Executive Committee, an entity that comprises persons who are not necessarily lawyers.

4. That by operation of the **County Attorney Act**, the County Attorney advises the County Executive Committee on legal issues. That put differently, the County Executive Committee has no mandate to make decisions on legal issues as the same is the preserve of the County Attorney, an office that ought to enjoy decisional independence and autonomy for it to effectively function as the principal advisor to the County Government on legal issues.

5. That in the financial year ending June, 2024, the County Attorney of Mandera procured the services of some external lawyers pursuant to the provisions of section 22(2) of the county Attorney Act, and paid them Kshs. 45,500,000/- for the legal services they rendered to the County Government of Mandera. That the Auditor General and the Senate have both determined that this expenditure is illegal. They argue that the same is in breach of **section 16(1)** of the **County Attorney Act** noting that the County Executive Committee did not approve the same.
6. On the other hand, the County Attorney maintained that the expenditure was lawful and regular because he exercised powers conferred upon him by dint of **section 22(1)** of the **County Attorney Act**. He averred that the Senate's recommendation directing that the Ethics and Anti-Corruption Commission investigates the matter is unlawful and lacks legal basis.
7. That the Auditor General and the Senate have misapprehended the law and seeks assistance of this court to interpret **section 16(1)** of the **County Attorney** *vis a vis* **section 22** of the **Act** and in the entire context of the institutional profile and status of a devolved government set up. That the foregoing is necessary as the Ethics and Anti-Corruption Commission has on recommendation of the Senate picked up the matter for investigation despite the apparently flawed interpretation of **section 16(1)** of the **County Attorney Act**, as there is a threat of an illegality crystalizing into a full-blown criminal proceedings against the County Attorney.

8. Upon considering the application for conservatory orders, the court granted the same in the interim and directed for the respondents to file a response. Before the motion could be set for hearing, various county governments and County Attorneys/Interested Parties filed their respective applications seeking to be enjoined in the matter herein thus contending that they have personal identifiable stake and or interest in the proceedings hence the outcome of the proceedings herein would adversely affect their operations and delivery of legal services.

9. Among the County Governments and County Attorneys who moved the court for joinder on similar ground are; Mombasa County Government; County Government of Nairobi; County Government of Turkana; County Government of Kakamega; County Attorney Nakuru County Government; County Government of Bungoma; County Government of Kisumu; County Attorney of Homabay County Government; County Government of Tharaka Nithi; County Attorney Busia County Government; County Attorney of Kiambu County Government; County Government of Kisii; County Government of Nyamira through their respective notices of motion dated 7-11-2025,10-11-2025,11-11-25,14-11-2025,28-11-25,28.11.2025,1-12.2025,1.12.2025,8-12-2025,3-12.2025,15.12.2025,16.12.2025and 16.12.2025 respectively.

10. Mr. Mohamednur Ibrahim and Jacqueline Wanjiru, investigators on behalf of the 1<sup>st</sup> respondent filed a replying affidavit sworn on 19.11.2025 and 03.03.2026 respectively

deponing that the joinder applications are misconceived and bad in law as the same are geared towards abuse of the court process. That the commission's legal mandate is to investigate corruption and economic crimes as provided for in the Constitution. It was urged that the orders sought ought not to be granted for the reason that the applicants have inter alia; no identifiable stake in the suit. Further, that the petition herein is a private suit by the petitioners and as such, the same does not require participation of the applicants.

11. According to the 1<sup>st</sup> respondent, the commission is conducting investigations vide inquiry EACG/GSA/FI/INQ/22/2025 pursuant to **section 11(1)(d)** of the **Ethics and Anti-Corruption Commission Act 2011** in respect to allegations of conflict of interest, procurement irregularities and unlawful acquisition of public funds in excess of Kshs. 45,000,000/- through payment of legal fees in the County Government of Mandera where the petitioner is employed. That the commission is conducting investigations based on reasonable suspicion and intelligence information received. In the end, it was urged that this court does dismiss the joinder applications.

