



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

Misc Appli 781 of 2006

**IN THE MATTER OF: THE ANTI-CORRUPTION AND
ECONOMIC CRIMES ACT, 2003**

AND

**IN THE MATTER OF: AN APPLICATION BY KENYA ANTI-
CORRUPTION COMMISSION FOR A
PRESERVATION ORDER IN RESPECT
OF L.R. NO.209/13539,L.R.76717
(WOODLEY/JOSEPH KANG'ETHE
ESTATE) AND ANY/ALL SUB-
DIVISIONS CREATED THEREFROM**

KENYA ANTI-CORRUPTION COMMISSIONAPPLICANT

VERSUS

- (1) PAUL MOSES NGETHA**
- (2) WAIRIMU KANGA**
- (3) MWANGI H.C. WANG'ONDU**
- (4) THOMAS KIPKOECH S. KOROS**
- (5) JOHN MUTURI THUMI**
- (6) WILSON KIPKIMBOI KIPKOTI**
- (7) JOSEPH MUTE NGATIA**
- (8) PETER MURIITHI NGATIA**

- (9) SIMON KIMONDO MUBEA
- (10) HARUN MUHORO MATHU
- (11) JOHNSON M.K. ONDIEKI
- (12) HELEN NJAMBI MBUGUA
- (13) TRADE WORLD COMPANY LTD.
- (14) JACQUELINE YVONNE AMOIT
- (15) PRAISE PLACE LTD.
- (16) MARGARET W. GOKO
- (17) FRED WAINAINA
- (18) JANE WANGUI BONO
- (19) EVA N. GAITHA
- (20) CHRISNA HOLDINGS LTD.
- (21) SORKEN LTD.
- (22) KENNEDY NYABUTI OGETO
- (23) JOHN P. NANGURAI
- (24) KENCHELAS CO. LTD.
- (25) LEGAL REPRESENTATIVE OF THE ESTATE OF JOSEPH MULU
MUTISYA
- (26) JOSHUA POLONG
- (27) IRENE WANJIRU MUGAMBI
- (28) ROSEMARY L. NJERI
- (29) PETER MWANGI
- (30) ALIF INTERNATIONAL LTD.
- (31) KIRICHTWA ESTATES LTD.
- (32) GEORGE PHILIP INVESTMENT LTD.
- (33) ELIZABETH CHEROTICH MIBEY
- (34) GEOFFREY CHEGE KIRUNDI
- (35) ALBINA GICHUKI KOSKEY

- (36) JOSEPH NJUGUNA THAIRU**
- (37) JAMES RERIANI GACHAGUA**
- (38) KAPSOEN ESTATES LTD.**
- (39) VIRGINIA TURUKA**
- (40) ROSEMARY GACHIKU MUGO**
- (41) TAMBAYYA ENTERPRISES LTD.**
- (42) BROOKSIDE STUDIOS LTD.**
- (43) W. MUSALIA MUDAVADI**
- (44) PETER MEIENBERG**
- (45) ABISHAX HEIGHTS LTD.**
- (46) CATHERINE R. NJERI**
- (47) VALEVIEW PLAZA LTD.**
- (48) INDUSTRIAL COLLABORATIVE LTD.**
- (49) PHILIP K. WAINAINA**
- (50) MAREWA PLANTATIONS LTD.**
- (51) JOSEPH MUTUOTA LTD**
- (52) ARGALTD.**
- (53) MOHAMMED ISAHAKIA**
- (54) ESTHER MUMBI KIRONJO**
- (55) MICHAEL KARERI KANYOTU**
- (56) DICKSON NJIRU KYANDA**
- (57) JENNIFER WANJIRU NJAU**
- (58) MARY WANJIRU MWANGI**
- (59) NOAH ARAP TOO**
- (60) RUTH WAGAKI MAINA**
- (61) PETER KEITH NYAGAKA**
- (62) NELSON MWANZIA KIVUVANI**
- (63) MARY J. ONG'ELE**

