



**Ongwenyi v Ethics and Anti-Corruption Commission & 7 others (Petition
51 of 2014) [2023] KEELRC 135 (KLR) (26 January 2023) (Ruling)**

Neutral citation: [2023] KEELRC 135 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION 51 OF 2014
MN NDUMA, J
JANUARY 26, 2023**

BETWEEN

HENRY MORARA ONGWENYI CLAIMANT

AND

ETHICS AND ANTI-CORRUPTION COMMISSION 1ST RESPONDENT

MUMO MATEMU 2ND RESPONDENT

IRENE KEINO 3RD RESPONDENT

JANE ONSONGO 4TH RESPONDENT

HALAKHE WAQO 5TH RESPONDENT

MICHAEL KAMAU MUBEA 6TH RESPONDENT

DIRECTOR OF CRIMINAL INVESTIGATIONS 7TH RESPONDENT

ATTORNEY GENERAL 8TH RESPONDENT

RULING

1. By a notice of motion dated May 6, 2022, the petitioner/applicant seeks an order in the following terms:-
 1. Spent
 2. This court be pleased to and hereby issue permission for the joinder of Archbishop Eliud Wabukhala, Chairperson of the Ethics and Anti-Corruption Commission as a 2nd Respondent in place of Mumo Matemu.
 3. This court be pleased to and hereby issues permission for the joinder of Major (Rtd) Twalib Mbarak as 5th Respondent in the place of Halakhe Waqo.



4. This court be pleased to and hereby issues permission for the renewal of the names of the 2nd, 3rd, 4th, 5th, 6th, 7th and 8th respondents from the proceedings.
2. The application is premised on grounds set out on the face of the application numbered (a) to (k) the nub of which is that Archbishop Eliud Wabukhala had since assumed office of the Chairperson of the 1st respondent, during the pendency of this suit and that (Rtd) (Maj) Twalib Mbarak has since been appointed the Chief Executive Officer of the 1st respondent. That the Respondents sought to be replaced have left the leadership and or employ of the Commission.
3. That the Commission and its staff have failed to comply with the orders of the Court in this matter hence the need to join the current leadership who have the obligation to ensure compliance.
4. That the application is in the interest of the rule of law and proper administration of justice.
5. The Advocates for the 1st, 2nd, 3rd, 4th, 5th and 6th Respondents filed grounds of opposition to the application stating save for prayer 4, the orders sought in the application are contradictory, vague and enforceable as it appears that the applicant seeks to both join and remove the 2nd to 8th respondents from the petition herein.
6. That the applicant seeks to litigate the issue of the joinder of the 2nd to 6th respondents in the petition which was already conclusively dealt with by the Court of Appeal in Civil Appeal No 229 of 2017 and the Court of Appeal held that the joinder of the 2nd to 6th Respondents to the petition was improper.
7. That the application is thus res-judicata and in breach of the judgment of the Court of Appeal aforesaid.
8. That judgment was delivered in the present suit on August 20, 2015, and therefore there are no pending proceedings in which the Court may Order the joinder of additional parties as sought in the application.
9. That the application offends the provisions of rule 5(c) and (d) of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice Procedure Rules, 2013* as read together with order 1 rule 10(2) of the *Civil Procedure Rules, 2010*.
10. That the application is an abuse of court process and it be struck out with costs.
11. The parties made written and oral submissions and the court having considered the depositions and the submissions finds as follows:-

The Court of Appeal in Civil Appeal No 229 of 2017, *Ethics and Anti-Corruption Commission and 5 others v Henry Morara Ongwenyi & 3 others* [2019] eKLR held that the joinder of the 2nd to 6th respondents to the petition was improper. This issue is *res judicata* and the court cannot revisit the same afresh.

12. With regard to the sought joinder of Archbishop Eliud Wabukhala, the erstwhile Chairperson of the 1st respondent to replace Mumo Matemu and Major (Rtd) Twalib Mbarak to replace Halakhe Waqo, the decision of the Court of Appeal sealed this matter having determined that the joinder of the 2nd respondent to the 6th respondent was improper.
13. The decision by the Court of Appeal is equally applicable in respect of officers who replaced the 2nd and 5th respondents and the applicant cannot be heard to revisit the said matter post judgment herein.



14. Accordingly, the court upholds the grounds of opposition by the respondents and finds that the application for joinder lacks merit and is dismissed with costs.

DATED AND DELIVERED AT NAIROBI(VIRTUALLY) THIS 26TH DAY OF JANUARY, 2023.

MATHEWS NDERI NDUMA

JUDGE

Appearances

Mr Ndubi for petitioner/applicant.

Mr Ouma for respondent.

Mr Ekale – Court Assistant.

