



**Ethics and Anticorruption Commission v Kamuri & another
(Miscellaneous Application E035 of 2024) [2025] KEHC 4113 (KLR)
(Anti-Corruption and Economic Crimes) (2 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4113 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
MISCELLANEOUS APPLICATION E035 OF 2024**

LM NJUGUNA, J

APRIL 2, 2025

BETWEEN

ETHICS AND ANTICORRUPTION COMMISSION APPLICANT

AND

DR. EVANSON NJOROGE KAMURI 1ST RESPONDENT

JACQUELINE KAVETE MBULI 2ND RESPONDENT

(Ruling on an application for extension of preservation orders)

RULING

1. The Applicant is a body corporate established under the [Ethics and Anti-Corruption Commission Act](#), No. 22 of 2011 (herein after the EACC Act) with the mandate to undertake investigations on any matter that raises suspicion that the offence of corruption, economic crime or bribery as defined under the Anti-Corruption & Economic Crimes Act, 2003 (hereafter ACECA) and the [Bribery Act](#), 2016, has occurred.
2. The 1st Respondent is currently serving as the Chief Executive Officer of Kenyatta National Hospital (KNH).
3. The Applicant moved the Honourable Court under a Notice of Motion Application dated the 24th January 2025, under Certificate of Urgency of the same date seeking to extend the Preservation Orders as issued by the Honourable Court on 30th July 2024, for a period of six (6) months to enable completion of investigations.



4. The Applicant's Notice of Motion dated the 24th of January 2025 is supported by the affidavit of Shadrack Mwenda sworn on the same date and is expressed to be brought under Section 56 (3) of the Anticorruption and Economic Crimes Act, NO. 3 of 2003, and it seeks the following orders:
 - i. (Spent).
 - ii. That pending the hearing and determination of this application this Honourable Court be pleased to extend the existing Preservation Orders issued on 30th July 2024, with regards to Ksh 4,000,000 held in Account No. 0100347xxxxxx resident at Standard Chartered Bank (K) in the name of Jacqueline Kavete Mbuli (2nd Respondent) for a further period of six (6) months by prohibiting the Respondents jointly and severally, their agents, servants or any other persons from withdrawing, transferring, alienating, disposing or in any other way dealing with the said funds.
 - iii. That this Honourable Court be pleased to extend the existing Preservation Order issued on 30th July 2024, with regards to Kshs. 4,000,000 held in Account No. 0100347xxxxxx resident at Standard Chartered Bank (K) in the name of Jacqueline Kavete Mbuli (2nd Respondent) for a further period of six (6) months by prohibiting the Respondents jointly and severally, their agents, servants or any other persons from withdrawing, transferring, alienating, disposing or in any other way dealing with the said funds.
 - iv. That this Honourable be pleased to discharge existing Preservation Order issued on 30th July 2024 with regard to Kshs. 1,108,477.70 held in Account No. 0100009xxxxxx domiciled at Stanbic Bank, in the name of Evanson Njoroge Kamuri (1st Respondent).
 - v. That there be no order as to costs.
5. The Applicant relies on the supporting affidavit dated the 24th of January 2025, supplementary affidavit dated 11th February 2025 and submissions dated the 24th of February 2025.
6. The Applicant submits that investigations are still ongoing and failure to preserve the money held in the said bank account would render the intended recovery proceedings nugatory, and as such, the sum of Kshs. 4,000,000 that was transferred from the 1st Respondent Bank Account No. 00107xxxxxx domiciled at Standard Chartered Bank to Bank Account No.: 0100347xxxxxx in the name of Jacqueline Kavete Mbuli held at the same bank should be preserved.
7. The Applicant further submits that since the Preservation Orders were granted, the Applicant has carried out extensive investigations and has made remarkable progress pertaining to the matter in issue. However, there are crucial investigative points yet to be covered for which the Commission will require six (6) more months to finalize.
8. The Applicant relies on the case of Ethics and Anti-Corruption Commission v Catherine Nkirote Maingi & 2 others [2017] eKLR where the court in extending the preservation orders for a period of six months held as follows;

“From the foregoing, it is my view that the Applicant has demonstrated considerable progress in its investigations, and that more time is needed to finalize investigations. It is in the Interest of Justice for the investigations to be allowed to determine whether due process was followed in the award of Tender No. NYS/RT/23/2014-2015 and whether the Respondents are culpable of any corruption or economic crime.”



