



**Ethics and Anti-Corruption Commission v Kuria & another; Njeri & 10 others (Interested Parties) (Civil Suit 6 of 2020) [2024] KEHC 11224 (KLR) (Anti-Corruption and Economic Crimes) (26 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11224 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
ANTI-CORRUPTION AND ECONOMIC CRIMES  
CIVIL SUIT 6 OF 2020  
EN MAINA, J  
SEPTEMBER 26, 2024**

**BETWEEN**

**ETHICS AND ANTI-CORRUPTION COMMISSION ..... APPLICANT**

**AND**

**MICHAEL KAMAU KURIA ..... 1<sup>ST</sup> RESPONDENT**

**GACHOMBA AND COMPANY PROPERTIES LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**CATHERINE WANJIKU NJERI ..... INTERESTED PARTY**

**AGNES WANJIKU KURIA ..... INTERESTED PARTY**

**HENRY NJOROGE GATHIGA ..... INTERESTED PARTY**

**WANJOHI CONTRACTORS AND GENERAL SUPPLIES  
LIMITED ..... INTERESTED PARTY**

**OLKALAU VENTURES ..... INTERESTED PARTY**

**KANJUIRI GENEAL CONTRACTORS AND SUPPLIES  
LIMITED ..... INTERESTED PARTY**

**KIAMBAGA ENTERPRISES ..... INTERESTED PARTY**

**GITHORO CONTRACTORS AND GENERAL SUPPLIES  
LIMITED ..... INTERESTED PARTY**

**JILSU GENERAL CONTRACTORS AND SUPPLIES LIMITED .... INTERESTED  
PARTY**



## **JUDGMENT**

### **Introduction**

1. The Commission instituted this Originating Summons pursuant to Section 55 of the *Anti-Corruption and Economic Crimes Act* (the ACECA) and Section 11(I)(j) of the *Ethics and Anti-Corruption Commission Act* seeking forfeiture of unexplained assets suspected to have been obtained through corruption, bribery and misappropriation and/or embezzlement of public funds from the County Government of Nyandarua (hereinafter referred to as “the County”).
2. The Originating Summons is dated 18<sup>th</sup> February 2020 and seeks orders for forfeiture of the Respondents’ unexplained wealth and determination of the following questions: -
  - i. Whether the 1<sup>st</sup> Respondent is the beneficial owner of the 2<sup>nd</sup> Respondent.
  - ii. Whether the 2<sup>nd</sup> Respondent’s corporate veil should be lifted/unmasked for engaging in Corruption and/or Money Laundering.
  - iii. Whether Kshs. 73,947,807.60 transacted through the 1<sup>st</sup> Respondent’s Bank Account Numbers 0160291143992 and 1110299529471 both held at Equity Bank Limited during the period of interest constitute unexplained assets within the meaning of the provisions of Section 55 of the ACECA.
  - iv. Whether the Kshs. 82,083,066.00 transacted through the 2<sup>nd</sup> Respondent’s Bank Account Number 111026450403 held at Equity Bank Limited during the period of interest constitute unexplained assets within the meaning of the provisions of Section 55 of the ACECA.
  - v. In the alternative, whether the said Kshs. 73,947,807.60 and Kshs. 82,083,066.00 stated in Paragraphs 3 and 4 above, respectively, are proceeds of Corruption and or proceeds of money laundering.
  - vi. Whether the Respondents jointly and severally should be ordered to pay to the Government of Kenya the cumulative sum of Kshs. 156,030,873.60 being cash deposits and bank transfers enumerated in paragraph 3 and 4 herein above and interest thereon at Court rates from the date of filing this suit until payment in full.
  - vii. Whether the suit immovable properties and developments thereon constitute unexplained assets within the meaning of the provisions of Section 55 of the ACECA:
    - i. Dundori/Lanetblock 5/2232 (Kiamunyeki ‘A’)
    - ii. Dundori/Lanetblock 5/1014 (Kiamunyeki ‘A’)
    - iii. Dagoretti/Kinoo/47
    - iv. Dagoretti/Kinoo/3213
    - v. Dagoretti/Kinoo/4469
    - vi. Kiambu/Municipality/block 1/233



- vii. Kikuyu/Kikuyu/block 1/891
- viii. Limuru/KirengaT.218
- ix. Limuru/KirengaT.225
- viii. Whether the movable properties (Motor Vehicles) listed here below constitute unexplained assets within the meaning of the provisions of Section 55 of the *Anti-Corruption and Economic Crimes Act*, No. 3 of 20023:
  - i. KCB 253B – Tata Tipper
  - ii. KCH 101P – Toyota Station/ Wagon
  - iii. KCF 410P – NISSAN Station/Wagon
  - iv. KCE 039L – Isuzu Truck
- ix. Whether the Respondents should be ordered to forfeit to the Government all those movable and immovable properties listed in paragraphs VII and VIII.
- x. In the Alternative, whether the Respondents should be ordered to pay to the Government an amount equal to the market value of the movable and immovable assets described in paragraphs VII and VIII.
- xi. Whether the Respondents should be ordered to pay the costs of this suit.
- 3. On 20<sup>th</sup> February 2020, this Court issued an injunction restraining the Respondents and their agents from selling, transferring, charging, disposing, wasting or in any way alienating the suit immovable properties, bank accounts and motor vehicles until the determination of the suit.
- 4. The 11<sup>th</sup> Interested Party chose not to take part in the proceedings. On 15<sup>th</sup> February 2022, the court granted the parties time to explore an out-of-court settlement but the parties were unable to come up with an agreement. The Court decided to proceed with the hearing of the suit.

### **The Parties**

- 5. The Commission is a body corporate established under Section 3 of the Ethics & Anti-Corruption Commission Act, 2011, pursuant to Article 79 of *the Constitution* of Kenya 2010. It is mandated to institute and conduct proceedings for the purpose of recovery or protection of public property.
- 6. The Respondent was the Chief Officer of Finance and Economic Planning at the County Government of Nyandarua who held beneficial interest in the 2<sup>nd</sup> Respondent, at all times material to this case.
- 7. The 2<sup>nd</sup> Respondent is a Limited Liability Company registered in Kenya, whose Directors are the nuclear family members of the 1<sup>st</sup> Respondent.
- 8. The 1<sup>st</sup> Interested Party is the wife to the 1<sup>st</sup> Respondent and a Director in the 2<sup>nd</sup> Respondent and the 4<sup>th</sup> to the 8<sup>th</sup> Interested Party Companies.
- 9. The 2<sup>nd</sup> Interested Party is the mother to the 1<sup>st</sup> Respondent and a Director of the 2<sup>nd</sup> Respondent.
- 10. The 3<sup>rd</sup> Interested Party is a business associate of the 1<sup>st</sup> Respondent.
- 11. The 4<sup>th</sup> to 10<sup>th</sup> Interested Parties are companies in which the 1<sup>st</sup> Respondent and/or members of his nuclear family own shares and/or act as Directors and which were awarded tenders by the County Government of Nyandarua and were alleged to have deposited funds into the Respondents' accounts.



12. The 11<sup>th</sup> Interested Party is the bank in which the suit accounts belonging to the Respondents are domiciled.
13. The Originating Summons was canvassed by way of viva voce evidence. Thereafter Learned Counsel for the parties summed up their cases by way of written submissions.

### **The Applicant's case**

14. The Commission called a total of 11 (eleven) witnesses including two Land Registrars who gave evidence concerning the immovable properties now registered in the name of the 2<sup>nd</sup> Respondent.
15. Briefly the Applicant's case is that:- the Commission has been investigating allegations of embezzlement of public funds, irregular procurement, bribery, abuse of office and conflict of interest by officials of the Nyandarua County Government; that the Commission received information that the 1<sup>st</sup> Respondent had accumulated vast wealth which was inconsistent with his legitimate sources of income; that the Commission established that in the period of interest, the 1<sup>st</sup> Respondent received numerous deposits totalling Kshs.73,947,806/60 in his Bank Account numbers 0160291143992 and 1110299529471 domiciled at Equity Bank, which deposits are suspected to have been corruptly acquired; that investigations revealed that the 1<sup>st</sup> Respondent is the beneficial owner of the 2<sup>nd</sup> Respondent as he and the nuclear family members of his family are directors/shareholders and he is a mandatory signatory of its bank accounts; that the 2<sup>nd</sup> Respondent received Kshs. 82,083,066.00 in its account Number 1110264050403 at Equity Bank, suspected to be proceeds of corruption, embezzlement and bribery and that some of the depositors were awarded tenders by Nyandarua County Government in processes wrought with procurement irregularities, corruption and bribery, during the 1<sup>st</sup> Respondent's tenure as Chief Officer of Finance and Economic Planning. Further that in the period of interest, the Respondents acquired and developed properties valued at Kshs.181,000,000; that the Respondents also acquired four motor vehicles valued at Kshs. 6,500,000.00.
16. The Commission contends that during the period of interest, January 2013 to December 2017 the 1<sup>st</sup> Respondent's known legitimate source of income was his salary whose aggregate gross was Kshs. 5,217,934 and net was Kshs. 2,139,128.60; that the 2<sup>nd</sup> Respondent was incorporated in the year 2015 and did not during the period of interest, have a known legitimate source of income.
17. Further that an analysis shows that the Respondents possess assets worth Kshs. 329,178,934.00 which are unexplained and that despite being afforded a reasonable opportunity to explain the disproportion between the assets concerned and their legitimate source, the Respondents failed and/or neglected to provide any explanation for the same.
18. In regard to the immoveable properties, the Commission called two Land Registrars, John Matheka (PW9) and Caleb Wanjala Singuti (PW10) who testified as follows: - PW9 testified that he is a Land Registrar in Ngong, and is familiar with the matter before court. He testified that he received a request from the commission to assist with information regarding the ownership of various parcels of land. That at the time in issue Dagoretti/Kinoo/47 was transferred to Gachomba and Company Properties Limited and Michael Kamau Kiromo. Prior to that, to wit, on 23<sup>rd</sup> July 2013 it had been registered in the names of the 1<sup>st</sup> Respondent and Michael Kamau Kiromo in equal shares.
19. He further testified that the 1<sup>st</sup> Respondent Dagoretti/Kinoo/3213 in the year 2010 and registered it to Gachomba and Company Properties Limited on 20<sup>th</sup> March 2015 and a title deed issued on same day. On 24<sup>th</sup> June 2016 it was charged to Equity Bank for a loan of Kshs.3,500,000/-. On 24<sup>th</sup> May



