



Ethics & Anti-Corruption Commission v Ochiel & 4 others (Anti-Corruption and Economic Crimes Civil Suit E024 of 2022) [2025] KEHC 3396 (KLR) (Anti-Corruption and Economic Crimes) (20 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3396 (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 E024 OF 2022
LM NJUGUNA, J
MARCH 20, 2025

BETWEEN

ETHICS & ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

NICHOLAS OWINO OCHIEL 1ST DEFENDANT

TERRY VIOLET MUTHONI MAINA 2ND DEFENDANT

TERNIC VALUERS LIMITED 3RD DEFENDANT

TERNIC ENTERPRISES LIMITED 4TH DEFENDANT

RICHARD OMONDI OCHIEL 5TH DEFENDANT

RULING

1. The Applicant herein has moved this court by way of the Notice of Motion dated the 24th January, 2025 which is supported by the affidavit sworn by Chrispus N. Maithya on the same date, and its premised on the grounds set out on the body of the same and it is seeking the following orders: -
 1. That this Honourable court be pleased to grant an order for stay of these proceedings pending the hearing and determination of this application.
 2. That this Honourable court be pleased to grant an order for stay of these proceedings pending the hearing and determination of the Intended Appeal.
 3. That this Honourable Court be pleased to issue orders preserving and maintain the status quo pending the hearing and determination of this application.



4. That in the alternative, this Honourable court be pleased to issue an order for maintenance of status quo of this suit pending hearing and determination of the intended appeal.
 5. That the Honourable court do issue an order of inhibition stopping any actions, dealings, registration and transactions affecting parcels of land registered as L.R. No. 9363/142, L.R.No. 9363/143, L.R. No. 12778/263, L.R. No.13330/601 (Thome Estate) and L.R No. 7978/27 (Plot No. 25 Mirema) charged in favour of the 2nd Interested Party pending the hearing and determination of the Intended Appeal.
 6. That this Honourable court be pleased to give any such other and/or further order(s) as it may deem fit.
 7. That the cost of this Application be provided for.
2. Though the application is seeking for stay of proceedings among other prayers, it is mainly brought under Order 42 Rule 6 of the Civil Procedure Rules which deals with stay of execution but in the interest of justice, the court will proceed to consider the same on merits.
 3. The Applicant's case is that sometime in the month of July, 2023, it filed the application dated the 27th July, 2023 seeking leave to be enjoined in this suit as an Interested Party, which application was allowed by consent of the parties recorded in court on the 27th September, 2023. Subsequently, it was joined as the 2nd Interested Party and the court directed it to file necessary pleadings and it filed a replying affidavit dated the 7th November, 2023.
 4. That sometime in January, 2024 it filed an application dated the 29th January, 2024 seeking among other orders:-
 - i. That the court be pleased to issue a mandatory injunction compelling the plaintiff, its agents, servants, employees, proxies or otherwise howsoever to delist, strike out and/or expunge parcels of land registered as L.R. No. 9363/142, LR No. 9363/143, L.R. No. 12778/263, L.R. No. 13330/601 (Thome Estate) and L.R No. 7978/27 (Plot No. 25, Mirema) charged in favour of the 2nd Interested Party, the Applicant herein from the list of the landed properties to be forfeited and surrendered to the State.
 - ii.
 - iii.
 - iv.
 5. In its ruling delivered on the 25th September 2024, in respect of the Applicant's application the learned Judge held that the Applicant lacked locus standi to appear and defend ownership or legitimacy of the said charged properties. The court further ordered that the Applicant herein be discharged and/or struck out from the proceedings in this suit.
 6. The Applicant, National Bank of Kenya Limited contends that it has a bona fide registered legal interest and substantial stake in the charged properties since the charges were registered in its favour prior to the institution of this suit, and if the application herein is not granted, the Applicant's bona fide interest over the charged properties will be defeated and greatly prejudiced if the properties are surrendered to the Government before it recovers loan facilities advanced to it.
 7. The Applicant states that being aggrieved by the ruling delivered on the 25th September, 2024, it has preferred an appeal to the Court of Appeal and in the circumstances, if this matter is allowed to proceed



before the appeal is heard and determined, it will have no other means to recover the outstanding loan amounts and that it will render the appeal nugatory.

