



**Ethics and Anti-Corruption Commission v Dab Complex (K) Limited (Anti  
Corruption and Economics Crime Miscellaneous Application 3 of 2023)  
[2024] KEHC 5817 (KLR) (Anti-Corruption and Economic Crimes) (23 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5817 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
ANTI-CORRUPTION AND ECONOMIC CRIMES  
ANTI CORRUPTION AND ECONOMICS CRIME  
MISCELLANEOUS APPLICATION 3 OF 2023**

**EN MAINA, J**

**MAY 23, 2024**

**BETWEEN**

**ETHICS AND ANTI-CORRUPTION COMMISSION ..... APPLICANT**

**AND**

**DAB COMPLEX (K) LIMITED ..... RESPONDENT**

**RULING**

1. The application coming for consideration in this ruling is the Notice of Motion dated 27<sup>th</sup> March, 2024 brought under Section 56 of the *Anti-Corruption and Economic Crimes Act*, No. 3 of 2003, which principally seeks extension of the preservation order granted by this court on 29<sup>th</sup> September 2023 for a further period of six months.
2. The application is premised on the following grounds;
  - “(i) The Applicant is undertaking investigations vide Inquiry File No. EACC/ISL/ FI/INQ/2/2023 pursuant to the provisions of Section 11 (1) (d) and (j) of the *Ethics and Anti-Corruption Commission Act*, 2011, regarding allegations of procurement fraud and money laundering against the Respondent, Dab Complex (k) Limited.
  - ii. That preliminary investigations have revealed that the Respondent, a company, irregularly received payments amounting to Kshs. 20,467,791 /= from Marsabit County in the guise of supply of foodstuff, stationery, computer accessories, water supply and car hire.



- iii. The Applicant has since made significant progress towards completion of Investigations and has already established that Investigations further revealed that that one Gonjobo Daki Guyo, a Director of Respondent is an employee of the Ministry of Health seconded to the County Government of Marsabit.
  - iv. That Investigations have revealed that the monies received by the Respondent are a product of conflict of interest and procurement irregularities therefore illegal and unlawful.
  - v. That the Applicant is in the final stages of finalizing the investigations with a view of filing a civil suit against the respondent as well as its directors to recover the monies unlawfully received by them.
  - vi. That the Preservation Orders are set to expire on 29<sup>th</sup> March, 2024 and the Applicant is reasonably apprehensive that the Respondent, his agents, servants and/or any other persons may in the intervening period withdraw, transfer, dispose or deal with the preserved funds in order to defeat the course of justice, before the Applicant has completed its investigations and commenced recovery proceedings, unless the Orders sought are granted.
  - vii. There is thus a need to extend the preservation orders for a further period of six (6) months pending the conclusion of investigations to obviate a situation whereby the intended recovery/restitution proceedings may be compounded or rendered nugatory altogether.
  - viii. That this Honourable Court has Jurisdiction to extend and issue the orders as sought under Section 56(3) of *Anti-Corruption and Economic Crimes Act*, No. 3 of 2003 and the Respondents are unlikely to suffer any or any significant prejudice as a result of the extension of the preservation order by a further period of six (6) months.”
3. The application is supported by the affidavit of Evanson Mathenge, an investigator working with the Applicant, sworn on 27<sup>th</sup> March, 2024 which reiterates the grounds upon which the application is brought and further deposes that the Applicant is in the final stages of finalizing the investigations with a view of filing a suit against the Respondent and its directors to recover the monies unlawfully received by them. The Applicant is thus apprehensive that should the order not be extended the Respondent is likely to withdraw, transfer, dispose or deal with the preserved funds in order to defeat the course of justice hence rendering the recovery proceedings nugatory.

