



REPUBLIC OF KENYA



Ethics and Anti-Corruption Commission v Joseph Kariuki Mwangi t/a Josil General Supplies & 9 others (Anti-Corruption and Economic Crimes Civil Suit E038 of 2022) [2023] KEHC 1505 (KLR) (Anti-Corruption and Economic Crimes) (2 March 2023) (Ruling)

Neutral citation: [2023] KEHC 1505 (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 E038 OF 2022

EN MAINA, J

MARCH 2, 2023

BETWEEN

ETHICS AND ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

**JOSEPH KARIUKI MWANGI T/A JOSIL GENERAL SUPPLIES 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 JUMA SIRENGO 7TH DEFENDANT

JOSEPH KAMAU MWANGI 8TH DEFENDANT

MAGETO OMARI MIRERI 9TH DEFENDANT

JACK NYARIANGO OGAO 10TH DEFENDANT

RULING

1. In the Notice of Motion dated October 7, 2023 the Plaintiff/Applicant seeks a temporary injunction to restrain the 7th Defendant/Respondent from accessing his bank accounts No. xxxx and No. xxxx held at the Housing Finance Corporation Kenya, on grounds that the funds therein are suspected



to be proceeds of corruption. It is contended that the Plaintiff has a prima facie case against the 7th Respondent and unless the injunction is granted the Government of Kenya and the public at large shall suffer irreparable loss which would not be adequately compensated by an award for damages. The application is expressed to be brought under Section 1A, 1B and 3A of the *Civil Procedure Act* and Order 40 (1) and 51(1) of the *Civil Procedure Rules*. It is supported by an affidavit sworn on 7th October by Shadrack Mwenda, an investigator employed by the Plaintiff Commission.

2. The 7th Defendant/Respondent opposed the application through a replying affidavit sworn by himself on December 9, 2022. In the affidavit he distances himself from the allegations of corruption made by the Plaintiff/Applicant and contends that some of the monies in the two accounts are from a different source not related to this case and that other monies were those paid to him by his co-defendants after loaning the same to them. He urges this court to reject the application as the orders if granted will gravely prejudice him.
3. The 1st, 2nd, 3rd, 4th, 5th, 6th, 8th, 9th and 10th Defendants are not parties to the application and as such they did not participate save for some of them filing affidavits to extricate themselves from the adverse allegations made against them in the supporting affidavit.
4. On December 14, 2022 this court directed parties to canvass the application by way of written submissions but by the time of writing this ruling only the Plaintiff/Applicant's submissions had been received.
5. The principles for grant of a temporary injunction are now well settled. The Applicant must demonstrate a prima facie case with a likelihood of success, that should the injunction be refused they are likely to suffer irreparable damage meaning damage that cannot be compensated by an award of damages and in the event that the court is in doubt it will grant the injunction based on the balance of convenience. In a case like this the court is also enjoined to consider the public interest.
6. I have carefully considered the application, the grounds on its face and in the supporting affidavit. I have also considered the submissions of Learned Counsel for the Plaintiff/Applicant. I am persuaded that the Plaintiff/Applicant is deserving of the order sought. Considering that a prima facie case is one that must not necessarily succeed I am persuaded that the Plaintiff/Applicant has demonstrated that it has a prima facie case against the 7th Defendant. I am also persuaded that should an injunction not issue there is a risk of the funds dissipating hence leaving nothing in the accounts capable of being recovered by the Plaintiff/Applicant. This would cause irreparable damage to the Plaintiff/Applicant which should the suit succeed, it would then be required to go to great lengths to recover the funds. This would not be in the public interest noting that the impugned funds are suspected to be public funds. The injunction is therefore necessary to preserve the funds. In the premises the application is allowed and it is ordered that:-
 1. That pending the hearing and determination of this suit, prohibition orders be and are hereby issued to restrain the 7th Respondent, his agents, servants or any other person from withdrawing, transferring, accessing or in any other way dealing with funds held in the below listed bank accounts:-
 - i. Bank Account No. xxxx held at Housing Finance Corporation Kenya in the name of Moses Juma Sirengo.
 - ii. Bank Account No. xxxx held at Housing Finance Corporation Kenya in the name of Moses Juma Sirengo.
 2. Costs shall be in the course.



SIGNED, DATED AND DELIVERED VIRTUALLY THIS 2ND DAY OF MARCH 2023.

E. N. MAINA

JUDGE

