



**Ethics & Anti-Corruption Commission v Amailo Investment Company Limited & 7 others  
(Anti-Corruption and Economic Crimes Civil Suit E025 of 2022) [2024] KEHC 16703 (KLR)  
(Anti-Corruption and Economic Crimes) (20 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16703 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
ANTI-CORRUPTION AND ECONOMIC CRIMES  
ANTI-CORRUPTION AND ECONOMIC CRIMES CIVIL SUIT E025 OF 2022  
BM MUSYOKI, J  
DECEMBER 20, 2024**

**BETWEEN**

**ETHICS & ANTI-CORRUPTION COMMISSION ..... PLAINTIFF**

**AND**

**AMAILO INVESTMENT COMPANY LIMITED ..... 1<sup>ST</sup> DEFENDANT  
MATHEW KIPCHUMBA KIPKEMEI ..... 2<sup>ND</sup> DEFENDANT  
GRACE MUREI ..... 3<sup>RD</sup> DEFENDANT  
SAMUEL EREGAI ..... 4<sup>TH</sup> DEFENDANT  
JAMES ARONO CHEGEM ..... 5<sup>TH</sup> DEFENDANT  
ESTHER LOKAI ELIM ..... 6<sup>TH</sup> DEFENDANT  
ELIM PETER EPAGAN ..... 7<sup>TH</sup> DEFENDANT  
PETER EKOROT ENDAPAL ..... 8<sup>TH</sup> DEFENDANT**

**RULING**

1. In its application dated 7<sup>th</sup> November 2024, the plaintiff asks this court to allow it to introduce eight documents as part of its intended evidence. These are Equity Bank certificates of authentication dated 30<sup>th</sup> August 2021 and 17<sup>th</sup> June 2022; Equatorial Nuts Processors Limited certificates of authentication dated 6<sup>th</sup> May 2022 and 25<sup>th</sup> March 2022; NTSA details of motor vehicle registration number KCx xx5J, NTSA certificate of authentication, KENHA certificate of authentication dated 24<sup>th</sup> March 2011 and 22<sup>nd</sup> March 2022; some documents relating to 2450 bags of corn soya from Equatorial Nut



Processors Ltd to Amailo Investment Company Limited and Mpesa statement of James Arono Chegen from 1<sup>st</sup> January 2021 to 30<sup>th</sup> June 2022.

2. The plaintiff avers that the omission of the documents in its list of documents was an inadvertent oversight by its previous advocates and maintains that the defendants will not be prejudiced if the documents are introduced as part of its documents in this suit. In opposition to the application, the defendants state that the case management closed on 26<sup>th</sup> April 2023 and the matter certified ready for hearing on 25<sup>th</sup> May 2023 and the current application comes too late in the day. The defendants also remind the court that they had applied for reopening the case management which application was vehemently opposed by the plaintiff them to abandon their application. The defendants add that this matter has been adjourned on four occasions on the behest of the plaintiff and the court and they are being prejudiced by the delay.
3. The application was heard orally on 27-11-2024. The plaintiff submitted that the documents were inadvertently left out and the mistake of the advocate should not be visited upon it. According to the plaintiff, the defendants will not suffer any prejudice as part of the documents are also in the defendants' bundle of documents and the defendants will have an opportunity to cross examine witnesses on the document during the hearing.
4. The defendants claim that allowing the application would be discriminatory as their application of similar was withdrawn. The defendants also submit that the plaintiff is a public body with established systems and change of advocates should not be a justification for allowing the application. They also argue that they will be prejudiced if the documents are introduced at this stage as the pleadings and the case management conference closed one year and eight months ago.
5. I have considered the rival arguments of the parties. Whereas it is evident from the record that the plaintiff has changed advocates in this matter more than once, that should not be an excuse for its poor organisation of the matter. That should be an issue between the plaintiff and its advocates. I however note that mistakes do occur and unless there is apparent and irreversible prejudice on the other party, courts should be liberal in allowing parties to make up for or correct their innocent mistakes of action or omissions especially where the case has not reached a stage where such correction would introduce new issues.
6. The defendants claim that allowing the application will be tantamount to discrimination as they were forced to withdraw their application to reopen the case management conference. I have gone thorough the record and I have not seen anything that may suggest that the defendants were forced to withdraw their application. They voluntarily and without reservations filed a notice of withdrawal which was adopted by the court. They had the liberty to pursue their application and wait for the court's determination. The fact that a party withdrew its plea does not preclude the opposing parties from making a similar application.
7. I note that the hearing of this matter has not taken off. It is coming for hearing on 28<sup>th</sup>, 29<sup>th</sup> and 30<sup>th</sup> January 2025. There is enough time for the defendants to consult and instruct their advocates in respect of the documents sought to be introduced. Filing of the documents does not mean that they have been produced as evidence in the suit. The defendants can raise issues of admissibility of the documents during the hearing. I don't see any new issues likely to be introduced by the documents. I am not therefore convinced that the defendants will suffer any prejudice if the documents are introduced as they will have time and opportunity to cross examine the witnesses and test the veracity of the evidence contained in the documents.



8. I am, in conclusion minded to allow the application with a caution to the parties that this court will not entertain any further delays in form of applications. The plaintiff shall file and serve the proposed list and bundle of documents within the next seven days.

The matter shall proceed for hearing in the dates earlier given.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF DECEMBER 2024.**

**B.M. MUSYOKI**

**JUDGE OF THE HIGH COURT.**

Ruling delivered in presence of Miss Sitati for the plaintiff and Mr. Suge for the 2<sup>nd</sup> 3<sup>rd</sup> and 5<sup>th</sup> defendants