9. The Applicant submits that if the extension of the order of preservation is not granted, it stands to suffer immensely and the Government of Kenya and the general public shall suffer irreparable loss as public money stands to be lost.
10. The Applicant further contends that once investigations are concluded the Applicant will issue Notice for unexplained wealth under section 26 and 55(2) of *Anti-corruption and Economic Crimes Act*, no.3 of 2003 to the Respondents to explain the disparity between their assets and their known legitimate source(s) of income.

1st Respondent's Case.

11. The 1st Respondent filed a replying affidavit dated the 11th of February 2025 and submissions dated the 5th of March 2025 strongly opposing the application.
12. The respondent argued that the Applicant has had sufficient time within which to conclude their investigations. He contends that the Applicant has not cited reasons for the extension or reasons that prevented them from completing the investigations.
13. The 1st respondent prays for this Court to discharge the preservation orders and direct the Chief Executive Officer of Standard Chartered Bank (Kenya) to transfer the Kenya Shillings Four Million (Kshs. 4,000,000/-) initially deposited in the account registered in the name of the 2nd Respondent, back to his Standard Chartered Bank Account No. 0100107xxxxxx as the Kenya Shillings Four Million (Kshs. 4,000,000/-) is proceeds from both his salary and private dermatology practice.
14. The 1st Respondent further claims that the Applicant's request for extension of the preservation orders should not be granted by this Court as the same has not been substantiated and that the Applicant is making mere assertions as to the progress of the investigations and has failed to present any evidence to that effect.
15. The 1st Respondent relies on the case of Ethics and Anti-Corruption Commission v Catherine Maingi & 2 Others [2017] eKLR where the Honourable Court in issuing preservation orders was satisfied that the Commission had given a detailed breakdown of the progress made by the investigator.
16. The 1st Respondent further contends that the preservation orders imposed on these accounts have occasioned extreme hardship and depravity as he is constrained from sustaining his day-to-day subsistence living including but not limited to constraints in financing his family's education and his professional subscription fees to the Kenya Medical Association, which permits him to continue with his professional practice.
17. From the foregoing, the 1st Respondent therefore, prays that this Honourable Court discharges the Preservation orders as the same have caused him and his family extreme hardship and depravity.
18. The 1st Respondent further relies on the case of Assets Recovery Agency v Samwel Wachenje alias Sam Mwadime & 7 others [2016] eKLR where it was held that:

“ 34. The foregoing section [Section 89 (1)(a) of POCAMLA] therefore, gives the court power to vary a preservation order, where it can be sufficiently proven that the operation of the order will deprive the Applicant of the means to provide for his reasonable living expenses, causing him undue hardship. Further the said undue hardship should be such as outweighs the risk that the property concerned may be destroyed, lost or transferred.”



19. In conclusion the 1st respondent submits that this real and present hardship outweighs the purely speculative risk of asset dissipation, justifying the need to discharge or vary the preservation order to allow the 1st Respondent a modicum of dignity.

2nd Respondent's Case.

20. The 2nd Respondent filed a replying affidavit dated the 5th of February 2025 stating that the said Application does not disclose any cause of action against her at all thus she ought to be struck out of the suit.
21. The 2nd respondent depones that whereas the sum of Kshs. 4 Million was transferred to her bank account number 0100347xxxxxx held at Standard Chartered Bank (K) Limited she is not privy to the source of the funds and she does not have any claim on the same.
22. The 2nd Respondent further avers that when she first got notice of the funds having been deposited into her bank account, she informed the bank on 24th May 2024 that she was not expecting such funds and asked that the funds be reversed back to the sender but the bank declined to reverse the transaction and instead froze her bank account without any further clarifications.
23. The 2nd Respondent in conclusion states that she has never obtained any funds corruptly or unlawfully and does not have any interest in the sum of Kshs. 4 million preserved in her account and she doesn't have any dealings with the 1st Respondent.

Analysis and Determination

24. The application, the affidavits and written submissions of the parties, the authorities cited, and the applicable law all pointed to the same question: Should this court exercise its discretion to extend the preservation orders issued on 30th July 2024?
25. At the time this court issued the preservation order it was satisfied on the evidence placed before it that, prima facie, there were reasonable grounds to suspect that the money in the bank accounts was acquired as a result of corrupt conduct.
26. The law on issuance of preservation orders is stated under section 56(3) of the *Anti-Corruption and Economic Crimes Act* as follows:

“ 56. Order preserving suspect property, etc.

