



**Ongalo v Ethics and Anti-Corruption Commission & 3 others (Anti-Corruption and Economic Crimes Civil Suit E027 of 2023) [2025] KEHC 10165 (KLR)
(Anti-Corruption and Economic Crimes) (16 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10165 (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 E027 OF 2023
LM NJUGUNA, J
JULY 16, 2025**

BETWEEN

STANVAS ONGALO APPLICANT

AND

ETHICS AND ANTI-CORRUPTION COMMISSION 1ST RESPONDENT

BEATRICE MBULA KITUU 2ND RESPONDENT

WYCLIFFE ONGATA 3RD RESPONDENT

OLIVER RABOUR 4TH RESPONDENT

RULING

1. The applicant herein (Stanvas Ongalo) has moved this court by way of the Notice of Motion dated the 25th March, 2025 brought under Order 51 of the [Civil Procedure Rules](#) and Sections 1A, 1B and 3A of the [Civil Procedure Act](#). It is premised on the grounds on the face of the same, and it is supported by the annexed affidavit sworn by the applicant seeking the following Orders: -
 1. Spent.
 2. That the Court be pleased to issue an order directed to NMK to produce the documents listed in this Notice of Motion.
 3. That the court be pleased to issue an order directed to Standard Chartered Bank compelling it to produce the documents outlined in this Notice of Motion at the soonest prior to the certification of this matter as being ready for Hearing.



4. That this Court be pleased to direct a general stay on proceedings in this matter until the said documents are produced.
5. That the Honourable Court be pleased to grant any other relief that it deems fit.
2. The applicant avers that he is one of the defendants, with the substratum of the case being an allegation that, in collusion with others, they abused their positions of trust at the National Museum of Kenya (NMK) via a payroll fraud scheme by creating a fictitious "Biodiversity" Division with ghost workers maintained on monthly salaries and other benefits during the period under review.
3. That following the institution of the Civil and Criminal cases, he, vide a letter dated the 12th August, 2024, made a request to NMK for the production of particular documents in its possession which are crucial to the subject matter of the case and his defence. That NMK responded vide a letter dated the 2nd September 2024 providing a number of documents while also directing him to obtain part of the sought for documents from Standard Chartered Bank.
4. That in the said letter of the 2nd September, 2024, NMK committed to provide further documents but to date has failed to do so and no explanation has been furnished. That vide a letter dated the 18th March, 2025, the applicant requested for the said documents from Standard Chartered Bank as per NMK's directive but the said Bank declined to provide the said documents citing reasons among others, that he must seek court Orders to compel them to produce the said documents, thus the application herein.
5. That the documents touch on the NMK's payroll system and are central to the determination of this suit as they will demonstrate the control of the system at the material time under review. That he stands to be prejudiced by the non – production of the documents since they will affect the completeness of his defence whereas no prejudice will be suffered by the other parties since the documents touches on operations of a public entity and are needed by a litigant for his defence and the rest of the litigants can file any further documents in response.
6. The plaintiff filed a replying affidavit sworn by Charity Muniu, in which she has deponed that the application is bad in law, frivolous and an abuse of the court process aimed at delaying the hearing of the matter. That the issues raised in the application ought to have been raised during pre-trial and they were never raised during the case management conference.
7. That the prayer for stay of proceedings is made in bad faith as the case will commence with the hearing of the plaintiff's case followed by the 1st defendant's case meaning that the applicant's case cannot be reached any time soon to justify stay of proceedings.
8. The application was disposed of by way of written submissions.

Applicant's Submissions

9. The applicant submitted that he has demonstrated that the documents in question are vital to the fair determination of the matter, as they pertain to the payroll system of the NMK, and are therefore essential in establishing the control and operation of the said system during the materiel period under review.
10. That *vide* a letter dated the 2nd September, 2024, NMK committed to produce some of the documents which it has since failed to produce.
11. The applicant identified two issues for determination to wit:-