8. The application is opposed vide a replying affidavit sworn by Shadrack Mwenda in which he deposes that he is an investigator with the Ethics & Anti-corruption Commission (EACC). That EACC received credible information that the 1st defendant/respondent, a Senior Assistant Director, valuation, at the Ministry of Lands and Physical Planning through the 4th and 5th defendants (Respondents) entered into various contracts with property development companies, organizations and other members of the public to facilitate valuation, payment of Government stamp duty, title processing and purportedly conducting forensic audit services. That the rendering of those services was in direct conflict with the 1st Defendant's full time occupation as an employee of the Ministry.
9. That he commenced investigations seeking to establish whether there were reasonable grounds to suspect that the 1st Defendant was engaged in corrupt conduct as alleged, and also establish whether he had acquired and/or accumulated assets that were disproportionate to his known legitimate source(s) of income during the period of interest. That upon conclusion of the investigations, the EACC established that the 1st Defendant was in possession of unexplained assets that were disproportionate to his known legitimate sources of income including the properties that are subject of this application.
10. He further deposed that vide a ruling delivered on the 25th September, 2024, the court dismissed the Applicant's application seeking to remove the subject properties from the suit and in the same ruling, the court proceeded to discharge the Applicant from the suit and, therefore, it ceased to be a party to the proceedings herein and consequently, it has no audience before the court and its only recourse lies with the Court of Appeal.
11. He contends that the application herein is an abuse of the court process as the Applicant has already filed a similar application in the Court of Appeal being Civil Appeal No. E087 of 2024 (National Bank of Kenya Vs EACC & Others). That the Applicant will suffer no prejudice if the application is not allowed as it is not claiming ownership of the subject properties nor is it defending the manner in which the said properties were acquired, its only interest being that of security of loans disbursed to the defendant.
12. In its supplementary affidavit sworn by Chrispus N. Maithya, the Applicant deposed that the notice that was issued by EACC to the 1st and 2nd Defendants to explain the disproportion only listed parcel Nos. L.R. 9363/142, L.R. No. 9363/143, L.R. No.12778/263, L.R. No. 13330/601 (Thome Estate) and L.R. No. 7978/27 (Plot No. 25, Mirema) and that by the time EACC commenced their investigations sometime in October 2019, the subject properties had already been charged to the Applicant, on various dates between February to August 2020 after investigations.
13. Further, that the EACC failed to register a caveat or restriction over the subject properties following commencement of the investigations against the Defendants, and that EACC failed to give notice to 3rd parties of the existence of the investigations so as to stop them from undertaking in further dealings in the charged properties.
14. He further deposed that at the time the charged properties were charged to the Applicant it did not have knowledge of the existence of defects over the same owing to the Plaintiff's failure to register a restriction or caveat. As such, he believes the Applicant is a bona fide chargee who should be allowed to fully participate in these proceedings.
15. He averred that owing to the consent order granted by the court on the 27th September, 2023, the Applicant remains an Interested Party unless the consent is discharged, set aside or varied in accordance with the law. He has urged the court to grant the application.



16. The application was disposed of by way of written submissions and both parties complied with the directions on filing of submissions.
17. The court has considered the application, the affidavits and the submissions filed herein.