- 2017 it was charged to the same bank for a loan of Kshs.6,500,000/- and on 24<sup>th</sup> May 2017 there was a variation and further loan of Kshs.3,000,000/-.
20. For Limuru/KirengaT218, PW9 stated that Michael Kamau Kuria (1<sup>st</sup> Respondent) acquired it on 9<sup>th</sup> October 2015 but on 12<sup>th</sup> February 2016 a restriction was placed on the title.
  21. Kiambu/Municipality block 1/233 was acquired by Gachomba & Company Properties Limited on 8<sup>th</sup> July 2015 having acquired it from one George Tharang Ngure on the same day.
  22. Kikuyu/Kikuyu/block 1/891 was originally owned by Joseph Kiromo Kiromo and Michael Kamau Kiromo. On 23<sup>rd</sup> July 2013 it was transferred to the 1<sup>st</sup> Respondent and one Michael Kiromo. Thereafter on 21<sup>st</sup> August 2013 it was transferred to the 1<sup>st</sup> Respondent and one Thuita Maina in equal shares but subsequently on 27<sup>th</sup> April 2016 it was transferred to the 1<sup>st</sup> Respondent as the sole proprietor.
  23. Limuru/Kirenga225 was acquired by Michael Kamau Kuria (1<sup>st</sup> Respondent) on 29<sup>th</sup> April 2015 and a title deed issued on the same day.
  24. In respect to Limuru/KirengaT218, PW9 testified that it was acquired by Michael Kamau Kuria (1<sup>st</sup> Respondent) on 9<sup>th</sup> October 2015 nine days after it was transferred to John Ngang'a Njuguna. He ruled out that this property was an inheritance and stated that if it was the transmission he would have noted on the register.
  25. PW9 also tendered green cards in respect to LR Dagoretti/Kinoo/4469 which was acquired by the 1<sup>st</sup> Respondent on 2<sup>nd</sup> November 2014 then transferred to the 2<sup>nd</sup> Respondent on 20<sup>th</sup> March 2015 before it was disposed to Leah Wanjiru Ndungu, Timothy Kairu Wanyoike and Waithaka Mwangi on 19<sup>th</sup> September 2017.
  26. In cross-examination, PW9 contended that Land Registrars do not require to have sale agreements at the time of registration; that there are no timelines for registration and that one can acquire a property now and register it many years later.
  27. Caleb Wanjala Singuti (PW10), testified that he is a Land Registrar in Nairobi Central Registry. Prior to that, between 2015 and 2019, he was the District Land Registrar in Nakuru. He testified in regard to property Dundori/Lanetblock 5/1014 (Kiamunyeki A) and stated that the same was registered in the names of Michael Kamau Kuria and Catherine Wanjiku Njeri. They were issued with a title deed on 4<sup>th</sup> of June 2015. Dundori/Lanet/block 5/2232 (Kiamunyeki A) was transferred to Gachomba & Company Properties Limited and title was issued on 22<sup>nd</sup> September 2016.
  28. In the affidavit in support of the application Abel Tunga Marevu (PW11), an investigator working with the Applicant, testified that through an inquiry EACC/INQ/AT/9/2018 the Commission investigated allegations of embezzlement of public funds, irregular procurement, bribery, abuse of office and conflict of interest by current and former officials of the Nyandarua County Government and received credible information that the 1<sup>st</sup> Respondent had accumulated vast wealth that was inconsistent with his legitimate sources of income; that upon investigations of his bank accounts, it was established that Kshs. 49,754,715.60 was deposited into Account number 0160291143992 held at Equity Bank, between 4<sup>th</sup> January 2013 and 29<sup>th</sup> December, 2017 and that held at Equity Bank also received Kshs.24,193,092/- between 11<sup>th</sup> January 2013 and 14<sup>th</sup> November 2017. Abel Tunga testified that investigations also established that the 1<sup>st</sup> Respondent is a mandatory signatory to the 2<sup>nd</sup> Respondent's Account Number 1110264050403 at Equity Bank which between 23<sup>rd</sup> April 2015 and



- 2<sup>nd</sup> December 2017 received a sum of Kshs.82,083,066/-. The 1<sup>st</sup> Respondent's wife, mother and seven children are the directors of the 2<sup>nd</sup> Respondent.
29. He further testified that some of the entities that deposited money into the three aforesaid accounts were awarded tenders by Nyandarua County Government in processes brought with procurement irregularities during the 1<sup>st</sup> Respondent's tenure and further that the Commission also established that the 4<sup>th</sup> to 10<sup>th</sup> Interested Parties had no commercial presence prior to the employment of the 1<sup>st</sup> Respondent by Nyandarua County Government and are associated directly or through proxy to him through his mother, wife, business partners and their associates.
30. The witness stated that county officials would collude to invite only the Interested Parties in this case for the tenders to the exclusion of all pre-qualified suppliers. He gave a list of the tenders and contracts affected by the corrupt awards but contended that the original files for a number of the contracts went missing from the County offices only to be traced to a property held by the Respondents following a search backed by a court order. He testified that the 1<sup>st</sup> Respondent took part in the tender committee that awarded the tenders, authorized all the payments and was in a position to influence the awards yet he did not declare a conflict of interest.
31. He also testified that once the Interested Parties received payment from the County, the funds were withdrawn in cash from the company's accounts and substantial amounts channeled to the Respondents' accounts. Further that in the period of interest, the 1<sup>st</sup> Respondent acquired and developed immovable property valued at over Kshs.181,000,000/-, and high-end motor vehicles against a total net salary of Kshs. 2,139,128.60 earned between January 2013 and 31<sup>st</sup> December 2017; that tangible assets held by the Respondents amounts to Kshs. 329,178,934. He contended that at the conclusion of the investigation, the Commission issued notices to the Respondents requiring a written explanation on the disproportion between their assets and their known sources of income. The Respondents did not respond to the Notice. Further that the Commission also invited the 1<sup>st</sup> to 3<sup>rd</sup> Interested Parties and the directors of the 4<sup>th</sup> to 10<sup>th</sup> Interested Parties to establish the purpose of the funds deposited into the accounts of Respondents but though they attended the Applicant's offices, they declined to be interviewed or to record statements.

### **The case for the Respondents and the Interested Parties**

32. The Respondents and the 1<sup>st</sup> to 10<sup>th</sup> Interested Parties opposed the Originating Summons through replying affidavits sworn by the 1<sup>st</sup> Respondent on 21<sup>st</sup> July 2020 and 9<sup>th</sup> December 2021; by Catherine Wanjiku Njeri on 30<sup>th</sup> July 2020 and 9<sup>th</sup> December 2021; Francis Mwangi Njuguna on 15<sup>th</sup> July 2020 and 9<sup>th</sup> December 2021; Hon. John Kieru Wambui on 9<sup>th</sup> December 2021; Peter W. Kanyugu on 24<sup>th</sup> January 2023 and Louisa Shitakwa Okwaro on 24<sup>th</sup> January 2023.
33. The 1<sup>st</sup> Respondent's case is that he joined the civil service in November 2006 as an Economist/ Statistician 1 at the Ministry of Finance and National Treasury; that he was seconded to the County Government of Nyandarua in the capacity of Chief Officer Finance and Economic Planning on 24<sup>th</sup> March 2014 and worked there until 28<sup>th</sup> June 2016 when he resigned to rejoin the National Government as a Senior Economist in the Ministry of Transport and Infrastructure until 25<sup>th</sup> January 2017.
34. It is his case that during his tenure as a civil servant, he was required to make declarations of his income, assets and liabilities, wealth declaration and that he did as required; that on 1<sup>st</sup> March 2018, the Applicant's officers visited his residence in Nakuru and conducted a search sanctioned by warrants issued in Milimani CM Misc. Application [No. 666 of 2018](#); that the officers carted away



documents belonging to companies, the 4<sup>th</sup> to 10<sup>th</sup> Interested Parties, in which his wife (1<sup>st</sup> Interested Party) is a director/shareholder; that some of those documents were Local Service Orders (LSOs) and Notifications of Awards from the Nyandarua County Government to the companies (4<sup>th</sup> to 10<sup>th</sup> Interested Parties) and which were rightfully in his wife's custody by virtue of her directorship in those companies. He disputed having custody or possession of any document belonging to the Nyandarua County Government. He also denied having a residence at Villa Moran Apartments where other documents related to procurement at the company were allegedly recovered. While conceding that the Villa Moran Apartments belonged to him he explained that at the time of the search, all the units in Villa Moran were fully occupied by tenants; that he was not at the villa Moran during the search, as is evidenced by the unsigned inventory, unlike the searches conducted at his other residences where he was present and signed the inventory. He averred that the only logical conclusion is that the Commission's officers maliciously planted the procurement documents at the said Villa Moran in order to build a case against him. He disputed that he sat in procurement committees to influence the award of tenders to the Companies associate with his wife and asserted that the allegation that he attended the Tender Committee meetings had not been proved through attendance forms.

35. In regard to the acquisition of the immoveable properties, he stated that some of the suit assets were acquired before his tenure at the County as Chief Finance and Economics Officer; that he purchased Dagoretti/Kinoo/3213 on 23<sup>rd</sup> September 2010, took possession and immediately started building a five storey block of 18 Apartments, which was financed by rental income from LARI/Kirenga3731 owned by his mother, his salary and proceeds of his wife's supplies business and that the development was completed in 2012 and he began earning rental income of Kshs.250,000. He stated that Dagoretti/Kinoo/47 and Kikuyu/Kikuyu/block 1/891 were acquired through an inheritance. He attached a certificate of Confirmation of Grant as proof and averred that at the time of the inheritance, Kikuyu/Kikuyu/block 1/891 was already developed with a five storey block of 17 Apartments with a monthly rental income of approximately Kshs. 320,000/-. He contended that he developed Dagoretti/Kinoo/47 with his uncle Michael Kuria Kiromo with whom he had inherited it through rental income, salary and income from business.
36. It is the 1<sup>st</sup> Respondent's case that he purchased Dagoretti/Kinoo/4210 and Dagoretti/Kinoo/4211 on 28<sup>th</sup> October 2014, transferred them to the 2<sup>nd</sup> Respondent and sold them in 2017; that he acquired Dundori/Lanetblock 5/1014 (Kiamunyeki 'A') which is his matrimonial home in 2015 and developed it with rental income from his already existing rental developments. In regard to Limuru/KirengaT.28 it is his case that he acquired it in October 2015 with income from his rental units and businesses; that however the property is undeveloped and has a pending case. Further that he acquired Limuru/KirengaT.225 in 2015 through his rental and business income and it is used by his mother for farming.
37. For the vehicles, the 1<sup>st</sup> Respondent's explanation was that motor vehicle KCB 253B was purchased in November 2014 through an asset finance loan of Kshs. 3,500,000 from Equity Bank; that he also acquired motor vehicle KBV 363G in 2014 but later sold it. He contended that motor vehicle KCH 101P was purchased by his wife (the 1<sup>st</sup> Interested Party) through her company, the 4<sup>th</sup> Interested Party, but it was registered in his name and lastly that motor vehicle KCE 039L B was also acquired through an asset finance loan from Equity Bank and had already been sold by the time the court granted the restraining orders in this case. He averred that he owned several motor vehicles even prior to joining the County Government of Nyandarua.
38. In regard to the bank accounts his explanation was that he started operating them prior to his employment at the County Government of Nyandarua. He denied that he received Kshs. 73,947,807.60 through corruption, embezzlement and bribery. He averred that he and his mother had a company, Oloborosat Mineral Company, which sold purified water under the brand name "Cianda



Water”; that the company operated the water business from his mother’s home situated in LARI/ Kirenga3529, where he had sunk a borehole and that the business commenced in 2012 but folded its operations in 2016 due to stiff competition. He further averred that during the period of interest, he used to advance loans to friends and that he and his wife would also send each other money, through the impugned bank accounts, to cover their financial obligations.

