



REPUBLIC OF KENYA



**KENYA LAW**

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**Ethics & Anti-Corruption Commission v Amailo Investment Company Limited  
& 7 others (Anti-Corruption and Economic Crimes Civil Suit E025 of 2022)  
[2025] KEHC 9791 (KLR) (Anti-Corruption and Economic Crimes) (7 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9791 (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 E025 OF 2022**

**BM MUSYOKI, J**

**JULY 7, 2025**

**BETWEEN**

**ETHICS & ANTI-CORRUPTION COMMISSION ..... PLAINTIFF**

**AND**

**AMAILO INVESTMENT COMPANY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**MATHEW KIPCHUMBA KIPKEMEI ..... 2<sup>ND</sup> DEFENDANT**

**GRACE MUREI ..... 3<sup>RD</sup> DEFENDANT**

**SAMUEL EREGAE ..... 4<sup>TH</sup> DEFENDANT**

**JAMES ARONO CHEGEM ..... 5<sup>TH</sup> DEFENDANT**

**ESTHER LOKAI ELIM ..... 6<sup>TH</sup> DEFENDANT**

**ELIM PETER EPAGAN ..... 7<sup>TH</sup> DEFENDANT**

**PETER EKOROT ENDAPAL ..... 8<sup>TH</sup> DEFENDANT**

**RULING**

1. This ruling is for notice of motion dated 14-04-2025 filed by the 1<sup>st</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> defendants (hereinafter referred to as ‘the defendants’) seeking the following orders;
  1. Spent.
  2. The Honourable Court be pleased to grant the 1<sup>st</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> defendants/applicants leave to file the annexed supplementary list and bundle of documents attached hereto.



3. The annexed supplementary list and bundle of documents be and is hereby deemed as properly filed upon grant of prayer 2 above.
4. The costs of this application be provided for.
2. The application is supported by affidavit of Jack Bigambo sworn on 14-04-2025. According to the supporting affidavit, the documents are material in assisting the court to make a fair and just determination of the case. The defendants aver that the plaintiff will not suffer any prejudice if the application is allowed. It is deponed further that the it had come to the attention of the applicants that this crucial evidence had been left out of the defendants' bundle.
3. The documents the defendants seek to add are;
  - a. A letter dated 18<sup>th</sup> May 2023 from the defendants' advocates to the plaintiff.
  - b. A draft statement made by one Harry Kidiga Hongo on 15-05-2023.
  - c. A copy of OB number 36/16/05/2023.
  - d. Copies of emails dated 15-05-2023.
  - e. Copies of WhatsApp communication dated 15-05-2023.
  - f. Some CCTV footage SN.ch16\_2-23-515140000.mp4, ch18\_2023051410000.mp4 and ch.16\_20230515154915.mp4
  - g. Electronic certificates under Sections 65(8) of the Evidence Act dated 31-04-2023 and 23-05-2023.
4. The application has been opposed by the plaintiff through an affidavit of its investigator one David Mutua dated 7<sup>th</sup> May 2025. In summary, the replying affidavit depones that the plaintiff has been with these documents all along and it will be prejudicial to the plaintiff to admit the documents at this stage when it has already closed its case. The deponent adds that allowing the application would mean that the plaintiff will re-open its case and recall its investigations officer.
5. This court gave directions on the application on 29-04-2025 that the plaintiff should reply to the application within seven days and parties to file submissions on the same within fifteen days thereafter. I have gone through the court record and I note that the defendants did not file submissions on their application. I don't know whether this is a sign that they have abandoned their application or it's an oversight. Nevertheless, I will proceed to give my ruling on the same.
6. The defendants filed their defence on 2-03-2023. The matter came before the Deputy Registrar for pre-trial on 13-04-2023 when the defendants indicated to the court that they had complied and requested for a hearing date. On 26-04-2023 the parties appeared before Honorable Justice Prof (DR) Sifuna who directed the parties to compile their trial bundles before he could give a date for hearing. The parties appeared again before the Judge on several other dates and on 19-10-2023 the court confirmed that parties had filed their trial bundles and fixed the matter for hearing on 8-02-2024.
7. In a ruling dated 20-12-2024, this court warned the parties that it will not entertain further delays in form of applications. The hearing of the case took off on 28-01-2025 where it took evidence of 11 witnesses before adjourning for further hearing on 28<sup>th</sup> April 2025. The record shows that the defendants extensively cross-examined the 11 witnesses. It took the defendants about three months to bring the application, a few days to the further hearing of 28-04-2025 and at a time when only one witness for the plaintiff was remaining.



8. The defendants have not laid basis to this court on the importance of introducing the documents towards the end of the hearing of the plaintiff's case. They have not given convincing reasons for failure to file the documents earlier. The documents have been in the hands of the defendant all that while. Actually, the letter, the emails and WhatsApp extracts have been authored by the defendants and their advocates. The documents in my assessment would be hearsay and of no probative value to the defendants' case as much as they would deny the plaintiff the opportunity to question them noting that it has closed its case. In my judgment, the application was an after thought and an attempt to delay further hearing of the case. It would be a trial by ambush for this court to allow the application at this stage.
9. In view of the above, the application dated 14-04-2025 is found unmerited and it is dismissed with costs to the plaintiffs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF JULY 2025.**

**B.M. MUSYOKI**

**JUDGE OF THE HIGH COURT.**

Ruling delivered in presence of;

Miss Githinji, Miss Sitati and Miss Baithalu for the plaintiff;

Mr. Bigambo for the 1<sup>st</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> defendants; and

Mr. Suge for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants.

