



**Ethics and Anti-Corruption Commission v Kodomuk & 3 others
(Civil Suit E036 of 2024) [2025] KEHC 12788 (KLR) (Anti-
Corruption and Economic Crimes) (19 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12788 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
CIVIL SUIT E036 OF 2024
BM MUSYOKI, J
SEPTEMBER 19, 2025**

BETWEEN

ETHICS AND ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

SIMON KACHAPIN KODOMUK 1ST DEFENDANT

MATHEW ARUSIO PKANANA 2ND DEFENDANT

FRANCIS PKEMOI TIKOL 3RD DEFENDANT

MARY CHEPTUR NGORIAKES 4TH DEFENDANT

RULING

1. The plaintiff has brought this suit seeking to recover Kshs 297,299,150.00 which was allegedly embezzled from the coffers of the County Government of West Pokot between 2017 and 2022 during which period the defendants were running the affairs of the said government in different capacities. The funds in issue are said to have been designated for bursary and infrastructure for the people of West Pokot County.
2. The defendants have instead of filing a defence to the claim which has been commenced by way of plaint filed a preliminary objection dated 29th April 2025 in the following terms;
 1. The current suit is premature, misconceived, and bad in law because the defendants herein are currently facing criminal prosecution in Eldoret MCACEC No. E004 of 2024: Republic v. Simon Kodomuk Kachapin & 3 others concerning the alleged loss of the West Pokot Bursary Fund - which is the subject matter in these proceedings.



2. Section 48 of the *Anti-Corruption and Economic Crimes Act*, 2003 provides a statutory mechanism for recovery of property acquired through corruption upon conviction, and thus the issue of recovery is inherently part of the criminal proceedings.
 3. It is an abuse of court process for the plaintiff to institute parallel and concurrent civil recovery proceedings in relation to the same subject matter when criminal proceedings, wherein recovery can be enforced upon conviction, are actively ongoing.
 4. Consequently, this suit ought to be struck out with costs to the defendants.
3. This ruling is in respect to the said preliminary objection which was argued by way of written submissions. I have read the submissions of the defendants dated 20th June 2025 and those of the plaintiff dated 28th May 2025 together with the cited authorities therein. Although each side has framed issues for determination in this objection, my opinion is that the only issue for determination is whether this civil suit can proceed while there is a criminal case facing the defendants on the same events or sequence of transactions.
 4. The defendants have claimed that this matter is premature and an abuse of the court process as the institution of the same should have awaited finalisation of Eldoret Chief Magistrate’s Court criminal case number E004 of 2024. The parties seem to have assumed that the court is or should be aware of the charges in the criminal case as none of the parties has produced the charge sheet or proceedings in the criminal case to enable the court ascertain whether the particulars of the charge are in respect of the same facts as in this case. It is also not clear to this court whether all the defendants in this matter are the same as the accused persons in the criminal case. Nevertheless, I will proceed on assumption that there is consensus that the criminal case involves the same issues as in this case.
 5. It is indisputable that the law allows for civil and criminal matters to proceed concurrently. Section 193A of the Criminal Procedure Code Chapter 75 of the Laws of Kenya provides that;

‘Notwithstanding the provisions of any other written law, the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition or delay of the criminal proceedings.’
 6. This is not the first time the argument contained in the preliminary objection is being found its way in court. There is an avalanche of court decisions where the courts, some higher than me, have held that the civil and criminal proceedings can run concurrently. In addition to the ten authorities cited by the plaintiff on this issue, I have gotten guidance in the following authorities.
 1. Chamonges & another v Director of Criminal Investigations & others; Aspire Limited (Interested Party) (2025) KEHC 11567 (KLR) in which Justice JRA Wananda held that;

‘Section 193A above therefore explicitly provides that existence of a civil case does not create a ground for delaying the concurrent criminal case. The logic behind the provision is to prevent litigants from using civil proceedings to obstruct or delay criminal case. The provision therefore ensures that criminal cases are dealt with without delay or frustrations brought about by Court orders issued on the pretext of existence of civil disputes on the same facts.’



2. Alfred Lumiti Lusiba v Pethad Ranik Shantilal & 2 others (2016) KEHC 6978 (KLR), Honourable Justice Jairus Ngaah held that;

‘The conclusion that one can draw from Section 193A of the Criminal Procedure Code together with the decisions of the learned judges in aforementioned cases is that both civil and criminal jurisdictions can run parallel to each other and that neither can stand in the way of the other unless either of them is being employed to perpetuate ulterior motives or generally to abuse of the process of the court in whatever manner.’

7. Whereas in the cited cases the applicants were seeking to stay criminal prosecutions while in the current preliminary objection the defendants are seeking to strike out the civil case, going by the established jurisprudence, an inference can be drawn that a court ought not to stay or strike out any of the matters on account of existence of the other unless it is shown that there is an abuse of the court process or abuse of powers or violation of constitutional rights of the applicant.
8. The consistent decisions of the courts in the cited authorities are clear that existence of criminal proceedings is not a bar to progression or institution of civil recovery proceedings and vice versa. This court does not intend to go on a tour of re-inventing the wheel. Courts have settled this issue of parallel proceedings and there is no need to belabour it.
9. This defendant adds that Section 48 of ACECA is sufficient for recovery of proceeds of crime. While it is true that the court trying a criminal case can order restitution or recovery of the lost funds or assets, the provisions does not and cannot operate as a bar to recovery being pursued in civil cases. The plaintiff has mandate under Section 11(1)(j) of the *Ethics and Anti-Corruption Commission Act* Chapter 7C of the Laws of Kenya to pursue recovery of public property on behalf of a public entity. Whereas the plaintiff has a central role in the criminal case, it has no control on its prosecution which is vested in the Office of the Director Public Prosecutions. Even an acquittal in the criminal case would not afford the defendants a defence in civil recovery which in my view makes the two processes different and independent of each other. Justice Jairus Ngaah held in Alfred Lumiti Lusiba v Pethad Ranik Shantilal & 2 others (supra) that;

‘But even so, the viability of a cause of action in a civil claim does not necessarily stem from the conviction of a defendant in a criminal trial. Further still, the success or failure of a civil suit based on facts similar to those that a criminal prosecution is mounted does not necessarily depend on the conviction or acquittal of the defendant in the criminal trial; the outcome of a civil suit is independent from that of a criminal trial largely because the standard of proof required of a prosecutor in criminal prosecution is higher than that required of a claimant in a civil suit.’

10. In view of the above, I find the preliminary objection as an attempt to delay the progression of this matter. The same is overruled with costs to the plaintiff.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF SEPTEMBER 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Ruling delivered in absence of the plaintiff and in presence of Mr. Sakari Kibiti holding brief for Mr. Peter Wanyama for the defendants.