39. He further averred that before its closure, the water business generated an annual turnover of approximately Kshs. 10,000,000 which was banked in his personal account at Equity Bank although the business had its own account at the same bank.
40. In regard to rental income he called FRANCIS MWANGI NJUGUNA (DW1), who testified that he is an estate agent operating under the business name of M/S Johnwise Ventures; that he had managed the 1<sup>st</sup> Respondent’s property LARI/Kirenga3731 since 2006; that the property was already developed with a three storey block of nine flats; that the property was registered in the name of the 2<sup>nd</sup> Interested Party but that initially he would remit the rent collected to the 1<sup>st</sup> Respondent but later to the 2<sup>nd</sup> Respondent when it was incorporated. He testified that in 2006 he used to collect rent of approximately Kshs.50,000 per month. However, by the year 2020 the rent increased to Kshs. 75,000 per month. He stated that he started to manage Dagoretti/Kinoo/3212, which is a block of 18 flats in 2012 and that the same had a rental income of Kshs. 250,000 and the same increased to Kshs. 300,000 in 2020. In the same year he began managing Kikuyu/Kikuyu/block 1/891 which is a block of 17 apartments with rental income of approximately Kshs. 320,000. He contended that being friends with the 1<sup>st</sup> Respondent, he was aware that the 1<sup>st</sup> Respondent acquired Dagoretti/Kinoo/47 in the year 2012 and started developing it. He asserted that he used some of the rental income to purchase construction materials for the other properties; that the 6 storey development of 21 flats was completed in 2013 and started earning rental monthly income of Kshs. 300,000 and further that he also manages Dagoretti/Kinoo/4469 which although incomplete, comprises a block of 18 two-bedroom apartments. His duty in regard to Kinoo/4469 is merely to oversee its maintenance. He contended that most of the impugned properties were acquired before the 1<sup>st</sup> Respondent started working for Nyandarua County Government. He contended that in a month he would deposit Kshs.935,000/= rental income into the 2<sup>nd</sup> Respondent’s account depending on the occupancy of the houses.
41. The 1<sup>st</sup> Respondent produced valuation reports prepared by PETER W. KANYUGO (DW4) which state the value of the properties as follows:-
- i. Dagoretti/Kinoo/47 – 17,500,000
  - ii. Dagoretti/Kinoo/3213 – 18,500,000
  - iii. Dagoretti/Kinoo/4469 – 14,000,000
  - iv. Kikuyu/Kikuyu/block 1/891 – 20,500,000
  - v. Kiambu/Municipality/block 1/233 – 3,000,000
  - vi. Limuru/KirengaT.218 – 2,000,000
  - vii. Limuru/KirengaT.225 – 2,000,000
  - viii. Dundori/Lanetblock 5/1014 (Kiamunyekei ‘A’) 6,000,000
  - ix. Dundori/Lanetblock 5/2232 (Kiamunyekei ‘A’) – 500,000
- Total – Kshs.84 Million
- (See EXBD1. Valuation Reports)



42. It is also the 1<sup>st</sup> Respondent's case that he incorporated the 2<sup>nd</sup> Respondent in 2015 so as to consolidate the income from his real estate and businesses. This was confirmed by Francis Mwangi Njuguna (Johnwise) (DW1) who testified that from February 2015 he deposited all the rent collected into the 2<sup>nd</sup> Respondent's account at Equity Bank.
43. In regard to the Applicant's averment that he influenced the award of tenders to the 4<sup>th</sup> to 10<sup>th</sup> Interested Parties, the 1<sup>st</sup> Respondent testified that all the Chief Officers of the Nyandarua County Government were discharged from the County Tender Committee vide a letter dated 16<sup>th</sup> September 2014, pursuant to an advisory by the Deputy Governor that their inclusion was illegal. He contended therefore that he did not attend the Tender Committee meetings on 11<sup>th</sup> December 2014 and on 15<sup>th</sup> May 2015 as alleged by the Applicant. He disputed that Mr. Timothy Ngunjiri who is alleged by the Chief Officer of Finance to be the IFMIS approver instructed to retrieve information from the IFMIS was not an employee of the Nyandarua County.
44. He stated that during his tenure, all departments at the County were procuring entities and Chief Officers in each department were appointed as the Accounting Officers responsible for procurement and therefore the tenders awarded to the 4<sup>th</sup> to the 10<sup>th</sup> Interested Parties were done without conflict of interest, collusion, fraud, bribery or abuse of office. He reiterated that the department he headed had no role in the procurement process that culminated in the award of tenders or in the approval of expenditure; that the system for award of tenders had changed by operation of the Public Procurement and Disposal of Assets Act 2015, which demanded segregation of procurement activities within the procuring entities.
45. He explained that the first property he purchased was Dagoretti Kinoo/3213; that he purchased it from one Chege Wainaina at Kshs. 1,400,000 on 23<sup>rd</sup> September 2010. He produced the sale agreement as ExB D.15. He then constructed residential flats which was financed from rental income from LR Lari/Kirenga3731, Equity Loan and from his wife's supply businesses. Construction was completed in 2012 and he begun earning monthly rental income of Kshs. 200,000/= He transferred the property to Gachomba on 20<sup>th</sup> March 2015. The reason for transferring was to consolidate the family assets and income.
46. He acquired Dagoretti/Kinoo/47 by way of transmission in the estate of Sarah Thara Kiromo. He produced the certificate of confirmation of grant as ExB D. 26. He built a five storey building of 18 units on the property, which he developed with his uncle Michael Kamau Kiromo who got a half share. His share was transferred to Gachomba on 14<sup>th</sup> May 2016.
47. He explained that Kikuyu/Kikuyu/block 1/891 had a five storied building of seventeen flats with a rental income of about Kshs. 320,000/=. The source of funds were loans from banks, income from his other properties and businesses and salaries. The property is still in his name.
48. He purchased Dagoretti/Kinoo/4210 and 4211 from Catherine Mwangeli Kumuyu at a consideration of Kshs. 2,000,000 per plot on 28<sup>th</sup> October 2014. By then he had worked for 4 months. The tenders, the subject of this case, had not been issued. He produced a copy of the green card. He transferred the property to Gachomba on 10<sup>th</sup> March 2015. He sold the properties on 13<sup>th</sup> June 2017 for a consideration of Kshs. 8.5 million to Leah Wanjiru Ndungu and Timothy Kairu Wanyoike. He produced the sale agreement as ExBD.28.
49. He acquired Dundori Lanetblocks 1014 (Kiamunyeke A) in 2015 from Monsiro Juma Titus and Eunice Mwasi Monsire and paid Kshs. 1,500,000. He produced copy of green card "as EXB D.29. Title deed was issued on 4<sup>th</sup> June 2015. He transferred the property to Gachomba in 2017. The property is



- his matrimonial home and he financed construction from his other properties and transport business at which time the impugned tenders had not been issued.
50. He testified that LR No. Limuru/KirengaT218 was purchased from John Ng'ang'a Njuguna in October 2015 at a consideration of Kshs. 1,200,000. He produced a copy of the green card as ExBD 30. He explained that he purchased it from rental and business income. He testified that he has not developed it due to a dispute at CM Limuru ELC 33 of 2019 where he is a Defendant.
  51. He testified that he acquired Limuru KirengaT225 at a consideration of Kshs. 1,400,000 financed by rental income and transport business. He has not developed this property.
  52. He testified that he acquired vehicle Registration No. KCB 253 B – a Tata Lorry tipper at Kshs. 3,500,000 on 13<sup>th</sup> November 2024. This was from a loan from Equity Bank which he is still repaying. The motor vehicle is co-owned by himself and the Bank.
  53. Motor vehicle Registration No. KBB 363 G A Nissan X Trail was purchased it at Kshs. 1,200,000 from his rental income and transport business. He sold the vehicle to John Thuita for Kshs. 900,000 in November of 2015.
  54. Motor vehicle Registration No. KCF 410 P – Toyota Prado was purchased in December 2015 at Kshs. 2.8 million from proceeds of sale of the X-Trail which he topped up with his rental income and transport business.
  55. He further testified that motor vehicle Registration No. KCH 101P Nissan Duales was purchased in 2016 at Kshs. 1,100,000 by his wife from her supplies business. He produced valuation reports of the motor vehicles as ExBD. 34, 35.
  56. Motor vehicle Isuzu FRL Lorry Registration No. KCE 039L was purchased on 4<sup>th</sup> September 2015 at Kshs. 4,110,000/= through an Equity Bank Assets Finance loan which was fully paid.
  57. He explained that he had three loan accounts with equity Bank as between 16<sup>th</sup> January 2008 to 21<sup>st</sup> September 2018 he had taken loans worth Kshs. 17,581,626 from Equity Bank. He is still serving some of the loans.
  58. He contended that the period of interest is from 1<sup>st</sup> April 2014 to 26<sup>th</sup> June 2016 – when he was working for the County Government of Nyandarua and transactions outside that period were included and should be struck out by this court.
  59. He explained that Johnwise Ventures is a property Management Agency belonging to Francis Mwangi Njuguna. They collect rental income for his properties at a commission. The income was transferred to his and the 2<sup>nd</sup> Respondent's accounts. They begun collecting rent for him from 2006 which was approximately Kshs. 900,000 per month.
  60. He further contended that there were no entries showing money coming in directly to his account from the County Government of Nyandarua; that he is not and was not a director of any of the companies named as 4<sup>th</sup> to 10<sup>th</sup> Interested Parties, as at the point they were awarded tenders by the County Government; that the bids were from the Department of Roads and Public Works which had its own Chief Officer but not the Department of Finance where he was the Accounting Officer and that he was not in a position to influence any bids or tenders. He also stated that he did not sit in any of the Tender Committees.
  61. He testified that he was at home when the searches were conducted. No procurement documents were recovered at his matrimonial home. What they took from the matrimonial home were phones, Laptops, title deeds and sale agreements. The documents they took were rightfully in their home.



