



**Ethics & Anti-Corruption Commission v Njehia (Anti-corruption and Economic Crimes
Miscellaneous E028 & E040 of 2021 (Consolidated)) [2022] KEHC 13067 (KLR)
(Anti-Corruption and Economic Crimes) (22 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13067 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
ANTI-CORRUPTION AND ECONOMIC CRIMES
MISCELLANEOUS E028 & E040 OF 2021 (CONSOLIDATED)**

**EN MAINA, J
SEPTEMBER 22, 2022**

BETWEEN

ETHICS & ANTI-CORRUPTION COMMISSION APPLICANT

AND

PETER MAINA NJEHIA RESPONDENT

RULING

Introduction

1. In its notice of motion applications dated March 22, 2022 and May 27, 2022 both premised on section 56 of the *Anti-Corruption and Economic Crimes Act*, the Ethics and Anti-corruption Commission seeks extension of preservation orders issued by this court on September 24, 2021 in Misc Application No E028 of 2021 and on June 2, 2022 in Misc Application No E040 of 2021 for a period of six months. The orders in Misc Application No E028 of 2021, Ethics & Anti-corruption Commission v Peter Maina Njehia is in respect of the following bank accounts:

- i. Bank account no [particulars withheld] held at Equity bank limited.
- ii. Bank account no [particulars withheld] held at Kenya Commercial Bank (KCB) limited.

The orders issued in Misc Application No E040 of 2021 on the other hand were in respect of the following:

- “i. Kshs 13, 557, 385 held as share capital in account No [particulars withheld] in Stima Sacco Society limited in the name of Peter Maina Njehia



- ii. Kshs 11,913,750 held as alpha deposit in account No [particulars withheld] in Stima Sacco Society in the name of Peter Maina Njehia
- iii. Kshs 10,000,010 held in the shares account no [particulars withheld] in Unaitas Sacco limited in the name of Peter Maina Njehia
- iv. Kshs 8,200,010 held in the shares account old system no [particulars withheld] in Unaitas Sacco Mununga in the name of Peter Maina Njehia
- v. Kshs 7,000,000 held in the shares account old system in account no [particulars withheld] in Unaitas Sacco Limited in the name of Julie Hellen Matu
- vi. Kshs 7,000,000 held in the shares account new system in account no [particulars withheld] in Unaitas Sacco Limited in the name of Julie Hellen Matu
- vii. Kshs 930,760 held in the dividend account new system in account no [particulars withheld] in Unaitas Sacco Limited in the name of Julie Hellen Matu.”

2. The applications are supported by the grounds on the face of it and the supporting affidavit of Shadrack Mwenda, an investigator working for the commission. He deposes that pursuant to its mandate under section 11(d) of the *Ethics and Anti-Corruption Commission Act* 2011, the applicant commenced investigations into corruption allegations against public officials at the Kenya Electricity Transmission Company (KETRACO) which revealed that senior officials, including the respondent had been receiving bribes from the company’s suppliers. Consequently, the applicant sought and obtained orders barring the respondent from accessing, withdrawing, transferring or in any other way dealing with the money held in the aforementioned accounts for a period of six (6) months upon reasonable suspicion that the money held therein was acquired as a result of corrupt conduct and constituted unexplained assets. The orders were set to lapse on March 24, 2022 and May 30, 2022 respectively. However, the applicant has not yet finalized its investigations necessitating the present applications.
3. The applicant avers that it has made significant progress towards completion of investigations which also entailed filing of myriad applications for warrants to investigate the accounts of the respondent, his associates and family members suspected to be linked to the respondent’s corrupt conduct. That to that end warrants obtained in respect of the respondents accounts held at Stima Sacco, Unaitas Sacco, Kihumo Nakuru Development Self-Help Group and Equity Bank as well as a variety of assets in Miscellaneous Application No E040 of 2021, E034 of 2022, E426 of 2022, E008 of 2022, E941 and E540 of 2022 between November 30, 2021 and March 17, 2022. Subsequently, it was established that the respondent was in possession of assets in land, motor vehicles, bank deposits, Mpesa credits and Sacco investments hugely disproportionate to his known legitimate source of income by approximately Kshs 175 million which were acquired between January 2010 to March 2021.
4. The deponent asserted that upon conclusion of investigations, the next step will be issuance of notices for unexplained wealth under section 26 and 55(2) of the *Anti-Corruption and Economic Crimes Act* for the respondent to explain the disparity before the decision to institute forfeiture proceedings is made. That this process inclusive of vetting responses is likely to take time and in the absence of a preservation order nothing will prevent the respondent from withdrawing, transferring, disposing or wasting the funds in the subject accounts in the intervening period before recovery proceedings are commenced.



