



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION**  
**ACEC NO. 6 OF 2020 (OS)**

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

**VERSUS**

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

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

**AND**

**CATHERINE WANJIKU NJERI.....1<sup>ST</sup> INTERESTED PARTY**

**AGNES WANJIKU KURIA.....2<sup>ND</sup> INTERESTED PARTY**

**HENRY NJOROGE GATHIGA.....3<sup>RD</sup> INTERESTED PARTY**

**WANJOHI CONTRACTORS AND GENERAL SUPPLIES LIMITED.....4<sup>TH</sup> INTERESTED PARTY**

**OLKALAU VENTURES.....5<sup>TH</sup> INTERESTED PARTY**

**KANJUURI GENERAL CONTRACTORS AND SUPPLIES LIMITED.....6<sup>TH</sup> INTERESTED PARTY**

**KAIMBAGA ENTERPRISES.....7<sup>TH</sup> INTERESTED PARTY**

**GITHIORO CONTRACTORS AND GENERAL SUPPLIES LIMITED.....8<sup>TH</sup> INTERESTED PARTY**

**JILSU GENERAL CONTRACTORS & SUPPLIES LIMITED.....9<sup>TH</sup> INTERESTED PARTY**

**SILVERDOLA GENERAL CONTRACTORS & SUPPLIES LIMITED.....10<sup>TH</sup> INTERESTED PARTY**

**EQUITY BANK LIMITED .....11<sup>TH</sup> INTERESTED PARTY**

**RULING**

**INTRODUCTION**

1. The Applicant moved the court under Certificate of Urgency for interlocutory order of injunction, restraining the Respondents and interested parties from selling, transferring, charging, wasting or in any other way alienating named properties, which application was certified urgent and an order of injunction issued pending the hearing of the application inter-parties.
2. What is now pending before this court is the following prayers: -

**THAT** this Honourable Court be pleased to issue an order of injunction restraining the Respondents interested parties and agents, servants and/or any other persons from selling, transferring, charging, disposing, wasting or in any other way alienating the following properties pending the hearing and determination of the suit for forfeiture

- 1.) DUNDORI/LANET BLOCK 5/2235 (KIAMUNYEKI 'A')
- 2.) DUNDORI/LANET BLOCK 5/1014 (KIAMUNYEKI 'A')
- 3.) DAGORETTI/KINOO/47
- 4.) DAGORETTI/KINOO/3213
- 5.) DAGORETTI/KINOO/4469
- 6.) KIAMBU/MUNICIPALITY/BLOCK 1/233
- 7.) KIKUYU/KIKUYU/BLOCK 1/891
- 8.) LIMURU/KIRENGA/T.218
- 9.) LIMURU/KIRENGA/T.225

**3. THAT** the Honourable court be pleased to issue an order of injunction restraining the respondents, interested parties and their agents, servants and/or any other persons from transferring, disposing of any other dealings (however described) with BANK ACCOUNTS named.

**4. THAT** the Honourable court be pleased to issue an order of injunction restraining the Respondents, interested parties, their agents, servants and/or any other persons from selling motor vehicle registration Nos.

- a) KCB 253B
- b) KCH 101P
- c) KCF 410P
- d) KCE 039L.

**5.** It was grounded on the grounds that the Applicant had received credible information that Mr. Michael Kamau Kuria, the 1<sup>st</sup> Respondent who was a former Chief Finance and Economic Planning Officer at Nyandarua County Government, had accumulated vast wealth, which was inconsistent with his legitimate source of income and that upon their investigation, established that he had received numerous deposit in cash and bank transfers to his two bank accounts totaling to Kshs.73,947,807.00 from sources reasonably suspected to be proceeds of corruption, embezzlement and bribery.

**6. THAT** the 2<sup>nd</sup> Respondent received cash deposit and bank transfers totaling Kshs.82,083,066.00 from sources reasonably suspected to be proceeds of corruption, embezzlement and bribery and that some of the entities that deposited money in the accounts of the Respondents, had been awarded tenders by Nyandarua County Government, in processes that were flout with procurement irregularities, corruption and bribery during the tenure of the 1<sup>st</sup> Respondent.

**7. THAT** investigations reveal that during the period of interest, the Respondents acquired or developed properties spread across the country, whose value is over Kshs.181,000,000/= and motor vehicles valued at over Kshs.6,500,000/=.