12. The application was disposed by way of written submissions.

13. Counsel for Nairobi and Bungoma Counties in their written submissions dated 06.03.2026 urged that the court's power to grant joinder under the rules is discretionary. They relied in the case of **Francis Kariokor Muruatetu & Another vs Republic**

**& Others SC Petition No. 15 of 2015 as consolidated with No. 16 of 2015** where the court laid out the test for joinder at para 37 as follows: that the respective applicant must demonstrate a personal interest or stake in the matter; that the prejudice that the prospective party would suffer in the event of non-joinder must be clearly demonstrated; and lastly, the application must set out the case or submissions the party intends to make.

14. That in the case herein, Nairobi and Bungoma counties have a direct and identifiable institutional interest in the subject matter as the interpretation of **sections 16(1) and 22(2)** of the Office of the **County Attorney Act 2020** is a central issue in this petition; directly affects how the county discharges its constitutional and statutory functions through its office as the County Attorney. That as a devolved unit with the largest administrative legal department, and has a high volume of litigation, Nairobi County's institutional capacity, budgetary allocations for legal services and arrangements for engaging external legal counsel are all potentially affected.

15. That the outcome of the petition will have immediate practical, operational and financial implications for the counties including their right and ability to engage external legal services where necessary, its budgeting planning for legal services and the overall structure and autonomy of its legal office. In the same breadth, it was contended that the inclusion of Nairobi County would add value to the court's understanding of practical,

administrative, financial and constitutional governance dimensions of the issues.

16. That the non-joinder of Nairobi and Bungoma Counties would deny the court access to vital institutional perspective of a large active devolved unit. That the same would risk a decision that fails to appreciate real world governance and devolution dynamics, potentially undermining constitutional and effective local legal governance. On the other hand, it was contended that, allowing joinder would promote the objectives of the **Mutunga Rules**, especially access to justice and full adjudication of constitutional governance issues arising under **article 22** of the **Constitution**. In the end, this court was urged to allow the joinder application as prayed.

17. Counsel for Nyamira County filed submissions dated 09.03.2026 wherein it was urged that the instant proceedings herein principally concern the interpretation and constitutionality of **sections 16 and 22(2)** of the **Office of the County Attorney Act, Cap 265**. That the applicant therefore, has a right to be enjoined and be heard as the proceedings herein have a direct consequence and implication on the nature and legality of the operations of the Office of the County Attorney. Reliance to support the foregoing was placed on the case of **Kenya Medical Laboratory Technicians and Technologists Board & 6 Others vs Attorney General & 4 Others [2017] eKLR** where the court held that elements to be satisfied where a party seeks to be enjoined in proceedings as an interested party are that: the intended interested party must have an identifiable

stake or the legal interest and or duty in the proceedings. This court was thus urged to allow the prayer for joinder.

18. Counsel for Kakamega County via submissions dated 04.03.2026 submitted that it had filed a notice of motion dated 14.11.2025 seeking to be enjoined in the suit herein. That the county has a direct claim and/or interest and that its inclusion to participate in the proceedings herein would allow an opportunity for the court to solve the suit definitively. He argued that despite other clauses in the **Office of the County Attorney Act** including **section 22** thereof that protects the functional status and decisional autonomy of the County Attorney, the Auditor General and the Senate have interpreted **section 16** of the **Act** as prohibiting the County Attorney as well. That this is unwarranted and would severely cause prejudice in the performance of the constitutional duties of the office. Additionally, that such a move would adversely affect the outcome of the suit herein hence the need for it to be joined in the suit.



