



**Ethics and Anti-Corruption Commission v Reen East Africa Company &
8 others (Anti-Corruption and Economic Crimes Civil Suit E036 of 2022)
[2023] KEHC 2110 (KLR) (Anti-Corruption and Economic Crimes) (16 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2110 (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 E036 OF 2022
EN MAINA, J
MARCH 16, 2023**

BETWEEN

ETHICS AND ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

**REEN EAST AFRICA COMPANY 1ST DEFENDANT
OCHOKI OMAIYO JOSEPH 2ND DEFENDANT
SARAH KEMUNTO KERANDI 3RD DEFENDANT
JAMES NYANG'AU GEKOBÉ 4TH DEFENDANT
HUMPHREY WENDE ABOK 5TH DEFENDANT
ISAAC BARASA WEKESA 6TH DEFENDANT
MOSES SIRENGO 7TH DEFENDANT
JOSEPH KAMAU MWANGI 8TH DEFENDANT
MAGETO OMARI MIRERI 9TH DEFENDANT**

RULING

1. The Plaintiff/Applicant's Notice of Motion dated October 7, 2022 which is supported by the affidavit of Shadrack Mwenda sworn on the same date is expressed to be brought under Section 1A, 1B, 3A, Order 40 Rule 1 and Order 51 Rule 1 of the [Civil Procedure Rules](#) and it seeks the following orders:

' i. (Spent).



- ii. (Spent).
 - iii. That pending inter partes hearing and determination of this suit, the 7th defendant by himself, his agents, servants and/or employees or any other person interested in the suit property be restrained from alienating, selling, charging or further charging, leasing, transferring, wasting, disposing or in any other manner dealing with property known as Nairobi/Block 156/1 Apartment A8 Block A situated in Komarock.
 - iv. The costs of this Application be provided for.'
2. As can be discerned from the face of the application and the supporting affidavit, the Application is made on the following grounds:-
- ' i) The Plaintiff/Applicant is mandated under the [Ethics and Anti-Corruption Commission Act, 2011](#), to institute and conduct proceedings in court for the recovery or protection of public property and recovery of property acquired through corrupt conduct.
 - ii. The Applicant vide inquiry EACC/AT/INQ/06/2022 investigated allegations of abuse of office and of irregular payments of Kshs 4,780,000/= by the State Department to a business firm owned by the 1s Respondent for goods not supplied.
 - iii. Investigations established the following: -
 - a) That during the financial year 2017/2018 the 1st Respondent received a total sum of Kshs 4,780,000/= from the State Department of Correctional Services (herein after 'the State Department') on account of goods (food and rations) not supplied.
 - b) It was established that the fraudulent scheme perpetuated jointly by the Respondents involved making of false procurement documents to wit requisition form, Local Purchase Order (LPO), delivery note, inspection and acceptance certificate, Invoice, S13 which were used to support payment vouchers.
 - c) The Payment vouchers as supported by the falsified documents were then used by the 2nd -10th Respondents to actuate payments amounting Kshs 4,780,000/= to the 1st Respondent for goods not supplied as set out below:



PV No	S13 S No	PRISON DEPT	AMOUNT IN KSHS
2721	8944221	NAIROBI WEST PRISON	4,780,000
Total 4,780,000			

- ii. Analysis of IFIMIS report and bank statement of the 1st Respondent has revealed that Kshs 4,780,000/= was received from the State Department Central Bank to Account No xxxx.
 - iii. The Plaintiff has further established that the 1st Respondent used some of the proceeds of corruption and or economic crime, amounting to Kshs 4,000,000/= to acquire property known as Nairobi/Block 156/1 Apartment number A8 on Block A Komarock Heights for the 7th Respondent.
 - iv. It is the Plaintiffs case that the aforesaid property was acquired through proceeds of corrupt conduct or corruption, which the Plaintiff is mandated to seek recovery or forfeiture from the Defendants.
 - v. That the Plaintiff/Applicant has filed this civil proceeding against the Defendants/ Respondents for the recovery of the aforementioned property subject matter of the present Application.
 - vi. That the Plaintiff/Applicant is reasonably apprehensive that the 7th Respondent may interfere with, dispose of or transfer all or part of the property in order to frustrate any decree that may be passed against them.
 - vii. It is therefore just, fit and in the public interest to prohibit the 7th Defendant/ Respondent, his agents, servants and/or any other persons interested in the aforementioned property from interfering with, alienating, wasting, transferring, disposing or in any other way dealing with the property pending the hearing and determination of this Application and the main suit to obviate dissipation of the property and/or rendering these proceedings nugatory altogether.
 - viii. The Plaintiff/Applicant has a Prima facie case against the Defendants/Respondents with a probability of success.
 - ix. That unless the orders sought are granted, the Government of Kenya and the General Public shall suffer irreparable loss, which would not adequately be compensated by an award of damages.
 - x. That the balance of convenience tilts in favour of granting the orders sought by the Plaintiff.”
3. The Application was opposed by the 2nd, 5th, 6th, 7th, 8th, 9th and 10th Defendants/Respondents. The 1st, 3rd and 4th Defendants/Respondents informed the court that they would not be participating in the Application.
 4. The Respondents opposed to the application, filed their respective Grounds of Opposition and replying affidavits dated November 8, 2022, and submissions dated November 27, 2022.



