



**Ethics & Anti-Corruption Commission v Amailo Investment Company Ltd
& 7 others (Anti-Corruption and Economic Crimes Civil Suit E025 of 2022)
[2023] KEHC 1965 (KLR) (Anti-Corruption and Economic Crimes) (9 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1965 (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
EN MAINA, J
MARCH 9, 2023**

BETWEEN

ETHICS & ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

**AMAILO INVESTMENT COMPANY LTD 1ST DEFENDANT
MATHEW KIPCHUMBA KIPKEMEI 2ND DEFENDANT
GRACE MUREI 3RD DEFENDANT
SAMUEL EREGAE 4TH DEFENDANT
JAMES ARONO CHEGEM 5TH DEFENDANT
ESTHER LOKAI ELIM 6TH DEFENDANT
ELIM PETER EPAGAN 7TH DEFENDANT
PETER EKOROT ENDAPAL 8TH DEFENDANT**

RULING

1. This ruling relates to two applications both brought by way of Notice of Motion. The first is the 1st Defendant’s application dated 25th November 2022 seeking an order for variation of the orders made by this court on 14th July 2022 so as to allow the 1st Defendant partial access to the frozen bank Account No. 0990260776292 to draw a sum of Ksh 11,187,155.31. The gist of the application is that the amount in the frozen account exceeds the sum claimed in the Plaint by the sum of Ksh 11,187,155.31 and that there is no justification to continue holding the excess funds as they do not form part of the



claim. This application is brought under Articles 23, 24, 31, 40, 50 and 165 of *the Constitution*, Sections 1A and 1B of the *Civil Procedure Act* and Order 45 of the *Civil Procedure Rules*.

2. The second application is the Plaintiff's Notice of Motion dated 16th December 2012 which seeks a temporary injunction to restrain the Defendants from withdrawing, transferring, disposing or in any other way dealing with the funds held in the account until this suit is heard and determined. The application is expressed to be brought under Order 40(1), 51(1) of the *Civil Procedure Rules* and Sections 1A, 1B and 3A of the *Civil Procedure Act*.
3. Both applications were canvassed by way of written submissions.
4. I have carefully considered the two applications, the grounds on their faces, the affidavits in support and in reply, the rival submissions of learned Counsel for the parties, the cases cited and the law. Whether or not to grant the orders sought in the two applications are in the discretion of the court and as is always the case, the discretion must be exercised judicially. In respect to the application by the 1st Defendant it is indeed correct that there is a difference of Ksh 11,187,155.31 between what is in the preserved account and what is claimed in this case. The Plaintiff's claim that even that sum may be proceeds of crime is in my view just speculation as investigations are yet to be conducted to determine that. Be that as it may, it is my finding that it would be premature to release those funds to the 1st Defendant given that apart from the principal sum there shall, should the suit succeed, be an element of interest and costs. Rather than release those funds at this point my considered view is that the hearing of this suit ought to be expedited so that in the event that the suit does not succeed then the funds in the account are released to the Defendant(s) at once. It shall be so ordered.
5. As for the application for a temporary injunction, it is my finding that the balance of convenience tilts in favour of the Plaintiff because in the event that the funds dissipate and the suit succeeds the Plaintiff would then have to go to great lengths, at tax payers expense, to recover the decretal sum from the Defendants. It would also not serve public interest to release funds which are alleged to be public funds acquired through corruption. The Plaintiff's application for a temporary injunction in terms of prayer 3 of the Notice of Motion dated 16th December, 2022 is therefore granted.
6. The costs in both applications shall be costs in the cause.

Orders accordingly.

SIGNED DATED AND DELIVERED VIRTUALLY THIS 9TH DAY OF MARCH 2023.

E N MAINA

JUDGE

