



Ethics and Anti-Corruption Commission v Chege & 7 others (Anti-Corruption and Economic Crimes Civil Suit E043 of 2024) [2025] KEHC 8382 (KLR) (Anti-Corruption and Economic Crimes) (16 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8382 (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 E043 OF 2024
LM NJUGUNA, J
JUNE 16, 2025**

BETWEEN

ETHICS AND ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

ESTHER WANJIRU CHEGE & 7 OTHERS & 7 OTHERS & 7 OTHERS DEFENDANT

RULING

1. The plaintiff herein filed the Originating Summons dated 19th November, 2024 under Section 55 of the Anti- Corruption and Economic Crimes [Act No. 3 of 2003](#) (herein referred as ACEC) Act and Order 37 Rule 14 of the Civil Procedure Rules seeking various Orders inter alia:-

“Whether the defendants are in possession of “ unexplained assets” pursuant to the provisions of the ACEC [Act, No. 3 of 2003](#) as itemized in the Originating Summons; whether Ksh. 25,461,174.29 transacted through the bank and mobile money (M-pesa) accounts of the 1st defendant as set out in the Originating summons constitute unexplained assets within the meaning of the provisions of Section 55 of the ACEC [Act, No.3 of 2003](#); Whether the properties listed in the Summons constitutes unexplained assets within the meaning of section 55 of ACEC [Act, No. 3 of 2003](#); whether the 1st defendant should be ordered to pay the sum of Ksh. 25,461,174.29, with interest until payment in full and Ksh. 24,750,000 being the cumulative value of the landed properties, and whether the 1st and the 2nd defendants should be ordered to forfeit and surrender to the Government of Kenya all the landed properties and the funds held in the 1st defendant’s bank account No. 0010291118483 held in Equity Bank Limited in settlement of the forfeiture Order.”



2. The defendants filed their respective replying affidavits in response to the Originating Summons.
3. This matter came up for hearing on the, 9th day of June, 2025 when one Gamaliel Kipkurui Kirui took the witness stand and towards the end of his evidence- in- chief, Counsel for the plaintiff sought to produce a letter dated the 5th June, 2025 which had been referred to in the affidavit sworn on the 25th February, 2025 by Mahmoud Mohdhar as an annexure but which, by an oversight, according to counsel, was not annexed to the said affidavit.
4. Counsel for the 1st -4th and 6th – 9th defendants, Mr. Thiankolu objected to the production of the letter for the reason that the court had earlier on given the plaintiff leave to file a supplementary affidavit in reference to the issues that the defendants had raised, but when it filed the affidavit sworn by Mahmoud Mohdhar, the plaintiff had the opportunity to attach the letter it is seeking to have produced but it did not. Secondly, Mr. Thiankolu averred that it would offend the rule against hearsay given that the document has been attached to an affidavit sworn by a different person, yet, the issue raised about the document in question touches on Gamaliel Kipkurui Kirui (PW2).
5. Counsel for the defendant further contended that, given the serious ethical questions the defendants have raised about the professional standing of Gamaliel Kipkurui, the plaintiff being a professional body cannot bring a case based on investigations of officers with integrity issues, and just by good principles of practice, it's only Gamaliel who could have sworn the affidavit himself and not any other officer.
6. The third reason for the objection was that, the letter dated the 5th June, 2025 was done just a week before the hearing to address an issue that the defendants raised in the month of February which was four months down the line, and long after the affidavit had been sworn. Further, that the letter has not even addressed the issue that the defendants had raised in the replying affidavit, and it does not tell the court why the witness was not in good standing as at the time he swore the affidavit on the 19th November, 2024, and as such, the letter cannot help the court to resolve the issue even if it is admitted in evidence.
7. In response, Counsel for the plaintiff averred that the further affidavit having been sworn by the investigating officer, he can refer to any document. Counsel made reference to Section 65 (1) of the Evidence Act that states that evidence can be produced by a public officer having custody of the documents. She urged the court to allow the letter to be admitted in evidence, in the interest of justice, and not to visit the mistake of a counsel to the client.
8. The court has considered the objection and the oral submissions that were made by both counsel on the issue at hand. The objection by the counsel for the defendants was first pointed out in the replying affidavit by the 1st - 4th and the 6th – 9th defendants sworn by the first defendant, on the 12th February, 2025 as hereunder;

Par. 42. In a bid to mislead this Honourable court as to his credibility and thus the integrity of his evidence, the Investigating officer, Mr. Gamaliel Kipkurui Kirui, has deliberately misrepresented his professional standing with the Institute of Certified Public Accountants of Kenya (ICPAK). In paragraph 2 of his Affidavit, Mr. Gabriel Kipkirui depones that he is in good standing, yet ICPAK's member directory as at 7th February, 2025

Indicates that he is not in good standing. A screenshot from ICPAK's member directory is annexed hereto and marked "WEC-17."



9. In response to that paragraph and other issues that had been raised by the defendants, the plaintiff filed a further affidavit sworn by Mahmoud Mohdhar, on the 25th February, 2025 and at paragraph 33 he deponed as follows;

“Par 33. THAT in response to paragraph 42 of the replying affidavit, Mr. Gamaliel Kipkurui Kirui who undertook Financial analysis on behalf of the plaintiff is a duly appointed investigator with the Commission and has always been in good standing by institute of Certified Public Accountants of Kenya (ICPAK).”