5. All the Respondents except the 7th Respondent denied having any beneficial interest in the property known as Nairobi Block 156/1 Apartment A8 Block A situated in Komarock and urged that as such, the Application should be disallowed.
6. On his part, in his replying affidavit the 7th Defendant/Respondent disputed that he falsified procurement documents, to wit; requisition form, local purchase order (LPO), delivery note, inspection and acceptance certificate, invoices, S13 and a copy of prequalified list of suppliers which were used to support the impugned payment voucher or any alleged document in this proceedings. He deposes that he lawfully acquired the suit property to wit Nairobi /Block 156/1 Apartment A8 Block A situated in Komarock, Nairobi, from proceeds of the sale of his property Ruai/Malaa/763 to Maureen Ndugwa Mwikya (1st Defendant) on July 18, 2017. He also deposed that he had acquired Ruai/Malaa/763 on November 5, 2010 and that he sold it to the 1st Defendant at a consideration of Kshs 10,000,000.00 and was paid Kshs 4,000,000.00 leaving a balance of Kshs 6,000,000.00. He annexed a copy of the sale agreement and other documents to his affidavit.
7. Parties consented to canvassing the submissions by way of written submissions.

Issues for determination:

8. It is trite that a party seeking an injunction must satisfy the test in *Giella v Cassman Brown [1973] EA 358*: which are:
 - i. Whether the applicant has shown prima facie case with a probability of success;
 - ii. Whether the applicant shall suffer irreparable injury which cannot be compensated by damages; and
 - iii. If the court is in doubt then it can decide the application on a balance of convenience.

The following issues therefore arise:-

- (a) Whether the Applicant has set out a prima facie case with a probability of success
- (b) Whether the Applicant has demonstrated that it stands to suffer irreparable injury which would not be adequately compensated by an award of damages if an injunction is not granted;
- (c) Whether the balance of convenience tilts in favour of the Applicant

Analysis and determination

9. This application is brought under Order 40 Rule 1 of the *Civil Procedure Act* which state:-
 1. Where in any suit it is proved by affidavit or otherwise—
 - (a) That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
 - (b) That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction



to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.'

10. The Plaintiff/Applicant's contention is that the 1st Defendant/Respondent received Kshs 4,780,000/= from the State Department of Correctional Services allegedly for goods comprising food and rations whereas there was no evidence for requisition and supply of such goods; that the procurement documents to wit, requisition forms, the Local Purchase Order, delivery note, inspection and acceptance certificate, invoice, Form S13 and a copy of prequalified list of suppliers, which were used to support the payment voucher were falsified and further that the payment voucher supported by the falsified documents were then used by the 2nd to 10th Respondents to facilitate the payment of Kshs 4,780,000/= to the 1st Defendant/Respondent through Account No xxxx at Equity Bank. The Applicant contends that the 1st Defendant/Respondent in turn transferred Kshs 4,000,000/= to Housing Finance Development and Investment Limited for the purchase of a property known as Nairobi/Block 156/1 Apartment Number A8 on Block A Komarock Heights for the benefit of the 7th Defendant/Respondent, a Senior Accountant at the State Department for correctional services. The Plaintiff/Applicant has therefore urged that the property ought to be preserved pending the determination of the suit.
11. At this stage the court is cautious not to get into the merits of the case and is only required to determine whether a prima facie case has been established as would warrant the court to grant the order sought.
12. In the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others Civil Appeal No 39 of 2002*, the court defined a prima facie case as follows: -

' A prima facie case in a civil application includes but is not confined to a 'genuine and arguable case.' It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.'
13. Having perused the affidavit evidence placed before me by the p rites I am satisfied that the Applicant has established that a sum of Kshs 4,000,000. was paid to the 1st Defendant/Respondent by the 7th Defendant/Respondent from an account to which it is suspected money embezzled from the Department of Correctional Services was deposited. That is an issue that this court is required to hear and determine. It is my finding therefore that the Plaintiff has established a prima facie case as would entitle it to an order to preserve the subject property pending the hearing and determination of the suit. This of course is keeping in mind that a prima facie case is not one that must necessarily succeed.
14. On the second test, my finding is that as the property is the only one named in these proceedings, the Plaintiff is likely to suffer irreparable injury should the property be disposed of to a third party as there will be nothing to forfeit to the government should the Plaintiff be successful. (See the case of *Ethics and Anti-Corruption Commission v Moses Kasine Lenolkulal [2019] eKLR.*) The Plaintiff will be constrained to expend considerable public resources in the execution of the decree should it succeed in the case and the property is no longer available and that would not be in the public interest. In the premises I am satisfied that it is entitled to the order sought.



15. The upshot is that the Plaintiff's Notice of Motion dated October 7, 2022 is allowed and an order be and is hereby issued as follows: -

- i. 'That pending inter partes hearing and determination of this suit, the 7th defendant by himself, his agents, servants and/or employees or any other person interested in the suit property be and is hereby restrained from alienating, selling, charging or further charging, leasing, transferring, wasting, disposing or in any other manner dealing with property known as Nairobi/Block 156/1 Apartment A8 Block A situated in Komarock.'

16. The costs of the application shall be in the cause.

Orders accordingly.

SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 16TH DAY OF MARCH 2023

E N MAINA

JUDGE