- (64) CYKA HOLDINGS LTD.**
- (65) GITWANY INVESTMENT LTD.**
- (66) MARRIONSON HOLDINGS LTD.**
- (67) FRANCIS MARITIM**
- (68) HENRY MAINA GATETE**
- (69) HADIJAH WANJIRU GATHIAKA**
- (70) BENSON IRUNGU MBARIA**
- (71) JOHN NJENGA MUNGAI**
- (72) ELIZABETH JERUTO**
- (73) LUCY W. WANJOHI**
- (74) FRANCESCA OTETE**
- (75) MATINY LTD.**
- (76) KIMANI KONGO**
- (77) DAVID GACHINA MURIITHI**
- (78) TRADESIDE LTD.**
- (79) RAHAB WANJIRU GICHUHI**
- (80) ZIPPORAH NAISENYA WAIYAKI**
- (81) AMINA AHMED ABDI**
- (82) ALBERT KIPRUTO**
- (83) TEGEMEO INVESTMENTS LTD.**
- (84) ANDREW GIKONYO NDEGWA**
- (85) CHEMUSIAN CO. LTD.**
- (86) GEORGE GAITHUMA**
- (87) NAOMY WAMBUI WANGAI**
- (88) NOEL K. WAMBUA**
- (89) JAMMA CONSOLIDATED LTD.**
- (90) BALI INVESTMENTS LTD.**
- (91) KAZI KAZI INVESTMENTS LTD.**

- (92) MWAKIO INVESTMENTS LTD.
- (93) STEPHEN KIRIMA KOGI
- (94) KIMEO STORES LTD.
- (95) PHOEBE WAMBUI GAKUI
- (96) ROSE WANJIKU KIMANI
- (97) BONIFACE SERVICES LTD.
- (98) JOSEPH OTUNGA
- (99) PARKSIDE MEDICAL CENTRE
- (100) SATTELITE INDUSTRIAL SUPPLIES LTD.
- (101) YATTA TORNADOS LTD.
- (102) WARIWAX GENERATION LTD.

(103) GATHIRU ENTERPRISES LTD.RESPONDENTS

RULING

(1) The Applicant in this Motion is the Kenya Anti-Corruption Commission (“**the Commission**”), established under Section 6(1) of the Anti-Corruption and Economic Crimes Act, 2003 (“**the Act**”).

(2) This application is brought under section 56 of the Act, the relevant part of which provides —

“56. (1) On an *ex parte* application by the Commission, the High Court may make an order prohibiting the transfer or disposal of or other dealing with property on evidence that the property was acquired as a result of corrupt conduct.

(2) An order under this section may be made against a person who was involved in the corrupt conduct or against a person who subsequently acquired the property.

(3) An order under this section shall have effect for six months and may be extended by the court on the application of the Commission.”

In the marginal note to the section such an order is referred to as an “**order preserving suspect property**” which may explain why the Commission calls it a Preservation Order. For my part, I will stick to the language of the section.

(3) In the Motion, the Commission seeks an order prohibiting the transfer or disposal of or other dealing in respect of all that property known as Woodley/Joseph Kang’ethe Estate comprising Plot L.R. No.209/13539 I.R. 76717 and any excisions/ subdivisions created therefrom. These properties include:

- (1) Land Reference No.209/13539/154 I.R. No.80454;
- (2) Land Reference No.209/13539/184 I.R. No.80455;
- (3) Land Reference No.209/13539/57 I.R. No.80456;

- (4) Land Reference No.209/13539/102 I.R. No.80457;
- (5) Land Reference No.209/13539/ 87 I.R. No.80458;
- (6) Land Reference No.209/13539/29 I.R. No.80459;
- (7) Land Reference No.209/13539/143 I.R. No.80460;
- (8) Land Reference No.209/13539/20 I.R. No.80461;
- (9) Land Reference No.209/13539/101 I.R. No.80462;
- (10) Land Reference No.209/13539/60 I.R. No.80463;
- (11) Land Reference No.209/13539/122 I.R. No.80464;
- (12) Land Reference No.209/13539/50 I.R. No. 80465;
- (13) Land Reference No.209/13539/152 I.R. No. 80466;
- (14) Land Reference No.209/13539/163 I.R. No. 80467;
- (15) Land Reference No.209/13539/49 I.R. No. 80468;
- (16) Land Reference No.209/13539/169 I.R. No. 80469;
- (17) Land Reference No.209/13539/21 I.R. No. 80470;
- (18) Land Reference No.209/13539/71 I.R. No. 80471;
- (19) Land Reference No.209/13539/13 I.R. No. 80472;
- (20) Land Reference No.209/13539/23 I.R. No. 80473;
- (21) Land Reference No.209/13539/65 I.R. No. 80474;
- (22) Land Reference No.209/13539/99 I.R. No. 80475;
- (23) Land Reference No.209/13539/112 I.R. No.80476;
- (24) Land Reference No.209/13539/120 I.R. No.80477;
- (25) Land Reference No.209/13539/135 I.R. No.80478;
- (26) Land Reference No.209/13539/61 I.R. No.80696;
- (27) Land Reference No.209/13539/68 I.R. No.80697;
- (28) Land Reference No.209/13539/4 I.R. No.80698;
- (29) Land Reference No.209/13539/132 I.R. No.80699;
- (30) Land Reference No.209/13539/160 I.R. No.80700;
- (31) Land Reference No.209/13539/139 I.R. No.80701;