5. In its submissions dated June 13, 2022, the applicant cited section 56(3) of the [Anti-Corruption and Economic Crimes Act](#) empowering the court to extend preservation orders. It was submitted that at the time of making of the present application a notice for unexplained wealth had not been issued in Misc App E028 of 2021; but had been issued in a related file, Misc App E040 of 2021 which files have been consolidated. That in the latter file, the disproportion in assets is Kshs 237,806,769.40. The applicant continued that the respondent has been accorded reasonable time to tender a written explanation on the source of his assets in accordance with the notice and that the applicant will also need commensurate time to review and confirm whether the tendered explanations are satisfactory.
6. The applicant placed reliance on the case of [Ethics and Anti-Corruption Commission v Catherine Nkirote Maingi & 2 Others](#) (2017) eKLR in which the commission's application for extension of preservation orders was granted for six months once they established that they had demonstrated considerable progress but more time was needed to finalize investigations.

Respondent's Case

7. The application is vehemently opposed *vide* the respondent's grounds of opposition filed on June 7, 2022 and a list of authorities filed on June 8, 2022. The grounds are:-
 - a) That the application is incompetent, bad in law in situ, misconceived and an abuse of the honourable court's process.
 - b. That the applicant has not provided any proof to show that it has made significant progress in the investigation of the matter
 - c. That the six months statutory period provided under section 56 of the [Anti-Corruption and Economic Crimes Act](#) is sufficient for the applicant to have conducted and concluded its investigations and therefore there is no justification to continue freezing the respondent's bank accounts.
 - d. That whereas preservation orders are necessary for the applicant to carry on with its statutory obligation to investigate allegations of corruption, investigations are part of a fair hearing and freezing orders cannot be issued in perpetuity.
 - e. That the preservation orders sought to be extended have exposed and will continue to expose the respondent to untold suffering and hardship that outweigh having the funds in the respondent's bank accounts transferred or concealed.
 - f. That the applicant has not tendered any proof that the funds in the applicant's bank accounts are proceeds of corruption. He who asserts the existence of facts must prove that those facts exist.
 - g. That therefore, the notice of motion lacks merit, it's an abuse of court process and should be dismissed with costs to the respondent."
8. Learned counsel for the respondent relied on his oral submissions to the application for extension of preservation orders in Misc App No E040 of 2021 canvassed on June 14, 2022. Counsel however reiterated that no reasonable grounds have been demonstrated to warrant extension of the orders and pointed out that the respondent continues to suffer hardship. Counsel stated there is no proof that the funds in issue are proceeds of corruption. Counsel cited the cases of the [Ethics and Anti-Corruption](#)



Commission v Co-operative Bank of Kenya & Lulu Company Limited (2018) eKLR, the *Ethics and Anti-Corruption Commission v Jobncele Insurance Brokers Limited* (2015) eKLR and the *Ethics and Anti-Corruption Commission v Moses Kasaine Lenolkulal & Another* (2019) eKLR in support of his submissions.

9. On the ground that there is no proof that the applicant has made any significant progress in the investigations within the first six months in which the preservation orders were granted learned counsel for the respondent urged this court to balance the applicant's right to fair hearing guaranteed in article 50 of the *Constitution* and to find that the preservation orders cannot last in perpetuity and hence dismiss the application with costs and discharge the orders sought to be extended.

Determination and Analysis

10. Section 56 of the *Anti-Corruption and Economic Crimes Act* provides that applications by the commission for preservation orders shall be made ex parte. Once the order is granted it last for six months as provided under section 56(3) of the Act. Additionally, subsection (3) gives the court discretion to extend the order upon application of the commission.
11. The manner of the application for extension is not provided for but in the interest of justice this court had always required that the application be served upon the respondent.
12. From the wording of subsection, the power to extend preservation orders is discretionary but as always that power must be exercised judicially. The issue of determination is whether the commission/ applicant had met the threshold for extension of the preservation orders.
13. Preservation orders of assets under investigations are crucial in preventing dissipation of assets under investigations prior to recovery. However, investigations must adhere to the tenets of fair trial and must be attended to by fairness and expedition. The respondent's plea that he is aggrieved by and continues to suffer the existence and pendency of the freezing orders are therefore not a baseless response to the application and cannot be taken lightly. This court is enjoined to balance between the public interest in this matter and the respondent's constitutional rights. I am in agreement with the respondent therefore, that freezing orders cannot be issued in perpetuity. My so saying is fortified by the holding of the court in the case of *Ethics and Anti-Corruption Commission v Beatrice Kagwiria Mugambi* [2018] eKLR.
14. In this case the main ground urged by the applicant is that it has issued notices for unexplained wealth in E040 of 2021 and intends to issue the same in E028 of 2021, that it will require time to vet the responses thereto and that it is at the tail end of its investigations which it ought to be given time to conclude. I have carefully considered the application and submissions by both sides and I am persuaded that it would be in the interest of justice to extend the orders sought. However as the commission/ applicant has by now had even more than the statutory six months to carry out its investigations and considering that it has intimated that it is at the tail end of the investigations, this court will allow the application but only extend the orders by 30 days effective from the date of this ruling.
15. This ruling shall apply *mutatis mutandis* to ACEC Misc E040 of 2021.

Orders accordingly.

SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 22ND DAY OF SEPTEMBER 2022.

E.N. MAINA

JUDGE

