



REPUBLIC OF KENYA



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**Ethics & Anti-Corruption Commission v Njehia & another (Anti-Corruption and Economic Crimes Civil Suit E033 of 2022) [2025] KEHC 8781 (KLR)
(Anti-Corruption and Economic Crimes) (18 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8781 (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 E033 OF 2022

LM NJUGUNA, J

JUNE 18, 2025

BETWEEN

ETHICS & ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

PETER MAINA NJEHIA 1ST DEFENDANT

ANTHONY NJEHIA 2ND DEFENDANT

RULING

1. The applicant herein filed the Originating Summons dated the 21st September, 2022 seeking determination of various issues as set out in the Originating Summons. It is supported by the supporting affidavit sworn by Shadrack Mwenda, on the due date.
2. The grounds in support of the Originating Summons are that; under Section 55 of the ACECA and Section 11 (j) of the EACC Act, the applicant has the mandate to undertake investigations into allegations of corruption and Economic Crimes, and in appropriate cases, to institute civil proceedings against any person for the recovery of assets whose value is disproportionate to his/her known legitimate source(s) of income.
3. That the applicant conducted investigations into allegations of unexplained wealth, unethical conduct, bribery, conflict of interest against Peter Maina Njehia, the 1st defendant/respondent herein who at the material time was a senior manager, Supply Chain, at KETRACO.
4. The applicant in its investigations sought to establish whether there were reasonable grounds to suspect that the 1st respondent was engaged in corruption and Economic Crimes as alleged, and further, whether he had acquired and/or accumulated assets that were disproportionate to his known legitimate



- source(s) of income irrespective of whether the suspected assets were held by himself, his associates and relatives.
5. The applicant completed investigations and established that in the period between January 2010 and March 2021, (hereinafter referred to the period of interest) the 1st respondent exploited his official position of trust in the Public Service during his employ at KETRACO for private gains, by involving himself in transactions that were in conflict with public interest.
 6. That investigations revealed that during execution of search at the 1st respondent's premises in Nairobi, an amount of Ksh. 1,020,000.00 in cash was seized from his motor vehicle and he could not reasonably explain the source of that money. That he was also found in possession of tender documents for Sieyuan Electric Company Limited which had been awarded the Tender for Olkaria- Lessos – Kisumu Transmission lines by KETRACO.
 7. The investigations also revealed that the 1st respondent had through his bank account No. 1101758929 and M-Pesa line number 0722113763 also received Ksh. 400,000 and Ksh. 85,000 respectively from Jooyato Surveys Limited and Jacob Oyato, a director of the said company respectively, who had been awarded contract by KETRACO to provide consulting services. Further, that Sieyuan Electric Company limited had in the period of interest deposited a total of Ksh. 3,000,000.00 in two bank accounts belonging to the 1st respondent's spouse.
 8. The applicant's investigations further established that in the period of interest, the 1st respondent under declared his assets during the routine Declaration of Assets, income and liabilities, contrary to the provisions of Section 26 of the *Public Officer Ethics Act*, No. 4 of 2003 and in addition, in the said period he had unsatisfactory declarations and/or payments.
 9. That in an effort to conceal the nature, source, disposition or movement of corruptly acquired funds, investigations established that the 1st respondent registered some of the assets acquired in the period of interest in the names of his associates namely Julie Hellen Matu (spouse) and Antony Njehia (son).
 10. That from the investigations, the applicant established that, during the period of interest in which the 1st respondent was reasonably suspected of corruption and Economic Crimes, he accumulated assets in landed properties, bank and mobile money (Mpesa) deposits, motor vehicles, shares in listed & limited companies and investment portfolios and deposits in saving and credit co-operative Societies (Saccos) which assets were disproportionate to his known legitimate sources of income amounting to Ksh. 237,806, 769.40 held in his name and those of his associates.
 11. The Commission received responses from the 1st respondent which was considered and after analysis, cumulative assets of value of Ksh. 21,432, 587.46 was found to have been satisfactorily explained leaving out unexplained disproportion of Ksh. 216, 374, 181.94 which the applicant is now claiming in this suit.
 12. The respondents filed a joint replying affidavit sworn by Peter Maina Njehia, on 19th October, 2022. He has deponed that the application is baseless as all what the applicant has done is to level allegations against him without showing any link between the assets and the corrupt deals.
 13. In response to the allegation that he received money from Sieyuan Electric Company Limited he stated that he had an arrangement with the said company for it to use one of his vehicles, a Toyota Prado under which they made periodic payments of Ksh. 200,000.
 14. On the unexplained assets, he averred that the burden of establishing any part of unexplained assets obtained through corrupt deals lies squarely with the applicant which it has not discharged. That K.C.B account is purely a salary account while Equity bank limited account has proceeds from his



businesses including rent from his apartments and Matatu business. In regard to the landed properties, he stated that he acquired several pieces of land in Nakuru through share purchase over a period of 22 years

