



Enterprises & another v Ethics & Anti-Corruption Commission; Mangiti & 22 others (Interested Parties) (Anti-Corruption and Economic Crimes Case 7 of 2016) [2025] KEHC 14926 (KLR) (Anti-Corruption and Economic Crimes) (22 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14926 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
ANTI-CORRUPTION AND ECONOMIC CRIMES CASE 7 OF 2016**

**LM NJUGUNA, J
OCTOBER 22, 2025**

BETWEEN

**JENNIFER MUTHONI KINOTI T/A BLUE STAR ENTERPRISES 1ST
APPLICANT**

BETTY NJOKI MURIITHI T/A BLUE STAR ENTERPRISES 2ND APPLICANT

AND

ETHICS & ANTI-CORRUPTION COMMISSION RESPONDENT

AND

**ENG. PETER OGANGA MANGITI INTERESTED PARTY
ADAN GEDOW HARAKHE INTERESTED PARTY
HENRY NYONGESA PILISI INTERESTED PARTY
HASSAN NOOR HASSAN INTERESTED PARTY
JOHN MUSYOKA MUNYWOKI INTERESTED PARTY
RUTH NJERI KIIRU INTERESTED PARTY
HEZBOURNE MACKOBONGO INTERESTED PARTY
MICHEAL WESLEY OJIAMBO INTERESTED PARTY
JAMES M. KIRIGWI INTERESTED PARTY
SALIM ALI MOLLA INTERESTED PARTY
SAMUEL MNDANYI WACHENJE INTERESTED PARTY
SAMUEL CLYOYD ODHIAMBO INTERESTED PARTY**



FRESHIA W. KAMAU	INTERESTED PARTY
MOSES OSORO OGOLA (DECEASED)	INTERESTED PARTY
KENNEDY NYAMAO	INTERESTED PARTY
FLORENCE BETT	INTERESTED PARTY
JENNIFER MUTHONI KINOTI T/A BLUE STAR ENTERPRISES	INTERESTED PARTY
BETTY NJOKI MURIITHI T/A BLUE STAR ENTERPRISES	INTERESTED PARTY
STEPHEN LAITITI MUTUNGA	INTERESTED PARTY
PETER MUKUNGU MURITU	INTERESTED PARTY
FRANCIS KARANJA	INTERESTED PARTY
TIMOTHY NDEKERE	INTERESTED PARTY
REGINAH NYAMBURA MUNGAI	INTERESTED PARTY

RULING

1. Before this Honourable Court is the 17th and 18th Defendants/Applicants' Chamber Summons Application dated 4th June 2025 seeking the following orders:
 - i. Spent.
 - ii. That this Honourable Court may be pleased to make Orders that the instant suit be struck out for want of prosecution.
 - iii. That the Orders of this Honourable Court issued on the 17th day of November 2016 be reviewed, varied or otherwise vacated.
 - iv. That this Honourable Court be pleased to make Orders and direct that the sum of Kshs. 47,600,000/= that had been frozen pending the finalization of the instant case and Criminal Case No. Anti-Corruption Case No. 26 of 2016 plus the interest thereon at Bank rates be forthwith released to the Applicants.
 - v. That the Plaintiff/Respondent herein be condemned to all the costs and consequences.
2. The Plaintiff/Respondent filed a Replying Affidavit sworn by Mark Ndiema on 1st July, 2025 in response to the Application herein.
3. By a Notice of Motion Application dated 16th May, 2016, the Plaintiff/Respondent sought conservatory orders to the effect that pending the hearing and determination of this suit, the 17th and 18th Respondents by themselves, their agents, servants, assigns or any other person whosoever be restrained from taking possession of, withdrawing, transferring, disposing or in any way dealing with the sum of Kshs. 45,137,937.05 held in account number 030002061501 at Paramount Bank, Nairobi.
4. On 17th November 2016 vide a ruling delivered by Hon. Lady Justice H.I. Ong'undi, the Plaintiff/Respondent's aforementioned Application was allowed.