62. He contended that the tenancy at Villa Moran was 100% so he did not know where they got those documents. He did not know Jotham who is alleged to have signed on his behalf.
63. He acknowledged that notices from EACC were served upon his former Advocate Chege Wainaina. He immediately filed a Constitutional Petition No. 18 of 2019 on infringement of rights which was dismissed. EACC was the Respondent so they were aware. He did not tender an explanation save in the Petition filed. The explanation was to the commission through the court. He did not get a stay to the notice. He filed a statement which was explaining the assets.
64. In cross-examination, he acknowledged that he was aware that the companies named as interested parties were doing business with the County Government. He was not party to making payments for the tenders. Each department had its own accounting officer responsible for payments. What was happening in the Ministry of Roads was not his concern.
65. He explained that the sum deposited on 5<sup>th</sup> January 2013 – Kshs.38,000/= was proceeds for water sold; that he had a godown in Lari Kirenga, his mother's property; that he used to issue receipts but as it was more of an informal business he did not keep any record and that the business was shut down due to unfair competition hence rendering it unprofitable. He contended that the documents were destroyed after the closure and that in any event he had paid taxes, he was not obligated to keep the documents. Further that there is a document from GSI Kenya showing the specifications of the bottles but that the documents to prove that they purchased the bottles got destroyed. He stated that the business had a business account of its own but as his mother was indisposed the money was deposited in his personal account.
66. He explained that the cash deposit made on 8<sup>th</sup> January 2023 was from Johnwise Ventures. There was an agreement for them to collect his rent at a commission and the bank statements.
67. He explained the cash deposit made on 13<sup>th</sup> April 2013 of Kshs. 400,000 by his wife to have been from sale of cereals. He explained that open markets are informal and do not issue receipts. He explained that they have land in Subukia where the farming was taking place.
68. He confirmed that the 1<sup>st</sup> Interested Party is his spouse and the 2<sup>nd</sup> Interested Party is his mother. The 3<sup>rd</sup> Interested Party is his friend and business partner.
69. He could not confirm whether at the material time (2015) when he was the County Chief Officer Finance of the Nyandarua County Government, 4<sup>th</sup> to 10<sup>th</sup> Interested Parties did business with the County Government since he was not a director in any of them.
70. He denied having developed LR Dagoretti/Kinoo/3213 between 2013 and 2017 and contended that it was developed in 2010. He stated that he started collecting rent thereon in December 2012.
71. He explained that Dagoretti/Kinoo/47 is an inherited property. The certificate of confirmation of grant is dated 21<sup>st</sup> May 2012. The property was already developed but it was not yet complete. Even the share of the co-beneficiary was developed. He begun earning rent from it in 2013 after it was completed. The tenancy documents are kept by Johnwise and the rents collected is reflected in the bank statements. I do not work with Johnwise.
72. He further explained that Kikuyu/Kikuyu block was already constructed and complete as at 2012. There is a bank statement for the rents that were being collected as at 2012. All the utilities were connected before he inherited the property. The owner was an old woman so he does not have the receipts. The other half share of the property is not developed.



73. He explained that for Kinoo/47 he equally received a half share. The other half was also constructed. It is not true that the property inherited was undeveloped.
74. He further explained that Dagoretti/Kinoo/4469 is owned by the 2<sup>nd</sup> Respondent. It was acquired on 28<sup>th</sup> August 2017.
75. Kiambu/Municipality block1/233, Limuru/KirengaT218 and Limuru/KirengaT 225 were acquired during the period of interest.
76. He explained that the cash deposit of Kshs. 300,000/= on 23<sup>rd</sup> October 2014 was proceeds from supply of construction materials, sand and ballast to Kingori Mucheru. He contended that he used to source the materials from quarries in Nakuru, Naivasha, Kinangop and Mai Mahiu and sometimes from Mlolongo. He would pay for the materials in cash and no receipts would be issued. He never supplied materials to his wife's companies.

### **The Interested Parties' case**

77. The 1<sup>st</sup> Interested Party opposed the application through Replying Affidavits dated 30<sup>th</sup> July 2020 and 9<sup>th</sup> December 2021. She conceded that she is a Director of the 2<sup>nd</sup> Respondent and the 4<sup>th</sup>, 5<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Interested Parties; that the 2<sup>nd</sup> Respondent which was incorporated in February 2015 deals in real estate and owns various properties, some of which are the subject of this suit; that the Directors of the 2<sup>nd</sup> Respondent, were, at its inception, the 1<sup>st</sup> Respondent and the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties. She explained that the 1<sup>st</sup> Respondent resigned as the 2<sup>nd</sup> Respondent company's director but stayed on as a Manager and that the other shareholders are their children who were minors at the time of incorporation. She also stated that the 2<sup>nd</sup> Respondent company was incorporated for the purpose of holding family property under one umbrella hence the children's shares. She explained that the company's bank account was opened for the purpose of receiving rental income from properties owned by the Company.
78. In regard to the immovable properties she contended that some of them were acquired before the 1<sup>st</sup> Respondent's tenure at the County, but that they were transferred to the 2<sup>nd</sup> Respondent company much later in the year 2015. She listed the assets as Dagoretti/Kinoo/3213, ½ share in Dagoretti/Kinoo/47, ½ share in Dagoretti/Kinoo/block 1/891; Dagoretti/Kinoo/ 4210 and Dagoretti/ Kinoo/4211. She stated that the 2<sup>nd</sup> Respondent retained the services of Johnwise Ventures as a property agent. She denied that the properties are worth Kshs. 181,000,000 as alleged by the Commission and relying on the valuation reports of Peter W. Kanyugo dated 2<sup>nd</sup> April 2019 contended that their value is Kshs.84,000,000/-. She confirmed that officers of the Commission visited their property with search warrants and took away several documents, some of which were from Nyandarua County and which were addressed to her companies. She contended that the documents were in her rightful custody. She disputed that she retained some procurement documents or that she had an office at Villa Moran Apartments where documents belonging to the County were allegedly recovered. She contended that she and the 1<sup>st</sup> Respondent were not present during the search as otherwise they would have signed the inventory tender by the Commission as they did the other inventories of the searches carried out in their other properties. She asserted that the Commission's officers maliciously planted the procurement documents belonging to Nyandarua County Government in the Villa Moran.
79. In regard to the tenders she contended that the awards to the 4<sup>th</sup> to 8<sup>th</sup> Interested Parties were done legally in a clear and transparent manner. She stated that she put in her bids in answer to various advertisements and did not collude with anyone in the Tender Committee, or bribe or use undue influence. She asserted that the awards were also not a result of the 1<sup>st</sup> Respondent's influence.



80. She testified that moreover all the tenders were implemented fully; that the works were inspected by representatives of the County Government, after which payment was made and that there was no adverse report in respect to the works.
81. The 1<sup>st</sup> Interested Party also disputed that the 2<sup>nd</sup> Respondent's accounts received a sum of Kshs. 82,083,066 and averred that all the money in the 2<sup>nd</sup> Respondent's bank account and the 4<sup>th</sup> to 8<sup>th</sup> Interested Parties' accounts were lawful payments. She reiterated that the transfers of the properties to the 2<sup>nd</sup> Respondent was so as to consolidate the income received by the companies and to enable the 2<sup>nd</sup> Respondent to undertake its own investments.
82. She acknowledged receipt of the Commission's notice seeking an explanation of the assets allegedly disproportionate to the known income of the 2<sup>nd</sup> Respondent and stated that in response thereto, the 2<sup>nd</sup> Respondent filed a Constitutional petition HC ACEC Constitutional Petition *No. 18 of 2019*, which is the reason why they did not respond to the Notice by the Commission. She conceded that the 1<sup>st</sup> Respondent Michael Kamau Kuria is her husband and that the 2<sup>nd</sup> Respondent was incorporated on 13<sup>th</sup> February 2015.
83. She went further to explain that Dagoretti/Kinoo/3213 was purchased by the 1<sup>st</sup> Respondent on 23<sup>rd</sup> September, 2010 for Ksh. 4,000,000 and transferred to 2<sup>nd</sup> Respondent on 20<sup>th</sup> March 2015. Dagoretti/Kinoo/47 was acquired by the 1<sup>st</sup> Respondent as an inheritance ½ share through Kikuyu Magistrate Court Succession Cause No. 123 of 2012 and transferred to 2<sup>nd</sup> Respondent on 14<sup>th</sup> March 2015. Dagoretti/Kinoo/4469 was acquired from Simon Mungai at Ksh 8.5 million on 28<sup>th</sup> August 2017 and transferred to 2<sup>nd</sup> Respondent the same day. Kiambu Municipality/block 1/233 was acquired on 12<sup>th</sup> November 2014 from Catherine Mwongela and transferred to the 2<sup>nd</sup> Respondent on 10<sup>th</sup> March 2015. Dundori Lanetblocks/1014 was acquired from Titus Juma on 21<sup>st</sup> July 2015 and transferred to 2<sup>nd</sup> Respondent. Dundori Lanet/block/2232 was purchased from Mary Njeri on 22<sup>nd</sup> September, 2016 and transferred to the 2<sup>nd</sup> Respondent on the same day. She stated that some of the properties are developed with apartments which earns them rental income.
84. In regard to the value of the immovable properties she adverted to the valuation report of John Wakahora Kanyugo (EXB D5).
85. In regard to the companies she explained that the 4<sup>th</sup> Interested Party was registered on 11<sup>th</sup> June 2015; the Directors being herself and Agnes Wanjiku, the 2<sup>nd</sup> Interested Party; The 5<sup>th</sup> Interested Party was incorporated as a business name on 23<sup>rd</sup> June 2015 and is the sole proprietor. She incorporated the 6<sup>th</sup> Interested Party on 20<sup>th</sup> June 2014 but sold it to one Esther Wangui in October 2018 at Ksh. 200,000/- while the 7<sup>th</sup> Interested Party was incorporated on 16<sup>th</sup> January 2015. She contended that she bid and was awarded tenders through those companies and that in addition she carried out a cereals business.
86. She narrated that during the search in the matrimonial home, EACC Officials took their phones, laptops, LSO's notification of awards, original title deeds for some of the properties, marriage certificate, certificates of incorporation of some of the companies, and Equity Bank account statements. She produced the EACC inventory as EXB D6. She contended that no bids, contracts or tender document were collected. The LSO's and notifications of award that were seized were rightfully in her possession as she is a contractor.
87. In cross-examination, she confirmed that all the companies were registered after her husband joined the County Government of Nyandarua. She explained that all her companies are construction companies licenced by the National Construction Authority (NCA); that whereas she had no knowledge in