**8. THAT** in spite of the Respondents being afforded a reasonable opportunity to explain the disproportion between the assets concerned and their known legitimate sources of income, the Respondents failed and/or neglected to provide any explanation for that disproportion.

**9.** To the said application was attached an Originating Summons under Section 55 of the Anti-Corruption and Economic Crimes Act for forfeiture of the said Assets to the Government.

#### **APPLICANT'S CASE**

**10.** The application was supported by a further affidavit sworn by **ABEL TUNGA MAREVA** a Forensic Investigator with the applicant, in which it was deposed that the properties, the subject matter of the application, were suspected to had been acquired and/or developed at a time when the 1<sup>st</sup> Respondent was suspected to be involved in corruption, as a result of inquiry on allegation of corruption involving embezzlement of public funds, irregular procurement, bribery, abuse of office and conflict of interest, by the public officials of the Nyandarua County Government.

**11.** It was contended that investigations conducted by the applicant had unearthed suspicious corrupt conduct against the respondents and the interested parties and accumulation of unexplained wealth and that the procurement documents recovered from the matrimonial home of

the 1<sup>st</sup> Respondent in Lanet Nakuru, belonging to the 3<sup>rd</sup> interested party was an admission that he was fully aware that his wife was actively trading with his employer, the County Government of Nyandarua, contrary to Section 33 of Public Procurement and Disposal of Assets Act.

12. It was the Applicant's case that the 3<sup>rd</sup> – 10<sup>th</sup> interested parties were incorporated/registered by the 1<sup>st</sup> Respondent's wife, mother and business partner during the tenure of the 1<sup>st</sup> Respondent at the County Government of Nyandarua, further indicating that the motive of registration was to corruptly take advantage of his new found position.

13. It was deposed that search warrants were obtained and a search carried on DAGORETTI/KINOO/47 belonging to the 1<sup>ST</sup> Respondent, yielded a significant number of original procurement files, belonging to Nyandarua County Government which was contrary to the law.

14. It was deposed that most of the subject properties were acquired and developed during the period in question and that the 1<sup>st</sup> and 2<sup>nd</sup> Respondent filed two petitions being ACEC PETITION No. 18 & 19 of 2019 to forestall their legal requirements to explain the disparity in their wealth, to the Chief Executive Officer of the Applicant, as set out under Sections 26 and 55(2) of the ACECA, they failed to satisfy the court as to why they should not explain their wealth and therefore failed to obtain an order of stay.

15. It was further stated that 1<sup>st</sup> Respondent and 1<sup>st</sup> – 3<sup>rd</sup> interested parties not only failed to honour their legal obligation after notices were issued but they had equally failed and/or neglected to cooperate with the applicant during investigations.

### **RESPONDENT'S CASE**

16. In response to the application, the 1<sup>st</sup> Interested Party swore an affidavit in which she stated that she was a business lady working and residing in Lanet, Nakuru County and that the 2<sup>nd</sup> Respondent was incorporated on 13<sup>th</sup> February, 2015 and deals in Real Estate with the 1<sup>st</sup> Respondent as a Director among others, before he resigned.

17. It was contended that the 2<sup>nd</sup> Respondent was incorporated so that the family property, then registered in the names of 1<sup>st</sup> Respondent were registered under "one umbrella" and Bank accounts opened for the purposes of receiving rental income.

18. It was deposed that when the 2<sup>nd</sup> Respondent was incorporated, the 1<sup>st</sup> Respondent, in line with their common objectives, transferred various properties which were already in his name to the 2<sup>nd</sup> Respondent, which then began to earn income, vide the rental proceeds, for which it retained the service of FRANCIS NJUGUNA T/a JONWISE VENTURES as its property agent, mandated to advertise vacant houses, rent and deposit collection, refund deposits, maintenance of premises, payment of service charges and disbursement of rent collection.

19. It was contended that the properties in issue were not worth Kshs.181,000,000/- as stated by the Applicant.

20. She admitted that during the execution of the search warrant obtained by the Applicant, documents collected by the Applicant's officers such as Local Supply Orders and Notification of Awards were from the Nyandarua County Government addressed to the directors of interested companies, in which she was a director and were rightly in custody by virtue of her directorship in the 4<sup>th</sup> to 8<sup>th</sup> Interested Parties herein.