5. It is stated that Sometime in November 2016, the Director of Public Prosecutions (hereinafter referred to as “DPP”) instituted criminal proceedings against the Applicants, along with other accused persons, before the Anti-Corruption Court vide Chief Magistrate’s Anti-Corruption Case No. 26 of 2016 (hereinafter referred to as ACC No. 26 of 2016”). The charges against the accused persons related to the alleged unlawful disposal of public funds in the sum of Kshs. 47,6500,000 by the Ministry of Devolution and Planning in the supply and delivery of training materials for automotive engineering by M/S Blue Star Enterprise.
6. That by a Notice of Motion Application dated 23rd January 2017, the Plaintiff/Respondent sought, inter alia, a stay of proceedings in the instant suit pending the hearing and determination of ACC No. 26 of 2016. The same was allowed vide a ruling delivered on 27th July, 2017 by Hon. Lady Justice H.I. Ong’undi, and ACC No. 26 of 2016 proceeded for hearing and the prosecution closed its case in 2018. In a ruling delivered on 9th March, 2018, Hon. K. Bidali acquitted the 1st to 23rd accused persons, including the Applicants herein, under Section 210 of the Criminal Procedure Code. The ruling delivered on 9th March, 2018 did not therefore close the case in ACC No. 26 of 2016 as, in the said ruling, the 24th accused person was placed on his Defense under the provisions of Section 211 of the Criminal Procedure Code.
7. While ACC No. 26 of 2016 was ongoing, the DPP filed an Appeal against part of the ruling delivered by Hon. K. Bidali on 9th March, 2018 vide Anti-Corruption and Economic Crimes Court Appeal No. 4 of 2018: Republic v Peter Oganga Mangiti & 22 others (hereinafter referred to as “ACEC Appeal No. 4 of 2018”). In its Appeal, the DPP challenged the acquittal of the 1st -23rd Respondents under Section 210 of the Criminal Procedure Code. In a ruling delivered on 28th July 2022 by Hon. Lady Justice E.N. Maina, this Honourable Court allowed the DPP’s Appeal and reversed the order acquitting the 1st - 23rd Respondents. Additionally, this Honourable Court directed the 1st -23rd Respondents to enter their Defence to counts 1, 2, 3, 4, 5, 6 and 7 in the lower Court trial.
8. Being dissatisfied with the ruling of this Honourable Court in ACEC Appeal No. 4 of 2018, the Respondents filed an Appeal at the Court of Appeal vide Criminal Appeal E111, E162, E056, E055, E054 & E053 of 2023 & E006 of 2024 & E021 of 2022 (consolidated): Peter Oganga Mangiti & others v Republic. (hereinafter referred to as the “consolidated Appeals”).
9. On 2nd May, 2025, the Court of Appeal delivered its Judgement allowing the consolidated Appeals and setting aside the judgment of the High Court delivered on 28th July, 2022 in ACEC Appeal No. 4 of 2028, in its entirety.
10. During the pendency of the consolidated Appeals, ACC No. 26 of 2016 was mentioned severally from 23rd February, 2023 to 27th May, 2025 to confirm the outcome of the proceedings before the Court of Appeal.
11. On 27th May, 2025, during the mention of ACC No. 26 of 2016, parties informed the lower Court that the Court of Appeal had rendered its decision in the consolidated Appeals. Noting that the 24th accused person was convicted and sentenced, Hon. H. Baraza marked ACC No. 26 of 2016 as closed.
12. Until 27th May, 2025, the Order issued by this Court on 26th July, 2017 staying the proceedings in the present suit pending the hearing and determination of ACC No. 26 of 2016 was still in force.
13. The applicant prays for the discharge of the Orders of this Court issued on 17th November 2016 and lastly the de-freezing of the applicants account subject to the suit.