10. Though the said letter was referred to in the affidavit of Mahmoud Modhar aforesaid, the same was not annexed as it was intended, and thus, the reason why counsel for the plaintiff applied to the court to have it admitted in evidence

11. The court has noted the contents of paragraph 42 of the defendants’ replying affidavit, and the objection that was raised in court by counsel for the defendants. According to the screen shot that has been annexed to the defendants’ replying affidavit, it indicates PW2’s membership status as being “active” but status as “not in good standing”.

12. The letter dated 5th June, 2025 states that Mr. Gamaliel Kipkurui was in good standing as at the date of the letter. None of the parties told the court in what aspect he was not in either “good” or “not in good” standing as a professional, so as to assist the court in making a determination as to whether the same would affect the credibility of his evidence, if all. As rightly submitted by the counsel for the plaintiff, ICPAK’s website can be accessed by any person who is looking to know the status of any of it’s members and therefore, there is nothing wrong with Mahmoud Mohdhar swearing an affidavit in his capacity as an investigator and annexing the letter to his affidavit. The letter indicates that PW2 was in good standing as at 5th June, 2025.

13. The court has read the authorities that the plaintiff filed in this matter in opposition to the objection. In the case of National Bank of Kenya Limited Vs. Anaj Warehouse Limited (Petition 36 of 2014) KESC 4 (KLR) (2nd December 2015) the Supreme Court of Kenya when dealing with an issue as to whether a document or instrument of conveyance is null and void for all purposes, on ground that it was prepared, attested and executed by an advocate who did not have a current practicing certificate within the meaning of Section 34(1) (a) of the Advocates Act, stated:-

“It cannot be right in law, to defeat that clear intention, merely on technical consideration that the advocate who drew the formal documents lacked a current practicing certificate. The guiding principle is to be found in Article 159(2) (d) of the Constitution: justice shall be administered without undue regard to procedural technicalities”

14. The Supreme Court further stated: -

“The facts of the case, and its clear merits, lead us to a finding and proper direction in law, that no instrument or document of conveyance becomes invalid under Section 34 (1) (a) of the Advocates’ Act, only by dint of it’s having been prepared by an advocate who at the time was not holding a current practicing Certificate. The contrary effect is that documents prepared by other categories of unqualified persons, such as non- Advocates, or advocates whose names have been struck off the roll of advocates, shall be void for all Purposes”.



15. The Supreme Court further went on to say:-

“While securing the rights of the client whose agreement has been formalized by an advocate not holding a Current Practicing Certificate, we would clarify that such advocates’ obligations under the law remain unaffected. Such an advocate remains liable in any applicable criminal or civil proceedings, as well as any disciplinary Proceedings to which he or she may be subject.”

16. The Supreme Court also observed that;

“The transgressor, in our view, is the advocate, and not the client. The illegality is the assumption of the task of preparing the conveyancing documents, by the advocate, and not the seeking and receiving services from the advocate. Likewise, a financial institution that calls upon any advocate from among its established panel to execute a conveyance, commits no offence if it turns out that the advocate did not possess a current practicing certificate at the time he or she prepared the conveyance documents. The spectre of illegality lies squarely upon the advocate, and ought not to be apportioned to the client.”

17. The Supreme court appreciated in the case of *Shital Bimal Shah & 2 others vs. Akiba Bank Limited Civil Appeal (Application) No. 159 of 2005 (2006) 2EA 323* that:-

“A mistake is a mistake. It is no less a mistake because it is an unfortunate slip. It is no less pardonable because it is committed by a senior counsel though in the case of a junior counsel the court might feel compassionate more readily. A blunder on a point of law can be a mistake. The door of justice is not closed because a mistake has been made by a person of experience who ought to have known better. The court may not forgive or condone it but it ought certainly to do whatever is necessary to rectify it in the interest of justice”.

18. Applying the above reasoning by the Supreme court to the issue before me, and borrowing from the wisdom of the court, PW2 who is a member of ICPAK and who is an investigator with the plaintiff analyzed the bank and the Mpesa statements held by the defendants herein, and his evidence in court related to the transactions that were done in those accounts. He undertook the same as a professional, and as the court stated, the effect is that documents prepared by other categories of unqualified persons, such as non-advocates, or advocates whose names have not been struck off the roll of advocates, shall be void for all purposes.

19. In the case herein, it has not been alleged that Mr. Gamaliel Kipkurui has been struck off the roll/ deregistered as a member of ICPAK. For that reason, and in determining the objection, the guiding principle is to be found in Article 159 (2) (d) of *the Constitution*, that justice shall be administered without undue regard to procedural technicalities. However, PW2 remains liable in any applicable criminal or civil proceedings, as well as any disciplinary proceedings to which he may be subject, and punished accordingly if he is found to culpable.

20. In view of the above, and keeping in tandem with the doctrine of stare decisis, I find that it would not be in the interest of justice for this court to not allow the production of the letter.

21. In the end, I hereby dismiss the defendants’ objection and allow the letter dated 5th June, 2025 to be produced in evidence.

22. It is so ordered.



DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 16TH DAY OF JUNE, 2025.

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L.M. NJUGUNA

JUDGE

In the presence: -

Mr. Muthoni appearing with Mr. Danstan Ondieki for the 1st -4th and 6th – 9th defendants

Mr. Muthoni for the 5th defendant

Miss Lunyolo for the Plaintiff

Court assistant - Adan