- construction she would engage engineers and pay them. She however stated that she did not have the list of the engineers she used to engage.
88. She further testified that her home is valued at Ksh. 5,000,000; that majority of her income came from rent but on 12<sup>th</sup> September 2017 she received Kshs. 3,250,000/= from sale of plot LR Dagoretti/Kinoo/4210 to Leah Wanjiru Ndugu. The property had been acquired by the 1<sup>st</sup> Respondent on 27<sup>th</sup> September 2017. Deposit was Kshs. 2,000,000 and there was a bank transfer of Kshs. 250,000/= for lease of Tata lorry truck. She had no evidence to support the Ksh. 200,000/= alleged by the 1<sup>st</sup> Respondent to have been from their cereal business; that on 14<sup>th</sup> September 2016 they sold maize for Ksh. 170,000,000/= but did not have anything to prove it; that they formed the 2<sup>nd</sup> Respondent to consolidate their rental income.
89. She contended that no money went to the 2<sup>nd</sup> Respondent out of the work they did for Nyandarua County Government. She had since shut down the companies. She denied that they were special vehicle companies to trade with Nyandarua County Government while her husband was there. She closed them because their names were spilt because of what happened during the searches.
90. She confirmed that she did not record a statement with the EACC as she was very ill. She did not have any evidence of the rent received from Johnwise.
91. She also testified that before she began trading with Nyandarua County Government, she was in construction using her friend's company, but did not have proof.
92. DW5: Louisa Shitakwa Okwaro a certified public accountant and auditor testified that he used the documents that had been supplied to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents by EACC to audit the Respondents' property. The vehicles were financed by Equity Bank at Ksh. 3,500,000 and Ksh. 4,110,000/=. He did not find any money payment RTGS from County Government of Nyandarua to the 2<sup>nd</sup> Respondent during the period in issue. There was no description of the person who was making the cash payments into the account.
93. He testified that he was unable to link cash coming from the County to the three impugned accounts, that Johnwise (DW1) was the agent who collected rent for the 1<sup>st</sup> Respondent. That cumulative amount of the alleged corrupt tenders was Kshs.42,33,202/=; that the minutes were signed before the tenders were opened and further that as the Commission is claiming Ksh. 343,530,873/=, there is need to authenticate that this figure moved from the account of the County Government of Nyandarua to the Respondents' accounts. She contended that the Commission should claim only Ksh. 42,323,202/=; that the same should also be supported by third party documents such as vouchers and explanation of how you award tenders that have not been approved through minutes. The stamp on the documents was just that of the County Government.
94. In re-examination, she testified that his terms of reference were to look/review the documents received from EACC. He looked at the period between January 2013 and December 2017. He did not know if prior to April 2014, the 1<sup>st</sup> Respondent was a public officer. He explained that Bank statements are valid third party documents for audit purposes and there were those entries that were indicated as Johnwise rent. He could not confirm whether it was rent or not as he did not call for the books of account in regard to rent from Johnwise. The 2<sup>nd</sup> Respondent was making its income was outside the scope of his review. Based on the documents availed, he was able to confirm that monies went from Nyandarua to the interested parties but not directly to the Respondents.



## Submissions

### The Applicant's submissions

95. In summary Mr. Nyoike, Learned Counsel for the Applicant, submitted that this is a suit for unexplained wealth brought pursuant to Section 55 of the ACECA; that the 1<sup>st</sup> and 2<sup>nd</sup> Respondent are in possession of assets worth Kshs. 392,178,934 which are unexplained; that Notices to explain were sent to the Respondents under Section 55(2) and no explanation was received.
96. Counsel placed reliance on the case of *Stanley Mombo Amuti v. Kenya Anti-Corruption [2019] eKLR (Civil Appeal No. 184 of 2018)* where the Court had set out the principles in cases of unexplained assets to be as follows:-
- i. there must be a set period, “the period of interest”;
  - ii. The person must be suspected of corruption;
  - iii. The person must be in possession of property disproportionate to his income at or during the period of interest; and
  - iv. there must be no explanation for the disproportion.
97. Counsel for the Commission submitted that the period of interest is defined in the Notice to Explain which is issued under Section 26 and 55 of the ACECA and that for this case the Notices issued on to the Respondents on 8<sup>th</sup> August 2019 defined the period of interest to be from January 2013 to December 2017. Counsel submitted that the 1<sup>st</sup> Respondent was employed by the Ministry of Devolution as a District Development Officer of Nyandarua District in November 2006. He was then seconded to the County Government of Nyandarua as a Senior Economist. In March 2014 he successfully applied for the position of Chief Officer Finance and Economic Planning although he remained on secondment from the parent ministry. Counsel stated that the 1<sup>st</sup> Respondent was suspended on 31<sup>st</sup> July 2015 following the Auditor General’s report on misuse of public funds in the County during the financial year 2013/2014. The suspension was lifted on 7<sup>th</sup> January 2016. He resigned on 28<sup>th</sup> June 2016 citing the decision by the Public Service Commission to de-link seconded staff to the County Government and his wish not to lose benefits in the parent ministry and was released from the service of the county effective 15<sup>th</sup> August 2016. He was effectively removed from the county payroll on 31<sup>st</sup> August 2016. He resumed his position in the Ministry until 25<sup>th</sup> July 2017 when he resigned. Therefore, Counsel argued that the 1<sup>st</sup> Respondent was a public officer as at January 2013 until August 2016. Investigations into his disproportionate wealth as well as that of the 2<sup>nd</sup> Respondent continued until December 2017. Counsel contended that the period of interest is defined by the period the 1<sup>st</sup> Respondent was a public officer.
98. Counsel relied on the finding in the case of *Stanley Mombo Amuti v. Kenya Anti-Corruption (Supra)* where the court stated:-
- “It is not the duty of the Trial Court to identify the period of investigation. . . It is the Duty of the .. Commission to identify the period of investigation.”
99. He contended that the period of interest only becomes an issue if the period set out in the Originating Summons is larger than the period set out in the notices. He contended that throughout the hearing of the case the Respondents neglected to address the period of interest and instead generated a separate



period defined by the 1<sup>st</sup> Respondent's employment at the County Government of Nyandarua, which period in any event fails to explain the source of the suit assets.

100. In regard to the Notices to explain, Counsel submitted that the Respondent's sought to forestall the operation of the notices through a Constitutional Petition but the court declined to stay the notices. Counsel stated that the 1<sup>st</sup> to 3<sup>rd</sup> Interested Parties refused to give an explanation of the funds deposited into the Respondent's accounts. Counsel submitted that failure to comply with the notices was an offense under Section 26(2) of the ACECA:
  101. On the beneficial ownership of the 2<sup>nd</sup> Respondent, Counsel submitted that it was uncontroverted that the 2<sup>nd</sup> Respondent is owned by members of the 1<sup>st</sup> Respondent's nuclear family; that it was registered on 13<sup>th</sup> February 2015 with the 1<sup>st</sup> Respondent as a Director although he later resigned, and become its Manager to date. Counsel stated that the 1<sup>st</sup> Respondent is a mandatory signatory to the 2<sup>nd</sup> Respondent's account at Equity Bank. Counsel stated that as the 1<sup>st</sup> Respondent signed the 2<sup>nd</sup> Respondent's account opening forms is proof that he is the beneficial owner.
  102. Counsel submitted that the 1<sup>st</sup> to 10<sup>th</sup> Interested Parties were engaged in corrupt conduct in that they conducted business with the County Government of Nyandarua where the 1<sup>st</sup> Respondent worked in conflict of interest.
  103. On whether there was satisfactory explanation, Counsel out the assets being queried whose source he contended had not been explained. Counsel urged this court to grant the orders sought.
  104. In support of his submissions Counsel relied on the following cases: Civil Appeal 184 of 2018, Stanley Mombo Amuti -v- Kenya Anti-Corruption Commission [2019] eKLREACC -V- Jimmy Mutuku Kiamba & 3 Others, Equity Bank Limited (Interested Party) [2019] eKLREACC -v- Patrick Ochieno Abachi & 6 Others [2021] eKLRBukunya & Others -v- Uganda [1972] EA 549Mann Holdings Pte Ltd and another -v- Ung Yoke Hong (2018) HCHG 69, Singapore High Court
- \* Elgin Finedays Limited -v- Webb 1947 AD 744 and 745

### **The Respondents and 1<sup>st</sup> to 10<sup>th</sup> Interested Parties' submissions**

105. Miss Maina Advocate, who appeared together with Mr. Ndegwa Wahome for the Respondents and the 1<sup>st</sup> to 10<sup>th</sup> Interested Parties, submitted the this subject matter of this Originating Summons are ten tenders. He explained that only three companies, to wit the 6<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Interested Parties, received those tenders whose total value is Kshs. 42,323,202/=.
106. She pointed out at the inconsistencies in the testimonies of the Plaintiff's witnesses.
107. She submitted that the 1<sup>st</sup> Respondent started working for Nyandarua County Government on 1<sup>st</sup> April 2014, that he was suspended on 31<sup>st</sup> July 2015 hence he worked for the County a year and four months; that his suspension was lifted on 1<sup>st</sup> July 2016 and that during the period he was on suspension he was out of the office and was not going to his office. Counsel averred that the tenders in issue were awarded during the period when the 1<sup>st</sup> Respondent was on suspension.
108. Further that from 2012 the 1<sup>st</sup> Respondent had a water business that the water was from a borehole drilled on Lari Kirenga35. Counsel referred to the quotation for drilling of the well as proof that Davis & Shirtliff placed a pump in that borehole. She contended that Equity Bank's estimate of expected return from that water business was Kshs.10,000,000 per annum with an expenditure of Kshs. 5,000,000.