### **The Respondent’s case**

4. The Respondent opposed the application through a replying affidavit sworn on 3<sup>rd</sup> April 2024 by Ngojobo Daki Guyo, a Director thereof. She deposes that the orders sought cannot be granted for reason of material non-disclosure of facts by the Applicant; that no criminal proceedings have been preferred against the Respondent or its directors in relation to Commission of any economic crimes as alleged in the Applicant’s Supporting Affidavit; that since issuance of the preservation order, the Applicant has not demonstrated existence of any ongoing investigations against the Respondents or its directors or agents; that the Respondent’s directors/employees have not been questioned or asked to record statements in regard to the investigations; that therefore the Applicant is not entitled to extension of the preservation order; that the Applicant has not adduced evidence of investigations and has been indolent, guilty of inexcusable and inordinate delay in their investigations thereby



disentitling themselves to this court's unfettered discretion under the rules of natural justice. Further that extension of the preservation order will greatly prejudice the Respondent as the funds in the subject accounts are legitimate business proceeds and working capital and the freeze on the funds would impact the Respondent's operations yet the Applicant has not satisfied the salient features of a grant of a prohibition order.

### **The Applicant's Further Affidavit**

5. In the Supplementary Affidavit sworn on 16<sup>th</sup> April 2024 in response to the Replying Affidavit, Evanson Mathenge. He deposes that it is not true that the directors of the Respondent were not questioned as Gonjobo Daki Guyi recorded a statement with the Applicant on 23<sup>rd</sup> January 2024; that she and her co-director have been summoned by the Applicant to record further statements as evidenced by a copy of the recorded statement as well as the letters summoning the two directors; that the co-director is a child of Gonjobo Daki Guyo and that investigations were initially hampered by the fact that whereas the name of the person of interest reads Gonjobo Daki Guyo in the national Identity Card, the name in the employment and IPPD system is Christine Daki Dima. He deposes that it took a while to retrieve the personal file and it was only during the recording of her statement on 23<sup>rd</sup> January 2024, that the Applicant was able to make headway with the investigation. He also explains that failure by the Applicant to complete the investigations within six (6) months was majorly occasioned by failure by the County Government of Marsabit to avail information and documents on time. He has annexed notices to provide information with diverse dates in February 2024. He contends that the law prohibits employees of County Governments from trading the County Governments and that doing so amounts to conflict of interest and corrupt conduct. Further that the Applicant has recorded over ten statements from officials of Marsabit County Government confirming that the Respondent traded with the County. (He has annexed copies of letters by the Applicant summoning various officials of the Marsabit County Government for interviews and statement recording).
6. Learned Counsel for the parties agreed to canvass the application by way of written submissions.

### **The Applicant's submissions**

7. Mr. Munene, Learned Counsel for the Applicant, submitted that the Applicant has since collected documents and recorded statements confirming that Gonjobo Daki Guyo is an employee of the Ministry of Health seconded to the County Government of Marsabit as the Chief Nursing Officer of Moyale Sub-County Referral Hospital; that the Applicant has also established that she is the director of the Respondent; and further that she is a signatory to the Respondent's account and that her company traded with the County Government without her declaring the conflict of interest to the County and is hence guilty of conflict of interest and the monies received by the Respondent are proceeds of crime.
8. Counsel submitted that Section 56(3) of the *Anti-Corruption and Economic Crimes Act* (ACECA) gives this court jurisdiction to extend the preservation orders; that the delay in the investigations was occasioned by the Respondent's director having a different set of names in her identity card and in her employment and IPPD records hence causing considerable time to retrieve her personal information and occasioning delay in the supply of documents by the County Government of Marsabit.
9. Placing reliance on Section 42(3) of the *ACECA* which provides:

“An agent of a Public body who knowingly acquires or holds, directly or indirectly, a private interest in any contract, agreement or investment emanating from or connected with the Public Body is guilty of an offense.”



Counsel submitted that the evidence gathered by the Applicant points to the offense of conflict of interest making the funds received from the County Government of Marsabit proceeds of crime, recoverable by the Applicant. Counsel contended that it is in public interest that the funds in the account be preserved for a further six months to enable the applicant conclude investigations and file the necessary criminal and civil proceedings against the Respondent and its directors.