19. County Attorney for Mombasa submitted that because the Office of the County Attorney in Mombasa was directly regulated by the impugned provision, the outcome of the petition would substantially affect how it discharges its mandate. It maintained that it had a clear and identifiable legal interest in the matter. The applicants relied on various constitutional provisions, the **Mutungu Rules**, and Supreme Court precedents such as **Trusted Society of Human Rights Alliance vs Mumo Matemu [2014] and Muruatetu Republic & 5**

**Others (2016)**, which set out the principles for joinder of interested parties.

20. The applicant emphasized that its participation would provide unique insights into the functioning of County Attorneys and would assist the Court in reaching a fair and informed decision. It further stated that no prejudice would be caused to the existing parties, since it did not intend to introduce new causes of action but only to contribute perspectives necessary for effective adjudication.

21. In conclusion, the applicant prayed that the court allows its joinder, arguing that its involvement would enhance the administration of justice and ensure that the constitutional issues raised were comprehensively addressed. The rest of the applicants associated themselves with the submissions of their colleagues.

22. The 1<sup>st</sup> respondent filed submissions dated 03.03.2026 urging that the law and principles on joinder are well settled. That the applicants did not demonstrate their stake in the matter under investigation and therefore, the joinder application ought to fail. That the petition rises out of the investigations into allegations that the County Government of Mandera during the period 2023 - 2024, being report EACC/GSA/FI/INQ/22/2025, while the petitioner served as the County Attorney, irregularly, illegally and/or unlawfully paid legal fees in excess of Kshs. 45,000,000/- to various law firms without following the necessary

procurement laws and procedures and other statutory provisions.

23. That the investigations relate to the petitioner as an individual and not the applicants as such. It was contended that the applicants did not demonstrate personal stake in the matter. Reliance was placed on the case of **Supreme Court decision (Application) No. E033 of 2023; Harcham Singh Sehm vs Jaswarana and Tabarana Co. Ltd** where the court held that:

**“The personal interest of stake that the party had in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough to stand apart from anything that was merely peripheral”.**

24. That the applicants herein will suffer no prejudice if they are not joined in the matter since there are no orders against them. That none of the applicants have demonstrated any reason as to why their interests will not be articulated in this petition. That the applicants simply want to convolute the suit herein by attempting to join other parties and as such, the joinder application ought to be struck out.

25. I have considered the application, submissions made on behalf of the parties, the authorities cited and the applicable law. The instant application seeks joinder of the applicants in the suit herein. The only issue for determination is whether the applicants have met the threshold for joinder as interested parties.

26. Joinder of parties is governed by **Order 1** of the **Civil Procedure Rules**. In law, joinder should be allowed for any parties in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly or severally; or in the alternative, where if such persons brought separate suits, any common question of law or fact would arise. See also **Order 7 Rule 9** of the **Civil Procedure Rules**. The court can even on its own motion add a party to the suit if such party is necessary for the determination of the real matter in dispute or whose presence is necessary in order to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit.

27. Therefore, joinder of parties is permitted by law and it can be done at any stage of the proceedings. However, joinder of parties may be refused where such joinder: will lead into practical problems of handling the existing cause of action together with the one of the parties being joined; is unnecessary; or will just occasion unnecessary delay or costs on the parties in the suit.

28. Similarly, joinder of parties will be declined where the cause of action being proposed or the relief sought is incompatible to or totally different from existing cause of action or the relief. The determining factor in joinder of parties is that a common question of fact or law would arise between the existing and the intended parties.

29. **Rule 5 of Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013. Rule 5(d)** provides that; -

**“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 just—**

- i. order that the name of any party improperly joined, be struck out; and**
- ii. that the name of any person who ought to have been joined, or whose presence before the court may be necessary in order to enable the court adjudicate upon and settle the matter, be added...emphasis mine”**

30. Additionally, the Court of Appeal in the case of **Civicon Limited vs Kivuwatt Limited and 2 others** [2015] eKLR stated as follows:

**“...the power of the court to add a party to a suit is wide and discretionary, the overriding consideration being whether he has an interest in the suit. The question is whether the right of a person may be affected if he is not added as a party. Generally, in exercising this jurisdiction the court will consider whether a party ought to have been joined as plaintiff or defendant, and is not so joined, or without his presence, the question in the suit cannot be completely and effectively decided. Accordingly, a necessary party is one without whom no order can be**

**made effectively, while a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceedings...we may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”**

31. Therefore, applying the above principles to the instant application; have the applicants made out a case to warrant their joinder in the case herein?