- (32) Land Reference No.209/13539/59 I.R. No. 80702;
- (33) Land Reference No.209/13539/17 I.R. No. 80703;
- (34) Land Reference No.209/13539/203 I.R. No. 80704;
- (35) Land Reference No.209/13539/128 I.R. No. 80705;
- (36) Land Reference No.209/13539/183 I.R. No. 80706;
- (37) Land Reference No.209/13539/106 I.R. No. 80707;
- (38) Land Reference No.209/13539/85 I.R. No. 80708;
- (39) Land Reference No.209/13539/27 I.R. No. 80709;
- (40) Land Reference No.209/13539/124 I.R. No. 80710;
- (41) Land Reference No.209/13539/82 I.R. No. 80711;
- (42) Land Reference No.209/13539/129 I.R. No. 80712;
- (43) Land Reference No.209/13539/156 I.R. No. 80713;
- (44) Land Reference No.209/13539/148 I.R. No. 80714;
- (45) Land Reference No.209/13539/108 I.R. No. 80715;
- (46) Land Reference No.209/13539/140 I.R. No. 80716;
- (47) Land Reference No.209/13539/113 I.R. No. 80717;
- (48) Land Reference No.209/13539/109 I.R. No. 80718;
- (49) Land Reference No.209/13539/114 I.R. No. 80724;
- (50) Land Reference No.209/13539/101 I.R. No. 81463;
- (51) Land Reference No.209/13539/25 I.R. No. 814464;
- (52) Land Reference No.209/13539/53 I.R. No. 814462;
- (53) Land Reference No.209/13539/70 I.R. No. 814465;
- (54) Land Reference No.209/13539/88 I.R. No. 814461;
- (55) Land Reference No.209/13539/78 I.R. No.814460;
- (56) Land Reference No.209/13539/107 I.R. No.801459;
- (57) Land Reference No.209/13539/118 I.R. No.81458;
- (58) Land Reference No.209/13539/121 I.R. No.81457;
- (59) Land Reference No.209/13539/165 I.R. No.81533;

- (60) Land Reference No.209/13539/153 I.R. No.81534;
- (61) Land Reference No.209/13539/211 I.R. No.81535;
- (62) Land Reference No.209/13539/189 I.R. No.81536;
- (63) Land Reference No.209/13539/187 I.R. No.81537;
- (64) Land Reference No.209/13539/201 I.R. No.81538;
- (65) Land Reference No.209/13539/72 I.R. No.81539;
- (66) Land Reference No.209/13539/110 I.R. No.81540;
- (67) Land Reference No.209/13539/100 I.R. No.81541;
- (68) Land Reference No.209/13539/181 I.R. No.81542;
- (69) Land Reference No.209/13539/92 I.R. No.81543;
- (70) Land Reference No.209/13539/79 I.R. No.81544;
- (71) Land Reference No.209/13539/77 I.R. No.81545;
- (72) Land Reference No.209/13539/136 I.R. No.81546;
- (73) Land Reference No.209/13539/105 I.R. No.81547;
- (74) Land Reference No.209/13539/47 I.R. No. 81548;
- (75) Land Reference No.209/13539/158 I.R. No. 81549;
- (76) Land Reference No.209/13539/111 I.R. No. 81550;
- (77) Land Reference No.209/13539/30 I.R. No. 81552;
- (78) Land Reference No.209/13539/75 I.R. No. 81553;
- (79) Land Reference No.209/13539/33 I.R. No. 81554;
- (80) Land Reference No.209/13539/18 I.R. No. 81555;
- (81) Land Reference No.209/13539/197 I.R. No. 81556;
- (82) Land Reference No.209/13539/12 I.R. No.81557;
- (83) Land Reference No.209/13539/162 I.R. No.81558;
- (84) Land Reference No.209/13539/3 I.R. No.81559;
- (85) Land Reference No.209/13539/41 I.R. No.81560;
- (86) Land Reference No.209/13539/56 I.R. No.81561;
- (87) Land Reference No.209/13539/196 I.R. No.81562;