- a. Whether this Honourable court can grant Orders compelling a party to produce documents.
 - b. Whether this court can stay these proceedings until the said documents are issued.
12. On the first issue, the applicant submitted on the Provision of Section 22 of the *Civil Procedure Act* and Order 11 of the *Civil Procedure Rules*, which provides that the court can either on its own motion or on application by either party make such Orders as may be necessary or reasonable in all matters relating to the delivering and answering of interrogatories, the admission of documents and facts and the discovery and inspection, production, impounding and return of documents or other material objects producible as evidence; and that the court has the power to summon any person to produce such documents or adduce evidence as the case may be.
 13. That the production of documents goes to the very core of ensuring a just and fair determination of a matter which is designed to facilitate access to crucial documents that may be solely within the custody of the opposing party which serves to level the playing field in litigation by preventing the concealment of material evidence and promoting procedural fairness. Reliance was placed on the case of *ABN Amro Bank N.V v Kenya Pipeline Company Limited* (2019) eKLR.
 14. That the applicant by a letter dated the 12th August, 2024, issued a notice to produce to NMK pursuant to Section 69 of the *Evidence Act*, requesting for the production of the said documents, which documents are within the custody and control of both NMK and the Standard Chartered Bank which have not been produced to date. Further reliance was made on the case of *Federation of Women Lawyers – Kenya & 28 others v Attorney General & 8 others* (2015) eKLR.
 15. On the second issue, it was submitted that the Honourable court possesses the inherent jurisdiction to stay proceedings pending production of the specific documents requested by a party and the court may exercise this power either Suo Moto or upon application by a party. The applicant further submitted on the principles governing stay of proceedings as set out under Order 42 Rule 6(1) of the *Civil Procedure Rules* as affirmed in the case of *Global Tours & Travel Limited v Five Continents Travel Limited* (2015) eKLR. The applicant averred that he stands to suffer substantial prejudice should these proceedings continue prior to the production of the requested documents as the same are central to his case touching on its core issues. That if the proceedings are not stayed and the same proceeds without the benefit of these crucial evidence, he reasonably apprehends that his case will be severely compromised and he will be denied a fair opportunity for adjudication on merits. The applicant urged the court to weigh the advantages and disadvantages of granting stay of proceedings sought and find that the benefits of issuing such Orders far outweighs any potential prejudice.

Plaintiff's/Respondent's Submissions

16. The plaintiff/respondent identified only one issue for determination to wit;
 - Whether the court can stay the proceedings herein until the documents are issued.
17. It was submitted that the applicant's prayer for stay of proceedings ought to be balanced against the respondent's right to expeditious disposal of the suit under Article 159(2)(b) of the *Constitution*. That the application has been made late in the day considering that the issues raised herein are pre-trial issues that were never raised during the case management conference.
18. The respondent submitted that it is in public interest that this matter be determined expeditiously in line with the Oxygen principles or the overriding objective under the *Civil Procedure Act*. Reliance was placed on the case of *Ethics and Anti-Corruption Commission v Nesco Service Limited & 8 Others* (Land



case E 211 of 2023) (2025) KEELC 3738 (KLR) (8 May 2025) in which the court stated that public interest is an element to be considered in an application for stay of proceedings.

19. It was also submitted that the matter herein touches on allegations of Corruption, economic crimes and abuse of office which are of immense public interest and by their nature warrant priority hearing and determination, in line with the Constitutional imperative to promote accountability and good Governance under Article 10 and Article 73 of the Constitution.
20. That the application has not met the conditions for grant of stay of proceedings and relied on the case of Kikambala Housing Estate Limited v Akash Devani & 10 others Civil Suit HCCC of 2018 (consolidated with Mombasa HCCC 58 of 2015) (2020) eKLR in which the court stated that “An order for stay of proceedings should not be granted as a matter of course merely because it has been sought. The court must appreciate the constitutional dictate for the expeditious disposal of the case and only issue stay of proceedings in very compelling cases”.
21. Further reliance was placed on the case Kenya Wildlife Service v James Mutembei (2019) eKLR and to Halsbury’s Law of England, 4th Edition Vol. 37 page 330 and 332 on the threshold for stay of proceedings and the court was urged to dismiss the application.

Analysis and Determination

22. The court has considered the application and the supporting affidavit, the replying affidavit and the Submissions filed herein. There are two issues for determination namely:-
 - a. Whether the court should grant an Order compelling NMK and Standard Chartered Bank to produce the documents requested for.
 - b. Whether this court should stay the proceedings herein until the said documents are issued.
23. The application has been made under Order 51 of the Civil Procedure Rules and Sections 1A, 1B and 3A of the Civil Procedure Act. The applicant who is one of the defendants in the matter herein filed his defence on the 11th March, 2024 and refuted the allegations levelled against him.
24. In a letter dated the 12th March 2024 he made a request to NMK for the production of the following documents:-
 1. Payroll approvals for the period between January 2016 to July, 2022.
 2. Certified copies of National Museums of Kenya Board of Directors Minutes of the Board Audit Committee report between January 2016 to June 2022.
 3. National Museums of Kenya Auditor General’s report for the years 2016/2017, 2012/2022
 4. Certified career guidelines
 5. Travel allowances vouchers from January 2016-June 2022
 6. Incentive allowances from research projects from National Museums of Kenya and Institute of Primate research from January 2016 to June 2023
 7. Committee allowances from January 2016 to June 2022
 8. Pension Trustee Allowances from January 2016 to June 2022
 9. Certified Standard Chartered Bank provide users and rights manual (who uploads data, who batches, who only approves payment)