Applicant's Submissions

18. The Applicant identified one issue for determination; whether stay of execution of the ruling dated 25th September, 2024 and the proceedings should be granted. He submitted on conditions for stay of execution as set out in the case of *Amal Hauliers Limited Vs Abdulnasir Abuker Hassan (2017) eKLR* and invited the court to be guided by the averments at paragraph 4, 5, 6, 7, 8 and 9 of the Applicant's supporting affidavit.
19. It was further submitted that the Bank was added as a party by consent of the parties and a consent order was recorded to that effect and that the Bank will suffer great prejudice and loss if the application is not allowed. Reliance was placed on the case of *Brooke Bond Liebig Ltd Vs Mallya (1975) EA 266* cited with approval in *Protus Hamisi Wambada & Anor Vs Eldoret Hospital (2020) eKLR* and that of *Kenya Commercial Bank Ltd Vs Specialized Engineering Company Limited (1982) KLR 485* on the principles governing setting aside of a consent order.
20. That the Bank has filed an appeal challenging the ruling that was delivered on the 25th September, 2024 and if the proceedings are allowed to continue the appeal will be rendered nugatory. In the alternative, the Applicant sought for an order of inhibition or for status quo preserving the charged properties in the form of an order compelling EACC not to dispose of, sell, transfer, confer or otherwise alienate the charged properties to third parties pending the hearing and determination of the appeal.
21. The Applicant argued that an order for preservation of the status quo is different from an order of injunction both in terms of principle for grant and practical effect of each. Reliance was placed on the case of *The Chairman Business Premises Tribunal at Mombasa Exparte Baobab Beach Resort (Mombasa) Ltd (UR) Misc. Application (JR) No. 26/2010*, that of *Kenya Revenue Authority Vs Sidney Katany Changole and Kenya Airline Pilots Association (KALPA) Vs Co-operative Bank of Kenya Ltd. & Anor (2020) eKLR*.
22. The Plaintiff (Respondent for purposes of this ruling) submitted that the application herein is sub judice as the Applicant, on 6th November, 2024 filed an application before the Court of Appeal being Civil Appeal No. E587 of 2024 and therefore urged the court to dismiss this application. Reliance was placed on the case of *Kenya Airports Authority Vs Antony Mutumbi Wachira (2015) eKLR* which expounds on the principle of sub judice.
23. It was submitted that the public on whose behalf the EACC has brought this suit, shall suffer immense prejudice as a result of the delay occasioned by the stay, should the orders be granted. See the case of *Peter Wangai Muriithi & 3 others Vs Assets Recovery Agency (2022) KEHC 944 (KLR)* that the stay would impede on the EACC's mandate to prosecute forfeiture proceedings against the Defendants and goes against the public interest in expeditious disposal of cases of corruption and economic crimes.
24. Further, that the Applicant's interest is limited to the fact that the subject properties were used to secure loans by the defendants and would only be affected once the determination is made on whether the subject assets should be forfeited for being unexplained wealth.
25. That the Applicant was just an Interested Party and not a substantive party to the suit and that being the case, its role was peripheral to the proceedings between the Plaintiff and the Defendants. Reliance was placed on the case of *William Odhiambo Ramogi & 3 Others Vs Attorney General & 4 others;*



Muslims for Human Rights & 2 others (Interested Parties) (2020) eKLR on the role of an Interested Party in proceedings. It urged the court to dismiss the application.

26. The court has considered the application, the affidavits and the submissions filed herein.

Issue for determination

Whether the Applicant has met the conditions for grant of stay of proceedings pending appeal.

27. It is trite law that whether or not to issue an order for stay of proceedings is a matter of the court's discretion exercised after due consideration of the merits of the case and the likely effect on the ends of justice. The exercise of the discretion should be premised on the defined principles which were expounded by Ringera J (Judge) in the case of Global Tours and Travels Limited Nairobi, High Court Winding up case No. 43 of 2000.

28. The threshold for stay of proceedings has been illuminated in the passages in Halsbury's Law of England, 4th Edition, Vol. 37 at pages 330 and 332 thus: -

“Stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceedings beyond all reasonable doubt ought not to be allowed to continue.

This is a power which, it has been emphasized, ought to be exercised sparingly and only in exceptional cases. It will be exercised where the proceedings are shown to be frivolous, vexatious, or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The Applicant for a stay in this ground must show merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”

29. First and foremost, the Plaintiff (EACC) has raised a fundamental issue to the effect that there is a similar application pending before the Court of Appeal which is yet to be determined. The Applicant has not denied the existence of such an application.

30. Regarding the sub-judice principle, the Court of Appeal in the case of Kenya Airports Authority Vs Antony Muthumbi Wachira (2015) eKLR took the following view:-

“We think, as a matter of policy of the law that finds expression in Section 6 of the Civil Procedure Act for instance that no court should proceed with the trial of any suit or proceedings in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceedings between the same parties where such suit or proceedings is pending in the same or any other court having jurisdiction to grant the relief claimed. The said object behind that policy is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits or proceedings in respect of the same subject matter in issue”

31. In the premises, I would agree with the submissions of the Plaintiff (EACC) and accordingly find that the application is incompetent for being sub judice. The same is hereby struck out with costs.

32. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 20TH DAY OF MARCH 2025



.....

L.M. NJUGUNA

JUDGE

In the presence of:-

Miss Wambugu for the Plaintiff

Mr. Waudo for all the defendants

Mr. Mwangi holding brief for Mr. Rimui for the Applicant

Court Assistant – Adan