32. The substratum of the petition herein is anchored on the claim that the second petitioner, being the County Attorney Mandera County did engage or source external legal services from private lawyers under **Section 16** of **the Office of the County Attorney Act** without seeking approval from the Executive Committee Members as provided under **Section 22(1)** of the same **Act**. For avoidance of doubt, I wish to reproduce the aforesaid provisions;

**“Section 16... Engagement of consultant**

**(1) A department or public entity established within a county executive shall not engage the services of a consultant to render any legal services relating to the functions of the County Attorney without the approval of the County Executive Committee.**

**(2) A request by a department or public entity to the county executive committee to engage the services of a consultant for the provision of legal services, shall be in writing.**

**(3) An approval by the county executive committee of a request under subsection (2) shall be in writing.**

**Section 22(1)...There shall be such officers and other members of staff of the Office as the County Attorney, in consultation with the county public service board, considers necessary for the proper and efficient discharge of the functions of the Office.**

**(2) The County Attorney may procure the services of such other persons as may be reasonably necessary for the purposes of assisting the County Attorney in the performance of the functions of the County Attorney.**

**(3) The appointing bodies shall ensure that the composition of the staff of the Office reflects gender equity and takes into account persons with disabilities.**

33. According to the 1<sup>st</sup> respondent, the issue at hand is purely private in the sense that the 2<sup>nd</sup> petitioner is accused of engaging in unlawful and illegal single sourcing of external legal services in complete disregard of the law inter alia the **Public Procurement Act** and the **Office of the County Attorney Act** hence an act in personam and not in rem.

34. Similarly, the proposed interested parties are concerned that as the County Governments and or sitting County Attorneys, any adverse interpretation by this court with regard to the application of **Section 7, 16 and 22** of the **Office of The County Attorney Act** will apply against them *mutatis mutandis* hence jeopardizing their mandate and or their smooth functioning either as County Governments or County Attorneys.



35. The question seeking for an answer is whether, the applicants have a personal interest or stake on the outcome of this case. Secondly, whether the respondents will suffer any prejudice by allowing the applicants to participate in these proceedings. Thirdly, whether the intended interested parties would be advancing anything different from what the current or original parties would be advancing. See **Muruatetu and another v Republic(supra)**.

36. It is apparent that any interpretation that finds the petitioners to have acted against **Section 16(1) and 22** of the **Office of the County Attorney Act**, will definitely apply or impact subsequently or even retrospectively on the operations and functioning of the office of the County Attorney anywhere in the republic of Kenya and the Auditor general will always find similar actions by any other County Government or County Attorney liable for prosecution. In that spirit, the County Governments or County Attorneys have a legitimate personal interest or stake on the outcome of the suit herein hence entitled to participate to protect and or promote their interest.

37. Regarding the question that the suit is private and therefore affects an individual, the outcome has far reaching effects going beyond the original parties. The argument that the petitioners will adequately address the issues in controversy is not correct. One will have to look at the right to fair hearing and the right to be heard under **Article 50** of the **Constitution** a factor which cannot be underestimated. The suit has far reaching consequences thus requiring wider representation owing to its complexity in nature.

38. Having held that the applicants have a personal stake in the outcome of the suit, I do not find any prejudice that will be suffered by the respondents merely because of joinder of the proposed interested parties. In view of the above holding, I am satisfied that the proposed Interested Parties' applications are merited hence allowed as prayed. Costs shall be in the cause. Interim orders extended pending hearing and determination of the petition.

Dated, signed and delivered virtually this **24<sup>th</sup>** day of **April 2026**

J.N.ONYIEGO

**JUDGE**