21. It was her case that the tenders awarded to the 4<sup>th</sup> to 8<sup>th</sup> interested Parties by County Government of Nyandarua were done legally in a clear and transparent manner, having applied for the said tenders, having learnt about the same in various advertisements, both in print and electronic media and that the successful bids awarded to the four companies were not as a result or influenced by the 1<sup>st</sup> Respondent, given his capacity as Finance Officer at the County, whose role did not permit him to have any say as to how the tenders were awarded.

22. It was further stated that the 2<sup>nd</sup> Respondent did not receive the sum of Kshs.82,083,066 as proceeds of crime and that if it was so, the applicant should prove those criminal allegations beyond reasonable doubt.

23. It was finally contended that the money transferred from the bank account of the 4<sup>th</sup> to 8<sup>th</sup> Interested Parties account to the 2<sup>nd</sup> Respondent were lawful proceeds of payment made to the them by the County Government of Nyandarua, on the basis of tenders approved and executed to finality, which did not amount to money laundering, but for consolidating/pooling income received by the said companies, as well as to enable the 2<sup>nd</sup> respondents engage/undertake its own investment activities.

24. It was confirmed that when the Applicant issued a Notice to the 2<sup>nd</sup> Respondent to explain the disproportionate between its known assets and its known source of income, the same filed a petition on the basis of infringement of the fundamental right under Articles 31, 40, 47 and 50 of the Constitution, which petition was dismissed on 5<sup>th</sup> April, 2020 and that the 2<sup>nd</sup> Respondent could not respond to the notice before the said ruling.

25. The Respondents further responded to the application through an affidavit sworn by one **FRANCIS MWANGI NJUGUNA** in which he deposed that he had known the 1<sup>st</sup> Respondent since the year 2002 and in the year 2006 began working for him as a caretaker of his properties and later on as his property Manager/Agent, with the first property being a family property known as **LARI/KIRENGA/3731 (White House)** registered in the name of the 2<sup>nd</sup> interested party **AGNES WANJIKU KURIA**, whose rent he disbursed to the 1<sup>st</sup> Respondent and later to the 2<sup>nd</sup> Respondent.

26. It was deposed further that from the year 2012 he began managing 1<sup>st</sup> respondents property known as Kikuyu/Kikuyu/Block 1/891 with a

rent collection of Kshs.320,000/- per month and in the year 2012 the 1<sup>st</sup> Respondent acquired property known as DAGORETTI/KINOO/47 which he began to develop up to 2013. It was stated further that he also managed the property known as DAGORETTI/KINOO/4469 registered in the 2<sup>nd</sup> Respondent's name since 2017, when the same was purchased.

27. He stated further that in the year 2015, the 1<sup>st</sup> Respondent informed him that he had incorporated/registered a company known as GACHOMBA & CO. PROPERTIES LTD (The 2<sup>nd</sup> Respondent) for the purposes of streamlining/ascertaining total rental income for the properties and that to date the monthly rental income for the said properties totaled to approximately Kenya shillings nine hundred and thirty five thousands (Kshs.935,000) and that most of the said properties were owned and developed by the 1<sup>st</sup> Respondent much earlier than 2014 when he began working for Nyandarua County Government.

### **SUBMISSIONS**

28. Directions were issued by the Court (Onyiego J) that the application be heard and determined by way of written submissions. For the purposes of this ruling, it was submitted by the applicant that the principle for grant of interlocutory injunction were set by the Honourable court in the case of **ETHICS & ANTI-CORRUPTION COMMISSION v ANDREW BIKETI MUASYA T/a MUKUYU PETROLEUM DEALERS, SALOME WALEGHWA & 4 OTHERS [2019] eKLR** and the Court of Appeal in **NGURUMAN LTD v JAN BONDE NIELSEN & 2 OTHERS [2014] eKLR** that the applicant has to satisfy the simple requirement to:-

- a) Establish his case only at a prima facie level.
- b) Demonstrate irreparable injury if a temporary injunction is not granted and
- c) Ally any doubts as to (b) by showing that the balance of convenience is in his favour.

29. It was submitted that a prima facie case was defined in the case of **MRAO LTD v FIRST AMERICAN BANK OF KENYA & 2 OTHERS [2003] eKLR** to mean a genuine and arguable case and where a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the other party, as to call for an explanation or rebuttal from the latter.