15. The matter proceeded to full hearing and upon the close of the Plaintiff's case, the defendants opted to exercise their right provided in Section 55(5) of ACEC Act to submit at the close of the Plaintiff's case on whether the Plaintiff has satisfied the court on a balance of probabilities that the defendants have unexplained assets for the court to require the defendants to satisfy the court that the assets were acquired otherwise than as the result of corrupt conduct.
16. The court directed the parties to file submissions in accordance with Section 55 (5) of the Anti-Corruption and Economic Crimes Act (ACEC) Act which directions all the parties complied with.
17. The court has considered the submissions filed herein together with the authorities cited, and the only issue for determination is whether the plaintiff has established a prima facie case against the defendants pursuant to the provisions of Section 55(5) of the ACEC Act.
18. Section 55(5) aforesaid provides as follows;

“If after the commission has adduced evidence that the person has unexplained assets the court is satisfied, on the balance of probabilities, and in light of the evidence so far adduced, that the person concerned does have unexplained assets, it may require the person, by such testimony and other evidence as the court deems sufficient, to satisfy the court that the assets were acquired otherwise than as the result of corrupt conduct.”
19. This Section is the equivalent of Section 210 of the *Criminal Procedure Code* in which after the close of the prosecution's case, the court is required to rule on whether a prima facie case has been established against an accused person to warrant him to be placed on his defence. Under Section 210, unless the court is acquitting the accused person, the court is not required to write a detailed ruling so that it does not prejudice the remainder of the trial. I am of the considered view that the same reasoning should also apply in a case in which the plaintiff elects to exercise his right provided in Section 55(5).
20. In the case of *Mrao Limited Vs First American Bank of Kenya Limited & 2 others* (2003) eKLR the court had this to say about prima facie case in civil cases;

“A prima facie case in a civil application includes but is not confined to a “genuine and arguable case “. It is a case which on the material presented to court; 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.”
21. In Civil Appeal no.184 of 2018 *Stanley Mombo Amuti Vs Kenya Anti- Corruption Commission* (2019) eKLR the learned Judges of the Court of Appeal in interpreting Section 2 and 55 (2) of the ACECA stated: -

“In our considered view, a reading of Section 2 and 55 (2) of the Act establishes the threshold for existence of unexplained assets to be:

 1. There must be set time period for the investigation of a person
 2. The person must be reasonably suspected of corruption or Economic Crime
 3. The person must have assets whose value is disproportionate to his known sources of income at or around the period of investigations and



4. There is no satisfactory explanation for the disproportionate assets.
22. The defendants have relied on the case of Ethics and Anti- Corruption Commission Vs Kanani and Others ACEC case number E022 Of 2023 (2024) KEHC in which the court held: -
- “ 14. The legal burden of proof remains with the Commission through out the suit and at no time does it shift to the subject. This is because this burden rests on the party that will loose the case if no evidence is adduced at all on either side. That party in these suits, is the Commission as the institutor of the suit.
15. The burden borne by the subject to explain, is only an evidential burden, and which like a pendulum will keep swinging between the Commission and the subject on particular assertions and counter assertions. It will at the onset of the case rest with the Commission, and then shift to the subject once the Commission has established a prima facie case. A prima facie case is one that requires an answer from the other party (Emphasis added).
23. It is indeed trite law that the legal burden in Civil and in criminal cases always remain with the plaintiff/ accused person and it does not shift. However, the evidential burden keep swinging between the plaintiff and the defendant and at the close of the plaintiff's case, it shifts to the defendant once the plaintiff has established a prima facie case.
24. I have carefully gone through the evidence that has been adduced by the plaintiff in this case, and in my considered view, the plaintiff has established a prima facie case that in the light of the evidence that has been adduced, to warrant the defendant to satisfy the court that the assets were acquired otherwise than as a result of corrupt conduct.
25. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 18TH DAY OF JUNE 2025

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L.M. NJUGUNA

JUDGE

In the presence of:-

Miss Ochola for the plaintiff

Mr. Arori for the 1st and 2nd defendants

Court assistant – Adan