- (88) Land Reference No.209/13539/97 I.R. No.81563;
- (89) Land Reference No.209/13539/61 I.R. No.81564;
- (90) Land Reference No.209/13539/130 I.R. No.81565;
- (91) Land Reference No.209/13539/40 I.R. No.81612;
- (92) Land Reference No.209/13539/45 I.R. No. 81613;
- (93) Land Reference No.209/13539/76 I.R. No. 81614;
- (94) Land Reference No.209/13539/84 I.R. No. 81615;
- (95) Land Reference No.209/13539/210 I.R. No. 81616;
- (96) Land Reference No.209/13539/174 I.R. No. 81617;
- (97) Land Reference No.209/13539/179 I.R. No. 81618;
- (98) Land Reference No.209/13539/214 I.R. No. 81619;
- (99) Land Reference No.209/13539/39 I.R. No. 90759;
- (100)Land Reference No.209/13539/42 I.R. No.90760;
- (101)Land Reference No.209/13539/73 I.R. No.90761;
- (102)Land Reference No.209/13539/74 I.R. No.90762;
- (103)Land Reference No.209/13539/94 I.R. No.90763.

(4) The Commission seeks the order against one hundred and three Respondents who it is alleged are presently registered as owners of those properties. The Commission says it had carried out investigations and confirmed that the named Respondents are the true owners. Those Respondents are:

1. Paul Moses Ngetha
2. Wairimu Kanga
3. Mwangi H.C. Wang'onda
4. Thomas Kipkoech S. Koros
5. John Muturi Thumi
6. Wilson Kipkimboi Kipkoti
7. Joseph Mute Ngatia
8. Peter Muriithi Ngatia
9. Simon Kimondo Mubea
10. Harun Muhoro Mathu

11. Johnson M.K. Ondieki
12. Helen Njambi Mbugua
13. Trade World Company Ltd.
14. Jacqueline Yvonne Amoit
15. Praise Place Ltd.
16. Margaret W. Goko
17. Fred Wainaina
18. Jane Wangui Bono
19. Eva N. Gaitha
20. Chrisna Holdings Ltd.
21. Sorken Ltd.
22. Kennedy Nyabuti Ogeto
23. John P. Nangurai
24. Kenchelas Co. Ltd.
25. Legal Representative of the Estate of Joseph Mulu Mutisya
26. Joshua Polong
27. Irene Wanjiru Mugambi
28. Rosemary L. Njeri
29. Peter Mwangi
30. Alif International Ltd.
31. Kirichwa Estates Ltd.
32. George Philip Investment Ltd.
33. Elizabeth Cherotich Mibey
34. Geoffrey Chege Kirundi
35. Albina Gichuki Koskey
36. Joseph Njuguna Thairu
37. James Reriani Gachagua
38. Kapsoen Estates Ltd.

39. Virginia Turuka
40. Rosemary Gachiku Mugo
41. Tambayya Enterprises Ltd.
42. Brookside Studios Ltd.
43. W. Musalia Mudavadi
44. Peter Meienberg
45. Abishax Heights Ltd.
46. Catherine R. Njeri
47. Valeview Plaza Ltd.
48. Industrial Collaborative Ltd.
49. Philip K. Wainaina
50. Marewa Plantations Ltd.
51. Joseph Mutuota Ltd
52. Arga Ltd.
53. Mohammed Isahakia
54. Esther Mumbi Kironjo
55. Michael Kareri Kanyotu
56. Dickson Njiru Kyanda
57. Jennifer Wanjiru Njau
58. Mary Wanjiru Mwangi
59. Noah Arap Too
60. Ruth Wagaki Maina
61. Peter Keith Nyagaka
62. Nelson Mwanzia Kivuvani
63. Mary J. Ong'ele
64. Cyka Holdings Ltd.
65. Gitwany Investment Ltd.
66. Marrionson Holdings Ltd.