- (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 if it is satisfied that there are reasonable grounds to suspect that the property was acquired as a result of corrupt conduct.
- (2)
- (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.”



27. The necessity of a preservation order was amply explained in the case of *Mape Building & General Engineering vs Attorney General & 3 others* [2016] eKLR where the court stated: -
- “In the circumstances of this case, the warrants and freezing orders were evidently necessary for the purposes of the investigation. Money moves. It moves fast. With the advent of e-banking, the movement is even faster. ...”
28. In addition to the material presented by both counsel, I have taken into account the relevant legal provisions, including those of the ACECA, which is the legislative framework under which these procedures have been initiated, as well as the appropriate legal principles; especially if such freezing orders ought to be lifted so that the Respondents can start using their previously frozen bank accounts again.
29. The Applicant submitted that there is need for an extension of preservation orders to enable them to complete their investigations and to issue notices to the Respondents to explain the disproportion in assets vis-a-viz legitimate/known sources of income.
30. The Applicant has relied on sections 56(1) and (3) of the *Anti-Corruption and Economic Crimes Act, 2003*, and the case of *Ethics And Anti-Corruption Commission V Catherine Nkirote Maingi & 2 others*.
31. Under Section 56(3) of the same, a preservation order is valid for six months, but the court can extend upon applications by the commission. Therefore, the authority to issue preservation is discretionary but it should be exercised judiciously.
32. The Applicant has argued that, investigations on the assets in question are on-going. It bears repeating that, in the circumstances of this case, there is absolute need to prevent the dissipation of assets under investigations, as such eventuality defeats recovery or forfeiture of such assets. Therefore, the preservation order herein will serve public interest, as opposed to being an infringement of respondent’s rights.
33. The court, however, notes that prolonged investigations can make the subject of investigations feel really drained and depressed, and worst of all, in some situations, they can violate their basic rights to privacy, property, and dignity. Because of this, the court does not demean the respondents’ argument that the orders are causing them suffering and inconvenience. It is a plausible possibility and a legitimate worry.
34. The court is guided by the case of *Ethics & Anti-Corruption Commission (EACC) v Lydia Ngini Lentinina* [2018] eKLR where the court held that
- “It bears repeating that preservation orders in section 56 of ACECA should be time bound as they relate to clogging of property of individuals suspected of corruption. It is also a judicial tool in aid of investigations and should therefore be carefully regulated as to avoid unnecessary infringement of person’s rights to property and fair trial. The major purpose of preservation is to prevent dissipation of assets. Orders accordingly.”
35. This court is alive to the 2nd respondent’s concerns that prolonged preservation of her assets may occasion injustice. However, the right to fair trial is a double edged sword and the respondent’s rights must be balanced against the public interest. Should the money be transferred pending the determination of the investigations, the same would be rendered a mere academic exercise.



36. In my view, the need to preserve these funds however, far outweighs the concerns and contentions by the 2nd Respondents. Therefore, there is need to continue freezing and preservation of the funds until the Commission has completed investigations into the source(s) of those funds
37. Besides, the purpose of such preservation orders under the ACECA, is merely preservatory in nature, to preserve the funds and allow for investigations into the source(s) of the funds and evaluation of the explanation offered by the Respondent. That is why they should always be for a specific period specified in the law.
38. The preservation orders are of a temporary character, and meant to merely preserve the funds, and not to permanently or indefinitely deprive the Respondents of the said funds. They are neither forfeiture nor sequestration orders.
39. This court is therefore, persuaded that it would be in the interest of justice to extend the preservation orders. The court is fully aware of the regime safeguards provided in Section 56 of the ACECA.

Determination.

40. The application dated 24th January 2025 is therefore, allowed in terms of Prayers (2), (3) and (4).
41. For avoidance of any doubt, the existing preservation order issued on the 30th July, 2024 with regard to Kshs.1,108,477.70cts held in account No. 0100009xxxxxx domiciled at Stanbic Bank in the name of the 1st Respondent is hereby discharged.
42. There shall be no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 2ND DAY OF APRIL 2025.

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L.M. NJUGUNA

JUDGE

In the presence of: -

No appearance for the Applicant

Mr. Tobias Olaibon holding brief Mr. mosota for the 1st Respondent

Mr. Odongo for the 2nd Respondent

Court Assistant – Adan