10. Certified NMK monthly payroll Manual and approval letters
 11. Certified Standard Chartered Bank manual for straight to bank Access
 12. Certified finance policy
 13. Certified inspectorate reports from 2016 to June 2022
 14. Certified appointment letter for Stanvas Ongalo as an AIE holder in regard to personal emoluments and related items for 2016 to 2022.
 15. Certified copies of loan application request from 2016 to 2022
 16. Certified appointment letters and transfer for Oliver, Zalira, Nyakweba and Wyliffe Ongara
 17. Online Standard Bank authorization print out from 2016 to 1st July, 2022
 18. Bank statement confirming payment from 2016 to June 2022
 19. Request to the Bank to effect electronic funds transfer (EFT) to the employees bank accounts for the periods June 2016 to June 2022.
25. The National Museums of Kenya responded to that request *vide* a letter dated the 2nd September, 2024 providing the following documents;
- a. Item No.3
 - b. Item No.4
 - c. Item No. 12
26. The following items were to be supplied when ready;
- a. Item 5
 - b. Item 6
 - c. Item 7
 - d. Item 18
 - e. Item No. 8, the reports for the period 2016 to 2021 to be provided once they are retrieved.
27. The following were to be obtained from the relevant Banks upon request
- a. Item No. 9
 - b. Item No. 11
 - c. Item No.15
 - d. Item No.17
 - e. Item No.19
28. As for the remaining items, the responses were as follows;
- a. Item No.1 was seized and taken by EACC
 - b. Item 2, the applicant was asked to clarify the specific issues touching on himself, as the Board Audit Committee reports cover diverse issues beyond what may be relevant to the applicant



- c. Item No. 13 was with the inspectorate of State Corporations
 - d. Item No. 16, consents were to be obtained from the relevant officers for the release of the said documents.
 - e. Item Nos. 10 and 14 are not available in their records.
29. Vide a letter dated the 18th March, 2025, the applicant requested the Standard Chartered Bank to provide the documents listed as items 9, 11, 15, 17 and 19 but the Bank did not respond to the said request.
 30. In the letter dated the 2nd September, 2024, NMK had promised to supply documents listed as item Nos. 5, 6, 7, item 18 and part of the reports listed as item 8 for the period between 2016 to 2021. For item No. 16 the consents of the said officers were required for NMK to release the requested documents to the applicant.
 31. From the evidence available to the court, there is no indication as to whether the consents were obtained and communicated to the NMK to enable them avail the documents relating to the said officers. Further, the applicant was to clarify to the NMK the specific issues that could be of interest to him on item No. 2 in order for NMK to facilitate the request. Again, there is no indication if this was done by the applicant.
 32. From my analysis of the correspondences between the NMK and the applicant, and the letter dated the 18th March, 2025 to the Standard Chartered Bank, it is clear that NMK cannot be blamed in total for failing to provide all the documents that the applicant has requested for. Some of those documents were to be provided upon the applicant meeting some conditions that he has not met to date. With regard to the documents in possession of the Banks, I note that a request was done vide the letter dated the 18th March, 2025 which the Bank failed to respond to.
 33. The documents requested as item No. 1 was said to have been taken away by the plaintiff. No request has been made to the plaintiff to produce the said documents or for it to indicate if the same are in their possession and therefore, this court cannot make any order against the plaintiff in that regard. With regard to item No. 2, I note that the letter was written to the applicant and the same should be in his possession.
 34. In the premises foregoing, the court makes the following Orders;
 - a. Documents listed as Item Nos.3, 4, 5,7,12 and 18 to be supplied to the applicant by NMK.
 - b. Documents listed as Item Nos. 9,11,15,17, and 19 to be supplied to the applicant by the respective Banks.
 - c. Documents listed as Item No. 2 to be supplied to the applicant upon him clarifying the specific issues touching on himself.
 - d. Item No. 13 to be requested for from the inspectorate of State Corporations.
 - e. Item No. 16 to be supplied to the applicant by NMK upon him obtaining the necessary consents from the concerned Officers.
 35. The Documents listed as Item Nos 3, 4, 5, 7, 12, 18, 9, 11, 15, 17 and 19 to be supplied to the applicant within 30 days from the date of this ruling.
 36. The Prayer for stay of proceedings is hereby declined.



37. No order as to costs.

38. It is so ordered.

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

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L. M. NJUGUNA

JUDGE

In the presence of:

Miss Kisabei for the Plaintiff

Mr. Kimakia for the 1st defendant

Miss Nyaga holding brief for Mr. Okatch for the 3rd defendant

Mr. Oginga for the 4th defendant

Court assistant - Adan