67. Francis Maritim
68. Henry Maina Gatete
69. Hadijah Wanjiru Gathiaka
70. Benson Irungu Mbaria
71. John Njenga Mungai
72. Elizabeth Jeruto
73. Lucy W. Wanjohi
74. Francesca Otete
75. Matiny Ltd.
76. Kimani Kongo
77. David Gachina Muriithi
78. Tradeside Ltd.
79. Rahab Wanjiru Gichuhi
80. Zipporah Naisinya Waiyaki
81. Amina Ahmed Abdi
82. Albert Kipruto
83. Tegemeo Investments Ltd.
84. Andrew Gikonyo Ndegwa
85. Chemusian Co. Ltd.
86. George Gaithuma
87. Naomy Wambui Wangai
88. Noel K. Wambua
89. Jamma Consolidated Ltd.
90. Bali Investments Ltd.
91. Kazi Kazi Investments Ltd.
92. Mwakio Investments Ltd.
93. Stephen Kirima Kogi
94. Kimeo Stores Ltd.

95. Phoebe Wambui Gakui
96. Rose Wanjiku Kimani
97. Boniface Services Ltd.
98. Joseph Otunga
99. Parkside Medical Centre
100. Sattelite Industrial Supplies Ltd.
101. Yatta Tornados Ltd.
102. Wariwax Generation Ltd.
103. Gathiru Enterprises Ltd.....RESPONDENTS

(5) These properties, were originally owned by the Nairobi City Council (“**the Council**”) under a Grant to the Council for the purposes of erecting rental dwelling houses for the residents of the City. It is alleged that at some point in time when the City was being run by a Commission, the Commission purported to allocate the houses/plots in the estate to various persons at a stated premium of K.Shs.1.1 million. On the 8th June 1998, Grant No. I.R. 76717 was issued in the name of Nairobi City Council in respect of the whole land comprising some 34.63 hectares. Thereafter, Instruments of Lease were prepared in favour of the Respondents by the Nairobi City Council and registered against the title.

(6) According to the affidavits sworn in support of this application by Mary Ngechi Ng’ethe, the Council’s Director of Legal Services, the Hon. William Ronkorua Ntimama, at the material time the Minister of Local Government, and Nzioki wa Makau, the Commission’s Investigator, the alienation and transfer of these properties was done illegally, corruptly and in flagrant breach by responsible officers at City Hall of their statutory duty. There were no Resolutions passed by the Council to alienate the properties or transfer them to the Respondents. As confirmed by Hon. William Ntimama, he did not give Ministerial approval to the alienation or sale as the Minister for Local Government. The officers of the Council who effected the transfers had no authority to do so, acted without power and abused their offices.

(7) Mr. Nzioki wa Makau also says in his affidavit that the alienation and transfers to the Respondents was without consideration; that none of these Respondents paid for the plots they were given; and that even those who claim to have paid have produced no evidence to show that the payments were made to the Nairobi City Council. The Commission decided to investigate the allocations after receiving a complaint questioning the propriety of the disposal of Woodley Estate.

(8) Another vital point that is made by Mr. Nzioki wa Makau is that Mrs. Zipporah Wandera who was the Town Clerk at the material time and who signed the leases in question has not denied having done so but simply says she must have signed these documents routinely after being presented to her by other officers of the Council.

(9) For the reasons I have outlined, I agree with Mrs. Jacinta Oduor, learned counsel for the Commission, that she has placed sufficient evidence before the court to support an order under section 56(1) of the Act. The averments in the affidavits without more indicate that the Respondents acquired those properties as a result of corrupt conduct. That being the case, it is in the interest of justice and fair play that the Respondents and each one of them should be called upon to explain how he/she/it/they acquired those properties. And until they do that satisfactorily, the Respondents or any of them should not be allowed to alienate, transfer, dispose of or deal with such properties in any manner.

(10) Accordingly, I allow this application and in exercise of the power in that behalf conferred by section

56(1) of the Act do hereby make an order in terms of prayer No.2 of the Originating Motion filed on the 12th October 2006 prohibiting the transfer or disposal of or other dealing with the properties specified in the said prayer or any of them.

(11) As regards service, the Commission requests that service be effected upon the Respondents through the press. Service is a judicial process and since the order has been obtained *ex parte* through no fault of the Respondents, they and each one of them must be served in accordance with the normal rules of service prescribed under the Civil Procedure Rules. The Commission is accordingly ordered to serve the order hereby made together with the application on each and every Respondent within the next thirty (30) days from today. And every Respondent so served may within fifteen (15) days from the date of service apply to the court to discharge or vary the order.

(12) Otherwise, the order I have made preserving the effected properties shall remain in force for six months from the date hereof. The costs of the application will be in the cause.

Dated and delivered at Nairobi this Sixteenth day of October 2006.

P. Kihara Kariuki

Judge