30. It was submitted that the substantive suit (OS) from which the application is based in premised on the Section 55 of ACECA and that the case was supported by evidence contained in the supporting affidavit, which shows that the applicant had established a prima facie case as the respondents did not annex documents in support of the averments, including rent receipts, demands, invoices, sales receipts, unaudited accounts, invoices and tax remissions.

31. It was submitted further that the applicant was likely to suffer irreparable damage if the assets subject to this application were not preserved pending the hearing and determination of the substantive suit which is a suit for forfeiture of specific assets which the Respondents were likely to dispose in order to defeat the suit as was stated in the case of **ETHICS & ANTI-CORRUPTION COMMISSION Vs MOSES KASAINI LENOLKULAL [2019] eKLR**.

32. It was submitted that the applicant had discharged its mandate as set out under Section 55 of Anti – Corruption and Economic Crimes Act and Section 11(j) of the Ethics and Anti-Corruption commission Act to undertake investigations into the allegations of corruption or Economic Crimes and in appropriate cases, to institute civil proceedings against any person for the recovery of assets whose value is disproportionate to his known legitimate sources of income, which investigations were in compliance to its mandate.

33. On behalf of the Respondents, it was submitted that the current application did not meet the threshold for the grant of interlocutory relief as the applicant did not divulge to the court the existence of the Respondents petition in ACEC Petition No. 18 & 19 of 2019 and only did so after the responses were filed. It was submitted that the respondents had sufficiently and honestly explained the sources of their wealth.

34. It was submitted further that the 2<sup>nd</sup> respondent was bound to suffer irreparable damages as it could no longer continue with its real estate business of buying, developing and selling property as all its landed assets, the subject matter of this application, were subject of interim orders restraining such sale and transfers against a backdrop of huge bank loans it took for the business.

35. It was submitted that the Applicant chose not to consider the 1<sup>st</sup> Respondent's previous employment and business incomes prior to the institution of the current application and the main suit herein which he accounted for in his response to the application.

### **ANALYSIS & DETERMINATION.**

36. I have considered the application herein, the affidavit in support and opposition together with authorities in support thereof and the submissions by each party and note the following undisputed issues: -

- a) The applicant applied for and was granted temporary injunction exparte pending the hearing and determination of this application.
- b) The Applicant to the application has filed an Originating Summons for forfeiture of the properties, the subject matter of this application.
- c) That the 1<sup>st</sup> Respondent is/was a Chief Finance Officer of Nyandarua County Government. The 2<sup>nd</sup> Respondent is a company wherein he has beneficial interest, the 1<sup>st</sup> interested party is the 1<sup>st</sup> Respondent's wife while the 2<sup>nd</sup> Interested Party is his mother.

d) That the applicant in exercising its mandate has been investigating the respondents in respect of allegations of corruption, for which it had issued to the respondents' requisite notice to explain the source of their wealth and or assets.

e) That the Respondents have not at the time of this ruling responded to the said notice.

f) That the 1<sup>st</sup> interested party through her affidavit confirmed that local supply orders and Notification of awards from Nyandarua County Government addressed to the directors of the 5<sup>th</sup> – 10<sup>th</sup> interested parties were collected from her custody.

37. The issue therefore for determination is whether the Applicant has made up a case for grant of injunction pending the determination of the Originating Summons filed herein for forfeiture of the unexplained Assets to the State.

38. The principles upon which the court may grant interlocutory injunctions pending the hearing and determination of the originating summons herein are now well settled in Kenya starting with **Giella Vs Cassman Brown and Co. Ltd. [1973] EA 358** to the effect that the applicant must establish a prima facie case with probability of success, the applicant is likely to suffer irreparable loss which may not be compensated with damages should the order not be granted and if the court is in doubt, it will determine the same on a balance of convenience.

39. In **ETHICS AND ANTI-CORRUPTION COMMISSION v JIMMY MUTUKU KIAMBAA & 3 OTHERS** the court stated that a prima facie case is one which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.

40. In **ETHICS AND ANTI-CORRUPTION COMMISSION v MINISTRY OF MEDICAL SERVICES & ANOTHER [2012] eKLR** the court had this to say: -

*“However it is my view that for the court to grant the order under Section 56(1) a prima facie case must be presented before the court that the property in question has been the subject of some corrupt dealings ..... where the said order is granted and it turns out that either the court was misled or no prima facie case existed that the property was acquired as a result of corrupt conduct, the court would be perfectly entitled to vacate the orders.”*

41. Having stated the principles for grant of the orders sought, I now turn to the issue as to whether or not the applicant has established a prima facie case. It is not disputed that the Applicant has been investigating the Respondents herein and the 1<sup>st</sup> interested party in her affidavit in opposition to the application herein has confirmed that the Respondents had won tenders from the Nyandarua County Government where the 1<sup>st</sup> Respondent was/is working.