10. Counsel stated that the Applicant has demonstrated that it has undertaken extensive investigations against the Respondent and its directors and is on the verge of concluding investigations. Further that the Respondent has not demonstrated that she will suffer any prejudice if the order for extension is granted but to the contrary, the public stands to suffer prejudice if the funds are withdrawn as that will defeat the course of justice.

#### **The Plaintiff/Respondent's submissions**

11. The Respondent did not file submissions for this application either in the e-filing platform or the Division email.

#### **The Issues for determination**

- i. Whether the Applicant has met the threshold for grant of extension of the preservation order;

#### **Analysis and Determination**

12. The preservation orders sought to be extended by the current Application were issued under Section 56 (1) of the [ACECA](#). The order was made ex parte as is required the only fetter being that the court must be satisfied that there are reasonable grounds to suspect that the property is tainted. Section 56(1) of the [ACECA](#) provides: -

“On an ex parte application by the Commission, the High Court may make an order prohibiting the transfer or disposal of or other dealing with property if it is satisfied that there are reasonable grounds to suspect that the property was acquired as a result of corrupt conduct.”

13. At the time this court issued the preservation order it was satisfied on the evidence placed before it that prima facie there were reasonable grounds to suspect that the property was acquired as a result of corrupt conduct. It is instructive that a preservation order is sought at the investigation stage so as to preserve the funds as a decision is made whether or not recovery proceedings shall be instituted. At that stage investigations are still ongoing and failure to preserve would render the intended recovery proceedings nugatory.

14. Nowhere was the necessity of a preservation order explained better than in the case of [Mape Building & General Engineering vs Attorney General & 3 others \[2016\]](#) eKLR where the court stated: -

“In the circumstances of this case, the warrants and freezing orders were evidently necessary for the purposes of the investigation. Money moves. It moves fast. With the advent of e-banking, the movement is even faster. ...”

15. In this case the Applicant established reasonable grounds for grant of a preservation order. It presented a schedule of payments made by County Government of Marsabit to the Respondent between 17<sup>th</sup>



July 2021 and 3<sup>rd</sup> May 2023, and the Respondent's account opening forms. It also established that the Respondent company belongs to Ngojobo Daki Guyo an employee of that County Government.

16. The Applicant seeks extension of the preservation order for a further six months so as to allow it to complete investigations and commence criminal and civil proceedings against the Respondent and its Directors and its investigator has given what in my view amounts to a plausible explanation for not completing the investigations within the six months first granted. The grounds raised by the Respondent do not, in my view, suffice to reject the application, as it has not been demonstrated that this sum is the only one available to the Respondent to run its affairs.
17. As for the Contention that there are no criminal proceedings against the Respondent or its directors, and that the facts of the Applicant's affidavit are falsehoods; that too is not a ground not to extend the order as at this point the court is not concerned with proof of the merits of the case but rather on whether reasonable grounds have been demonstrated.
18. While the law does not provide for the threshold for an application for extension of preservation orders, it does provide for extension under Section 56 (3) of the ACECA which states: -

“ An order under this section shall have effect for six months and may be extended by the court on the application of the Commission.”
19. The power to grant or not to grant an application for extension is therefore discretionary. That discretion must be exercised judicially and it is my finding that in this case the Applicant has met the threshold for exercise of this court's discretion in its favour as it has given a plausible explanation for the delay in completion of the investigations. Accordingly, the application is allowed. The preservation order be and is hereby extended for a period of six (6) months from the date of this application. There shall be no order for costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 23<sup>RD</sup> DAY OF MAY, 2024.**

.....

**E. N. MAINA**

**JUDGE**

In the presence of:

Mr. Munene for the Applicant/EACC

Mr. Kiogora Mugambi for the Respondent

Court Assistant – Karanja