109. Counsel submitted that there was also income from rent and from a transport business where a tipper and a truck were used. Both the tipper and truck were financed by Equity Bank at Kshs. 4,110,000. Counsel stated that the 1<sup>st</sup> Respondent also ran a cereal business.
110. In regard to the immovable properties, Counsel submitted that the Kinoo property was acquired in 2010 and transferred to the 2<sup>nd</sup> Respondent in 2015; that property Kikuyu/891 was also an inheritance; that the 1<sup>st</sup> Respondent owns half share of that property and that the same already had rental apartments when he inherited it. Counsel averred that the 1<sup>st</sup> Respondent had it for 8 months before joining the County.
111. Further that the 1<sup>st</sup> Respondent owns half share of Kinoo/47 which is an inheritance; that at the time of transmission the property already had apartments for which the 1<sup>st</sup> Respondent and co-owner continued to receive rent. Counsel submitted that Kiambu/1233 was purchased for Kshs. 4,500,000 through the water business and rental income; that Limuru/T218 was acquired was on 9<sup>th</sup> October 2015 for Kshs. 1,200,000/; Dundori block/1014 and Dundori block 2332 are on same portion of land where he resides with his family and that the 1<sup>st</sup> Respondent purchased them at a total of Kshs. 3 million. Counsel asserted that he acquired these properties from the water businesses; Limuru/225 which is undeveloped was purchased in November 2015 for Kshs. 1.4 million from water business and that Kinoo/4469 was acquired in 2017 after he had left the County. It was 85% developed and he completed the construction from him businesses.
112. Counsel submitted that the 1<sup>st</sup> Respondent sold a Nissan Xtrail to purchase a Prado and this with money from the water and transport; that motor vehicle KCH 101P was purchased in 2017 for 1,100,000 after the 1<sup>st</sup> Respondent left the County through income from the transport business and rental income and further that motor vehicle KCE Isuzu truck, was financed by Equity Bank for Kshs. 4,400,000.
113. Counsel submitted that the loans borrowed by the 1<sup>st</sup> Respondent from Equity Bank between 16<sup>th</sup> January 2008 and 21<sup>st</sup> September 2018 – a period of 10 years amount to of Kshs. 17,581,625.
114. In regard to the alleged conflict of interest, Learned Counsel submitted that the 1<sup>st</sup> Respondent did not sit in any Tender Committee nor attend such Tender Committee meetings; that the County Government advertised the tenders and anybody could bid and nothing stopped the Interested parties from doing so. Counsel contended that there was value for the tenders and no complaints were raised. Counsel argued that the Interested Parties used their money to satisfy the tenders so the state should not forfeit the 1<sup>st</sup> Respondent's assets.
115. Counsel acknowledged that prior to 1<sup>st</sup> April 2014 the Interested Party companies were not in existence and that they folded up after the 1<sup>st</sup> Respondent left the County and no contracts were awarded to them after that.
116. Counsel concluded by stating that the Commission has not proved its case on a balance of probabilities and it ought to be dismissed. To support their submissions Counsel relied on the following: -Kinyanjui Kamau -v- George Kamau [2015] eKLR EACC -v- Catherine Nkirote t/a Venyte Suppliers & Joscate Sales and Supplies & 2 Others [2020] eKLR
117. I have carefully read and considered the pleadings and the submissions of the Learned Counsel and have found the following to be the issues for determination.



## Issues for determination

118. I have considered the oral testimonies and documentary evidence adduced by the parties. I have also considered the rival submissions and the cases cited.
119. Simply put the Commission/Applicant's case against the Respondents is that they have unexplained assets which they must either cede to the state or pay their equivalent market value to the State.
120. Section 2 of the ACECA defines "unexplained assets" to mean assets of a person:-
- "(a) Acquired at or around the time the person was reasonably suspected of corruption or economic crime;
  - and
  - b. Whose value is disproportionate to his known sources of income at or around that time and for which there is no satisfactory explanation."
121. The law and procedure in regard to forfeiture of unexplained assets is contained in Section 55 of the *Anti-Corruption and Economic Crimes Act* (the ACECA). Firstly, the commission must be satisfied that the person (Respondent) has unexplained assets. Secondly, it must have afforded the person a reasonable opportunity to explain the disproportion between the assets concerned and his known legitimate sources of income. It is only if there is no adequate explanation that the Commission can commence proceedings for forfeiture (see Section 55 of the ACECA).
122. Once proceedings have been commenced it is only once the Commission must prove on a balance of probabilities that the Respondent does have unexplained assets, the court will require the Respondent to adduce evidence to satisfy the court that the assets were acquired otherwise than as a result of corrupt conduct.
123. Section 55(6) of the ACECA states that:-
- "55(6) If, after such explanation, the court is not satisfied that all of the assets concerned were acquired otherwise than as the result of corrupt conduct, it may order the person to pay to the Government an amount equal to the value of the unexplained assets that the Court is not satisfied were acquired otherwise than as the result of corrupt conduct."
124. For the purpose of the proceedings corrupt conduct is defined to mean conduct that constitutes corruption or economic crime (Section 55 (1)(a)) while the assets of the Respondent are "deemed to include any assets of another person that the court finds: -
- a. Are held in trust for the person whose assets are in question or otherwise on his behalf; or
  - b. Were acquired from the person whose assets are in question as a gift or a loan without adequate consideration.
125. Arising from the above provisions, the issues that fall for determination in these proceedings therefore are:-
- a. Which is the "period of interest".
  - b. Whether the Respondents were afforded a reasonable opportunity to explain the disproportion.



- c. Whether the Commission has proved on a balance of probabilities that the assets, the subject of these proceedings, are unexplained assets.
- d. If so, whether the Respondents have discharged their evidentiary burden to satisfy this court that the assets were acquired otherwise than as a result of corrupt conduct.
- e. If the answer in issue (d) above is in the negative, whether those assets should be forfeited to the government of Kenya.

**Issue No. (a):- Which is the “Period of Interest”**

126. The Commission contends that the period of interest is January 2013 to July 2017 as defined in the notices to explain served upon the Respondents. This according to the Commission is the period when the 1<sup>st</sup> Respondent worked at the County Government of Nyandarua on secondment from the ministry of Planning and Economic Development (National Government and a period just immediately before he joined the County Government from the Ministry and a period after he resigned to rejoin the Ministry until the time he left the public service. On their part the Respondents contend that the period of interest should be confined to period when the 1<sup>st</sup> Respondent joined the County Government which is March 2014 to 28<sup>th</sup> June 2016 when he resigned from the County Government.
127. As can be seen from the definition of unexplained assets the period of interest is determinable from the time the person is or was reasonably suspected of corruption or economic crime. It is indeed that period which constitutes the period in the Notice served upon the Respondents and the Interested Parties. That period is informed by Sections 26 and 55 of the ACECA and is clearly stated to be January 2013 to December 2017. It is my finding therefore that the period of interest is January 2013 to December 2017.

**Issue No (b): Whether the Respondents were afforded a reasonable opportunity to explain to explain the disproportion.**

128. The Respondents admit that they received a Notice to Explain the disproportion between their assets and their known legitimate e sources of income. The 1<sup>st</sup> Interested Party testified that even though they got the notice they chose not to respond and instead decided to challenge it in court but they were unsuccessful. From their own admission, therefore, I am satisfied that they were given a reasonable opportunity to explain the disproportion as required by Section 55(2) (b) of the ACECA.

**Issue No. (c):- Whether the Commission has proved on a balance of probabilities that the assets, the subject of these proceedings, are unexplained assets.**

129. As was held in the Court of appeal in the case of *Kiambaa & 3 others v Ethics and Anti-Corruption Commission; Equity Bank Limited (Interested Party) (Civil Appeal 464 of 2019)* [2024] KECA 74 (KLR) (9 February 2024) (Judgment) it was held that:-

“The afore-cited sections clearly set out the position in law that, he who asserts has to prove the fact in issue. The respondent had the obligation to prove beyond a balance of probabilities that the appellants were in possession of ‘unexplained assets’ and, if the court was so satisfied, only then would the evidentiary burden shift to the appellants to explain how those assets were acquired . . . We are of the view that the judge gave an opportunity to the respondent to prove on a balance of probabilities, that there were indeed ‘unexplained assets’, which it did.”



130. The Commission adduced evidence of the 1<sup>st</sup> Respondent's salary and emoluments during the period of interest by tendering pay slips covering the entire period. By the start of the period of interest his gross salary was Kshs. 59,590/- with a net of Kshs.24,974.80. by July 2016 the gross salary had risen to Kshs. 212,249 with a net of Kshs. 96,577.40. the net salary for the period of interest as calculated by the Commission between January 2013 to July 2016 is Kshs. 2,139,128.60. It is however instructive that he period of interest extends to December 2017 given that his accounts continued to receive funds from the 2<sup>nd</sup> Respondent up to that date even though he had resigned from formal employment. The figures tabulated by the Commission were not controverted and so the total of the 1<sup>st</sup> Respondent's salaries for the period in issue is Kshs.5,217,934 (gross) and Kshs.2,139,128/60 (net). The 1<sup>st</sup> Respondent's bank statements seem to suggest that prior to the period of interest Johnwise Ventures was depositing to more than 67,400/- per month as rental income. The salaries and rental income is what the commission juxtaposed to a total asset base/portfolio of Kshs.329,178,934 which the Commission has tabulated as follows:-

#### Analysis Of Unexplained Assets

DESCRIPTION	AMOUNT (KSHS)
Total approximate value of landed properties	181,000,000.00
Total approximate value of motor vehicle	6,500,000.00
Total bank deposits (Equity Bank-Ac No.160291143992 Ac Name Michael Kamau Kuria)	49,754,715.60
Total bank deposits (Equity Bank-Ac No.1110299529471 Ac Name Michael Kamau Kuria)	24,193,092.00
Total bank deposits (Equity Bank Ac. No. 1110264050403, Ac. Name: Gachomba and Company Properties Limited)	82,083,066.00
Total assets	343,530,873.60
LESS (subtract)	
Total Net Salary Income from January 2013 to 31 <sup>st</sup> December 2017	2,139,128.60
Total Bank disbursement credit for the period January 2013 to 31 <sup>st</sup> December 2017	12,212,811.00
Value of un-explained assets	329,178,934.00

131. Clearly the commission has discharged its burden of proving, on a balance of probabilities, that the Respondents are in possession of assets not proportionate to their known legitimate sources of income.