42. There is evidence tendered and not disputed that some of the interested parties paid sums of monies into the account of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent and that the Respondents have in their attempt to show that the funds in dispute and the properties were lawfully acquired fell short of giving any supportive documents in support of the said acquisition. It therefore follows that the applicant has established a prima facie case with a probability of success. At this stage, the issue is not whether the applicant shall succeed in its case against the Respondent but whether prima facie case is established.

43. On whether the Applicant will suffer irreparable loss if the order sought is not granted, the Applicant therein has commenced forfeiture proceedings against the respondents and therefore an order for forfeiture can only be made if the property in issue are still available for such order as was stated by the Court of Appeal in **KENYA ANTI-CORRUPTION COMMISSION v STANLEY MOMBO AMUTI [2011] eKLR**.

44. Should the orders sought herein not be granted, the Respondent are likely to dispose of or transfer the properties herein thereby rendering the originating summons nugatory. In this I find support in the case of **ETHICS AND ANTI-CORRUPTION COMMISSION v KANYI JOSEPH KARANJA. [2017] eKLR**.

45. There is uncorroborated fact that the interested parties were trading with the County Government of Nyandarua wherein the 1<sup>st</sup> Respondent is/was the Chief finance Officer and the issue as to whether the said tenders were awarded in breach of the law will be the subject matter of the forfeiture proceedings herein where the Respondents and the Interested Parties will have the opportunity to tender in evidence on how they acquired the subject property herein and if the same is done to the satisfaction of the court, the orders issued herein shall be set aside and the Respondents and Interested Parties shall suffer no prejudice unlike the Applicant, which stands to suffer loss should the property be disposed off.

46. It is therefore in the best interest of justice that the orders sought are granted so as to enable the applicant carry on its mandate under Section 11 of the Ethics and Anti-Corruption Commissions Act and Section 55 of the ACECA and since the same has filed the Originating Summons in respect of the recovery of unexplained assets, the balance of convenience is in favour of granting the orders herein pending the determination of the Originating Summons herein.

47. I am therefore satisfied that the Applicant has made up a case for the grant of the following orders pending the hearing and determination of the suit for forfeiture (OS):

a) An injunction restraining the Respondents, Interested Parties and their agents, servants and/or any other person from selling, transferring, charging, disposing, wasting, or in any other way alienating the following properties pending the hearing and determination of the suit for forfeiture.

- 1) DUNDORI/LANET BLOCK 5/2235 (KIAMUNYEKI 'A')
- 2) DUNDORI/LANET BLOCK 5/1014 (KIAMUNYEKI 'A')
- 3) DAGORETTI/KINOO/47
- 4) DAGORETTI/KINOO/3213
- 5) DAGORETTI/KINOO/4469
- 6) KIAMBU/MUNICIPALITY/BLOCK 1/233
- 7) KIKUYU/KIKUYU/BLOCK 1/891
- 8) LIMURU/KIRENGA/T.218
- 9) LIMURU/KIRENGA/T.225

**b)** An injunction restraining the Respondents, Interested Parties and their agents, servants and/or any other persons from transferring, disposing of or any other dealings (howsoever described) with BANK ACCOUNT NUMBERS; 0160291143992, 1110299529471, 1110264050403 all held at EQUITY BANK pending the hearing and determination of the suit for forfeiture.

**c)** An injunction restraining the Respondents, Interested Parties, their agents, servants and/or any other persons from selling, transferring, disposing of, wasting, charging or in any other way dealing (howsoever described) with **MOTORS VEHICLE REGISTRATION NUMBERS; KCB 253B, KCH 101P, KCF 410P and KCE 039L** pending the hearing and determination of the suit for forfeiture.

**48.** Costs of this application to be in the cause and it is ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI**

**THIS 19<sup>TH</sup> DAY OF MAY, 2021**

**J. WAKIAGA**

**JUDGE**

**In the presence of:**

*Mr. Nyoike for the Applicant*

*Mr. Mwangi for the 11<sup>th</sup> interested parties*

*Mr. Maina for the Respondent/interested parties*