



Prosecution of Corruption Cases on Trial

Sunday, February 25th, 2024 - Nairobi, Kenya: We are deeply concerned over the continued attempts by the Office of the Director of Public Prosecutions (ODPP) to withdraw corruption cases involving high-profile individuals perceived to be politically connected; cases which have resulted in the loss of significant amounts of public funds. We are also concerned by the disturbing pattern of discord between the Ethics and Anti-Corruption Commission (EACC) and ODPP in determining the direction that corruption cases ought to take; a trend that undermines the fight against corruption and erodes public trust in the country's criminal justice system.

In the [recent proceedings on 22nd February 2024](#), at the Milimani Law Courts, the ODPP sought to withdraw charges against three senior government officials of Geothermal Development Company (GDC), citing insufficient evidence. However, EACC vehemently opposed this move, highlighting that the withdrawal was not in the public interest and could potentially perpetuate the abuse of the legal processes. A similar discord arose on 16th February 2024, concerning the [withdrawal of charges against former Kenya Pipeline Authority bosses](#), further confirming the lack of harmony between EACC and ODPP in pursuing corruption cases.

These instances underscore deeper systemic issues within the prosecution of corruption cases to the extent that a section of the judiciary hearing the cases has criticised the conduct and management of cases by the ODPP. For instance, in the High Court's pronouncement in Criminal Revision Application No. E008 of 2023, Justice (Prof) Sifuna clamped down on the unjustified withdrawal of graft cases, declaring that guilt or innocence is determined within the court's purview, not the litigating parties, thus pointing to the need for a complete overhaul of the corruption prosecution system.

Given the foregoing, we propose the following measures to redeem the prosecution of corruption cases:

1. **Prosecutorial powers for EACC:** We aver that granting prosecutorial powers to EACC would streamline the prosecution process and ensure a more cohesive approach to tackling corruption cases. This would enable EACC officers, often at the forefront of corruption investigations, to directly prosecute matters, thus reducing the likelihood of conflicting decisions among investigators and prosecutors. The gazettelement of qualified EACC officers as special prosecutors should also be

considered to formalise their role in the prosecution process. This will also enhance coordination in investigative and prosecutorial processes, leading to more effective outcomes in corruption cases.

2. **Strict adherence to the decision to charge guidelines:** Implementing rigorous guidelines in the decision to charge will ensure that cases cleared for prosecution meet the requisite evidentiary threshold. This will minimize the risk of rushed or frivolous charges, or premature withdrawals, fostering confidence in the integrity of the prosecution process.
3. **Holding prosecutors personally liable for mismanagement of cases:** If prosecutorial counsel bungles a corruption case, the court should lift the immunity of such prosecutors and hold them personally liable to discourage neglect of prosecutorial duty. This will stem the tide in the rising patterns of reckless dereliction of duty and lack of independence by prosecutors as witnessed in the [bungled Ksh63 billion Aror and Kimwarer dams case](#).
4. **Harmonisation of roles:** There is need for harmonisation of efforts between the ODPP and the EACC to avoid conflict and facilitate better coordination throughout the investigation and prosecution of corruption-related cases towards seamless, timely and successful outcomes of graft cases to inspire public trust in the entire criminal justice system and anti-corruption efforts.

Signed

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