**Issue (d):- If so, whether the Respondents have discharged their evidentiary burden to satisfy this court that the assets were acquired otherwise than as a result of corrupt conduct.**

132. The Commission has alleged that the suit assets were acquired during the period of interest when the 1<sup>st</sup> Respondent through proxies, engaged in business with the County Government of Nyandarua which amounted to Conflict of interest.
133. The Commission claimed that the 1<sup>st</sup> Respondent failed to declare conflict of interest when tenders were awarded to the 1<sup>st</sup> to 10<sup>th</sup> Interested party during his tenure at the County Government of Nyandarua. It claims that he sat in the tender committee meetings and influenced payments to the Interested parties. The Commission claims that the 1<sup>st</sup> Respondent was present during the tender Committee held on 15<sup>th</sup> May 2015, which awarded the impugned tenders.
134. I have duly considered the evidence adduced by the 1<sup>st</sup> Respondent and 1<sup>st</sup> Interested Party in their endeavour to explain the disproportion in regard to the Interested Parties doing business with the County Government of Nyandarua. The 1<sup>st</sup> Respondent alleges that he never sat in a tender committee, the tenders were issued from a Ministry of the County that was independent from his docket and that he was not a Director of the Interested Parties and was thus not involved. The Interested Parties also claim that no complaints were ever recorded against their performance of the tenders.
135. While it is not disputed that the 1<sup>st</sup> to 10<sup>th</sup> Interested Parties, whose directors and shareholders are family members of the 1<sup>st</sup> Respondent, traded with the County Government of Nyandarua during the period that the 1<sup>st</sup> Respondent was its employee, it is vehemently denied that those awards were influenced by the 1<sup>st</sup> Respondent. As stated earlier the 1<sup>st</sup> Respondent testified that he never sat in the Tender committees that awarded the tenders to the Interested Parties and also called a member of County Assembly the Hon. John Kieru (DW3) who testified and produced an extract of a Hansard (EXBD7) as proof that the 1<sup>st</sup> Respondent was prohibited from sitting in the Tender committee and hence he could not have done so. The 1<sup>st</sup> Interested Party (wife of the 1<sup>st</sup> Respondent) also testified that the 1<sup>st</sup> Respondent did not influence the awards. However, the Commission produced minutes of a Tender committee held on 15<sup>th</sup> May 2015 where the 1<sup>st</sup> Respondent was present. Indeed, the same shows he was a member.
136. Be that as it may and even were we to believe that he did not influence the awards, that trade with the County where he worked and the companies so closely associated with him was prohibited under the law both under Section 33(1) of the Public Procurement and Disposal Act, 2005 and Regulation 26 of the Public Procurement and Disposal Regulations 2006 which state:-

“ 33(1) Except as expressly allowed under the regulations, a procuring entity shall not enter into a contract for a procurement with—

- (a) an employee of the procuring entity or a member of a board or committee of the procuring entity;
- (b) a Minister, public servant or a member of a board or committee of the Government or any department of the Government or a person appointed to any position by the President or a Minister; or
- (c) a person, including a corporation, who is related to a person described in paragraph (a) or (b).



“26. For purposes of Section 33(2) of the Act, a relative is limited to a spouse or 2 child.”

137. Any tender awarded in contravention of Section 33(1) of the Public Procurement and Disposal Act, 2005 and Section 66 of the Public Procurement and Assets Disposal Act, 2015 is an illegality as it arises from a conflict of interest.
138. As stated while indeed the Respondent provided evidence of revocation of appointment of Chief Officers to the Tender Committee, there are minutes which indicate that he attended one meeting where tenders were deliberated and awarded to the Interested Parties. That amounted to a conflict of interest under the Public Procurement and Disposal Act, 2005 and Regulations and also under Section 59 and 66 of the Public Procurement and Assets Disposal Act 2015.
139. The 1<sup>st</sup> Respondent conceded that the 4<sup>th</sup> to 10 Interested Parties not only traded with his employer while he worked with the County Government of Nyandarua, but were incorporated during that period. His allegations that he was unaware of the award of tenders to the Interested parties as he was no longer a director does not hold water as the shareholders and directors are members of his nuclear family to wit his wife, mother, children and uncle whose affairs could not be a secret to him.
140. The admission by the 1<sup>st</sup> Respondent that he supplied materials to the Interested Parties and hired his lorry out to them betrays his assertion that he was not aware were trading with the County. It also amounts to Conflict of Interest as he took part in conflict of interest is an offence under Section 42 of the ACECA. Any income derived from the tenders awarded to the 1<sup>st</sup> to the 10<sup>th</sup> Interested Parties by the Nyandarua County Government was against the law and cannot form an explanation of the disproportionate wealth.
141. Though the 1<sup>st</sup> Respondent and 1<sup>st</sup> Interested Party maintained that the 2<sup>nd</sup> Interested party was incorporated with the aim of consolidating their rental income, the bank statements reveal that the bulk of the deposits in the 2<sup>nd</sup> Respondent’s accounts were made by the Interested Parties. Several Transactions above Kshs.6,000,000 were made by Githioro and Kanjuri Contractors which the 1<sup>st</sup> Interested Party admitted was trading with the County Government of Nyandarua, and which as I have stated was contrary to the law hence tainting any income derived therefrom.
142. As regards the acquisition of the motor vehicles and immoveable properties and the development thereon the explanation given by the Respondents is that they were all save for two properties Kinoo/47 and Kikuyu block 1/891, which were inherited, acquired and then developed with rental income derived from the already developed properties as well as other businesses.
143. However, an analysis of the bank records indicates rents collected to be as follows:-Rent collection from Johnwise Ventures into the 1<sup>st</sup> Respondent’s Account No. 0160291143991 from January 2013 to December 2018 –2013 – 122,0532014 – 0.002015 (March)- 470,5002016 – 0.002017 (May) – 594,2722018 – 0.00Total: Kshs.1,186,825Equity Bank Account Number 1110299529471 in the name of Michael Kamau Kuria Rent collection from Jonwise Ventures2013 – 510,0382014 – 1,190,1162015 – 4,363,9482016 – 4,103,6002017 – 0.002018 – 0.00Total: 10,167,702.Equity Bank Account Number 1110264050403 In the name of Gachomba & Company Properties Limited received rent collection from Johnwise Ventures as follows:-
  - \* 2016 – 554,785
  - \* 2017 – 5,961,529.0Total: 6,516,314



144. The above figures are more or less in agreement with those set out in the analysis of Louisa Shitakwa Okwaro (DW5) meaning that given the amounts they clearly could not be had was used to acquire the immovable properties at the considerations given and thereafter to develop them to the level that they were. Indeed, a close analysis of the bank statement reveals that number 0160291143992 held at Equity Bank, in the 1<sup>st</sup> Respondent's name used to receive small amounts of money not exceeding Kshs. 67,000 until 25<sup>th</sup> March 2013 when the cash deposits tripled to Kshs. 245,000 and thereafter on 28<sup>th</sup> March 2013 Kshs. 340,000 was deposited. Clearly there was another stream from where the cash was coming. That stream brought in substantial cash deposits and by June 2015, the account was receiving several deposits of up to Kshs. 1,000,000 and Kshs. 1,400,000 from the 2<sup>nd</sup> Respondent. The source of these cash deposits was not explained. In the absence of an explanation one can safely conclude that these were proceeds of corruption. It is easy for one to say as did Johnwise (DW1) that I remitted some of the rental income to the landlord, to wit the 1<sup>st</sup> Respondent, in cash. However, even then an agent would have been expected to have kept a record of the cash remittance. He would also have been expected to maintain records of what he paid for the construction materials and as wages to the labourers. In the absence of such evidence it cannot be said that the Respondents have rebutted that of the Commission's.
145. The account also received numerous RTGS transfers from the County Government of Nyandarua which were not the 1<sup>st</sup> Respondent's salary or emoluments and which have not been explained hence rendering them suspicious.
146. Also in regard to the alleged rental income it is my finding that even a record of the agency fees/ commission earned or paid to Johnwise, which ordinarily would be a percentage of the rent collected, would have aided this court in gauging the real amount collected from the properties both before and during the period of interest. Further the 1<sup>st</sup> Respondent could have adduced evidence of the time when the buildings were constructed. This is in regard to the Kinoo/47 and Kikuyu block 1/891 which he claims to be the source of funds with which he slowly acquired developed the other properties. The best evidence to prove time of construction would have been drawings, utility connections receipts and/or applications not to mention tenancy agreements and building materials receipts. Without such evidence this court is not able to arrive at a conclusion that those properties were already developed. The only reasonable conclusion is that these two properties were also developed with money from the tainted sources.
147. Dagoretti/Kinoo/4469 was transferred to the 2<sup>nd</sup> Respondent from Simion Gakuha Mungai, on 28<sup>th</sup> August 2017, which is within the period of interest and hence it was acquired with tainted funds.
148. Limuru/KirengaT. 218 was transferred to the 1<sup>st</sup> Respondent on 9<sup>th</sup> October 2015, which is within the period of interest. The 1<sup>st</sup> Respondent testified that he purchased it in October 2015 at a consideration of Kshs. 1,200,000 from rental and business income. However, there was no evidence tabled of the transaction and of the account from which the purchase price was paid or the business that generated the income. I find that the property is unexplained.
149. Kikuyu/Kikuyu block 1/891 half share was transferred to the 1<sup>st</sup> Respondent on 23<sup>rd</sup> July 2013 under Succession Cause Number 123 of 2012, at the Kikuyu Principle Magistrate's Court. The other ½ share was subsequently transferred to the 1<sup>st</sup> Respondent on 27<sup>th</sup> April 2016 which is within the period of interest. The source of the funds that acquired that ½ share most certainly was also tainted.
150. Dagoretti/Kinoo/3213 was acquired by the 1<sup>st</sup> Respondent on 23<sup>rd</sup> September 2010 and then transferred to the 2<sup>nd</sup> Respondent on 20<sup>th</sup> March 2015. The 1<sup>st</sup> Respondent testified that the property was acquired in September 2010 through a loan from Equity Bank as well as income from his



wife's supply business. He claimed to have constructed flats on the property in 2012 and started earning rent of Kshs, 200,000 per month but again he did not adduce any evidence of the time of construction, the case of construction and the source of funds hence this court finds that the development is unexplained as are all the properties which were acquired and developed during the period of interest and that includes the matrimonial home which is built on Dundori/Lanet/block 5/1014 and Dundori/Lanetblock 5/Kiamunyeke "A".

151. The 1<sup>st</sup> Respondent claimed to have used proceeds of his water business known as Olobasait to acquire and develop some of the properties. However his evidence that it was a profitable business with a turnover of Kshs.10,000,000 a year was not supported by any evidence. In any event the fact that he shut down the business due to stiff competition betrays that it was not profitable. Moreover he did not produce any records to prove the income of Kshs.10,000,000 or tax records as would satisfy this court that the business was a going concern.
152. The 1<sup>st</sup> Respondent was at a loss to explain how such a profitable business was shut down because of competition. In my view the only reasonable explanation for the closure was that the business was not profitable at all. It could not therefore have been the source of funds that were used to acquire and develop the properties in issue. It does not therefore explain the disproportion. I am not therefore satisfied that the water business earned him any income as would the assets were acquired otherwise than through corruption.
153. As for the motor vehicles they were all acquired during the period of interest and much as he borrowed from Equity Bank towards the acquisition it is evidence that those loans were serviced from no other than the monies that were collected from the immovable properties which as I have already found were acquired and developed with monies illegally received from the County Government of Nyandarua. Those motor vehicles are therefore also tainted.
154. In conclusion I find that the pay slips from the Ministry of Planning as well as those of the County Government of Nyandarua reflect a figure much less than the properties amassed by the Respondents during the period of interest. The 1<sup>st</sup> Respondent did not prove the sources of the large amounts of cash deposits made by himself and the 1<sup>st</sup> Interested Party into the accounts. The explanation that the 1<sup>st</sup> Interested Party was carrying on business in informal open markets hence the lack of receipts is not tenable. The 1<sup>st</sup> Respondent also claimed that they have land in Subukia from where the produce his wife traded with was grown. He did not however tender any evidence of this land or the activities that go on there. Receipts for purchase would have sufficed. Further no evidence of the open market activities/trading was adduced such as receipts even from the local authorities were presented. I am unable to find that the 1<sup>st</sup> Interested Party carried on any such business or any other legitimate business, other than the business she did with the County Government of Nyandarua, that could have generated the funds to acquire the suit assets.
155. It is instructive even from their own analysis that the rental income that the Respondents allege to have been collecting before the period of interest does not reflect in the accounts.
156. The 1<sup>st</sup> Respondent also alleges that he used to lend money. However what he tendered in evidence does not show that he earned any interest and even if he had the source of the money lent was still that which I have already made a finding that it was tainted.
157. Those soft loans cannot therefore be taken into account as clearly they could not have played any part in the acquisition of the assets.
158. As for the wealth declaration it is noteworthy that the wealth declaration made by the 1<sup>st</sup> Respondent on 1<sup>st</sup> November 2015 does not ordinarily contain the sources of the wealth. It is merely a declaration



of one's sources of income, one's assets and the liabilities. It cannot, other than being used as evidence of the income, assets and liabilities as at that time, be of any probative value of how those assets were acquired. I shall advert to the values attributed to the assets later in this judgment.

159. This court will not examine the veracity of the acquisition process for properties Dagoretti/Kinoo/4210 and 4211 which were explained by the 1<sup>st</sup> Respondent as they are not the subject of this case. The evidence of funds from their sale could have however been relevant to the proceedings had they been flagged as having been used to acquire the suit properties.
160. Save for the property transmitted under succession, I find all the rest to be disproportional to the Respondents legitimate and known income and thus being unexplained assets.
161. As for the value of the assets, the commission and the Respondents presented conflicting valuation reports. The value of the properties is fundamental to this case and this court must therefore determine which value to adopt. The values assigned to the properties by the parties are as follows:-

PROPERTY	VALUE ASSIGNED BY APPLICANT'S VALUER	VALUE ASSIGNED BY RESPONDENTS' VALUER
Dundori/Lanetblock 5/2232 (Kiamunyeki 'A') And Dundori/Lanetblock 5/1014 (Kiamunyeki 'A')	17 Million	5.5 Million
Dagoretti/Kinoo/47	30 Million	15 Million
Dagoretti/Kinoo/3213	36 Million	15 Million
Dagoretti/Kinoo/4469	45 Million	12 Million
Kiambu/Municipality/ block 1/233	8 Million	2.5 Million
Kikuyu/Kikuyu/block 1/891	45 Million	16 Million
Limuru/KirengaT.218	Value not provided	2 Million
Limuru/KirengaT.225	Value not provided	2 Million
KCB 253B – Tata Tipper	Value not provided	2.4 Million
KCH 101P – Toyota Station/ Wagon	Value not provided	1.1 Million
KCF 410P – NISSAN Station/Wagon	Value not provided	
KCE 039L – Isuzu Truck	Value not provided	



162. In the case of Kenya Ports Authority v Modern Holdings [E.A] Limited [2017] eKLR, the Court of Appeal stated:-

“We agree with the learned judge that in the event of conflicting expert evidence, it is the duty of the court to consider the evidence and form its own opinion. However, in so doing, the court must give cogent reasons why it prefers the evidence of one expert over the other. (See Ndolo v Ndolo [2008] 1 KLR (G&F) 742).”

163. In view of the above principle I note that the Respondents’ admission as to how much they acquired the properties and how much they spent on their developments, when juxtaposed with the 1<sup>st</sup> Respondent’s wealth declaration in 2015, reveal that the Respondent’s valuation report has grossly undervalued the properties. For instance, in his wealth declaration made in November 2015, the 1<sup>st</sup> Respondent indicated the value of his rental properties in Dagorretti/Kinoo/44 to be Kshs. 90,000,000 yet in the valuation report which came 5 years later, when the property should have reasonably appreciated, valued Dagoretti/Kinoo/47 and Dagoretti/Kinoo/3213 at Ksh. 15,000,000 each. He declared property Kikuyu/Kikuyu block 1/891 to be worth Kshs.60,000,000 in 2015 but provided the value assigned in the valuation report is Kshs. 16,000,000. He declared Limuru/KirengaT.225 to be worth 9,000,000 in 2015 but in the valuation report it is assigned a value of Kshs. 2,000,000. Clearly the valuation report has grossly undervalued the properties so as to fit in the explanation offered by the Respondents.

164. As for the rental income, the rent schedules adduced by the Respondents are not supported by any tenancy agreements to demonstrate how much was being collected yet the Respondent’s valuer claimed to have based his value on the rent collected. This court therefore finds the values in the Commission’s valuation report more credible.

Issue (e):- If the answer in issue (d) above is in the negative, whether those assets should be forfeited to the government of Kenya.

165. Having found that the answer to issue (d) above is in the negative I must now turn to the issue of what happens to the assets which are unexplained.

166. Section 55 (6) of the ACECA states that:

“55(6) If, after such explanation, the court is not satisfied that all of the assets concerned were acquired otherwise than as the result of corrupt conduct, it may order the person to pay to the Government an amount equal to the value of the unexplained assets that the Court is not satisfied were acquired otherwise than as the result of corrupt conduct.”

167. In this case I have found that all the impugned assets save for the two properties which were inherited are unexplained. This is given that the Respondents did not explain the source of the huge or even that with which they acquired and subsequently developed the immovable properties. The only source of funds is that traced from the tenders the Interested Parties got from County Government of Nyandarua.

168. The Principle for forfeiture of unexplained assets is ‘prove it or lose it’ not ‘explain it or lose it. Explanation must be supported by cogent evidence albeit on a balance of probabilities. The Respondents having failed to discharge that evidentiary burden it is my finding that they hold assets, to wit, the impugned immovable properties, save for the value of the inherited properties and the motor vehicles.



169. As for the huge deposits in the two bank accounts belonging to the 1<sup>st</sup> Respondent, albeit depleted, there was no explanation or evidence in regard to the source or as to how they were spent. It is however reasonable to conclude that these are the funds that the 1<sup>st</sup> Respondent was using to acquire the impugned assets and to hereafter develop them. Having found that he shall forfeit those properties or pay their equivalent current market value to the government, it would be unjust of me to also require him to refund those funds.
170. However, the funds transacted through the account of the 2<sup>nd</sup> Respondent were paid into that account as income from the tainted assets and must therefore be paid to the State. The same are clearly proceeds of corruption from which the Respondents would be illicitly enriched.
171. The upshot is that the claim by the Commission is successful and accordingly judgment is entered in its favour against the Respondents and the 1<sup>st</sup> to 10<sup>th</sup> Interested Parties as follows:-
- a. That the Respondents are jointly and severally hereby ordered to pay to the Government of Kenya the sum of Kshs.82,083,066/- which was deposited into the 2<sup>nd</sup> Respondent's account during the period of Interest.
  - b. That the following immovable properties and the developments thereon constitute unexplained assets within the meaning of Section 55 of the ACECA and hence shall be forfeited to the Government.
    - i. Dundori/Lanetblock 5/2232 (Kiamunyekei 'A')
    - ii. Dundori/Lanetblock 5/1014 (Kiamunyekei 'A')
    - iii. Dagorreti/Kinoo/3213
    - iv. Dagoretti/Kinoo/4469
    - v. Kiambu/Municipality/block 1/233
    - vi. Limuru/KirengaT.218
    - vii. Limuru/KirengaT.225
  - c. That in regard to properties Dagorreti/Kinoo/47 and Kikuyu/Kikuyu block 1/891 the same shall be forfeited less the value of the current market value of the land upon which the developments stand.
  - d. That the below listed motor vehicles shall be forfeited to the State: -
    - i. KCB 253B – Tata Tipper
    - ii. KCH 101P – Toyota Station/ Wagon
    - iii. KCF 410P – Nissan Station/Wagon
    - iv. KCE 039L – Isuzu Truck
  - e. That in the alternative to order (b), (c) and (d) above the Respondents shall pay to the Government of Kenya an amount equal to the market value of the moveable and immovable properties as stated in the Commission's valuation report.
  - f. That the Respondents shall pay the Commission's and 11<sup>th</sup> Interested Party's costs.

Orders accordingly.



**SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 26<sup>TH</sup> DAY OF SEPTEMBER 2024.**

.....

**E N MAINA**

**JUDGE**

In the Presence of: -

Mr. Pius Nyoike for EACC /Applicant

Ms Maina for the Respondents and 1<sup>st</sup> to 10<sup>th</sup> Interested Parties

Mr. Nyoike Mungai for the 11<sup>th</sup> Interested Party

Court Assistant – Aden