14. The plaint in the matter was initially filed on or about the 17th of May 2016. Among other issues the plaint pleaded alleged misappropriation of public funds, breach of procurement requirements (par 20) the crediting of the sum of Kshs. 47,600,000 in the account of the 17th & 18th Defendants (par 21), issue of tender No NYS/RT/29/2014–2015(4) for supply of equipment and tools (par 23); alleged illegality and fraud for being based on a conspiracy; (par 24), allegations of particulars of fraud (par 25), allegations of fraud on the part of the Ministry of Devolution, allegations of overpricing (par 35) and consequently allegations that the 17th and 18th defendants ought not to benefit from an illegality. The plaintiff then sought reliefs by way of judgement in the sum of Kshs.47,600,000 Or alternatively 32,000,000 And declaration that the contract between M/s Blue Shield Enterprises (read 17th and 18th) Defendants was null and void ab initio.
15. I note that on the 13th of December 2016 the Plaintiff applied and was allowed to amend the plaint. However, the amended plaint remained largely as per the original pleading save for amendments of the sums claimed, added allegations on the illegality of the contract and particulars of fraud and conspiracy, further allegations on the issue of restricted tendering, allegations of criminal charges against the 17th and 18th and other Defendants in a criminal case cited as Criminal Case 148/33/2016, the case number being Anti-Corruption Case No. 26 of 2016 the reliefs remaining basically as per original plaint.
16. After filling the suit, the plaintiff applied for and was granted injunctive relief on the 16th of November 2016 which is one of the basis of this application.
17. I note that on 25th day of January 2016, the applicant filed an application seeking to stay proceedings in the instant matter pending the full hearing and determination of Anti-Corruption Case No. 26 of 2016 against all the applicants and interested parties herein.
18. I further note that on the 9th day of March, 2018 the Chief Magistrate delivered a ruling in which he found that all the accused persons had no case to answer save for 24th accused who was placed on his defense.
19. The Applicant submitted that the order of stay of proceedings issued on the 27th of July, 2017 then lapsed in law and was never extended.

Determination

I. Whether the Respondent/Plaintiff's suit should be dismissed for want of prosecution?

20. Order 17, rule 2 (1), (2) and (3) of the Civil Procedure Rules provide thus:
 1. In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.
 2. If cause is shown to the satisfaction of the court it may make such orders as it thinks fit to obtain expeditious hearing of the suit.
 3. Any party to the suit may apply for its dismissal as provided in subrule.
21. The test for dismissal of a suit for want of prosecution was set out in the case of Ivita –v- Kyumbu (1984) KLR 441 which was cited with approval by the Court of Appeal in Rajesh Rughani v Fifty Investments Limited & another [2016] KECA 829 (KLR) thus:

“The test is whether the delay is prolonged and inexcusable, and, if it is, can justice be done despite such delay. Justice is justice to both the Plaintiff and Defendant; so both parties to



the suit must be considered and the position of the judge too, because it is no easy task for the documents, and, or witnesses may be missing and evidence is weak due to the disappearance of human memory resulting from lapse of time. The Defendant must however satisfy the court that it will be prejudiced by the delay or even that the plaintiff will be prejudiced. He must show that justice will not be done in the case due to the prolonged delay on the part of the plaintiff before the court will exercise its discretion in his favour and dismiss the action for want of prosecution. Thus, even if delay is prolonged if the court is satisfied with the plaintiff's excuse for the delay, the action will not be dismissed, but it will be ordered that it be set down for hearing at the earliest available time”.

22. It is trite that where the Court is satisfied by the Plaintiff's excuse for the delay and parties are keen to pursue the matter, a Court ought to set the matter down for hearing at the earliest convenience than to dismiss it. To this end, the court in the case of *Thathini Development Company Limited v Mombasa Water & Sewerage Company & another* [2022] KEELC 689 (KLR) held thus: Clearly, the powers granted to court hereby by law are discretionally and have to be exercised judicially and fairly.
23. In so doing, the test applied by court in the application for dismissal of suits for want of prosecution is whether the delay is prolonged and inexcusable and if it is, whether justice can be done despite the delay. In other words, if the court is satisfied with the Plaintiff's excuse for the delay, and the parties are still keen and interested in pursuing their matter going forward in the fullness of time, justice can still be done to the parties before court, and hence the action would not be to dismiss it but direct that it be heard at the earliest time possible.
24. In the matter herein, I note that the matter was initiated in 2016 and the Stay of proceedings Orders were issued on 27th July, 2017 to last until Nairobi Chief Magistrate's Anti-Corruption Case No. 26 of 2016 was heard and determined. On 9th March, 2018, the trial court acquitted 1st-23rd accused persons and placed the 24th accused on his defence but neither the applicant nor the respondent has informed the court when the 24th accused's person's case was finalized. What is clear is that he was convicted.
25. As the 24th accused person's case was still ongoing, the DPP preferred an appeal against the ruling of the trial court acquitting the 1st - 23rd accused persons in Criminal appeal No. 4 of 2018 which went all the way to the Court of appeal with the Court appeal upholding their acquittal vide their judgement that was delivered on the 27th May, 2025 in Criminal appeals E111, E162, E056, E055, E054 & E053 of 2023 & E006 of 2024 & E021 of 2022 (consolidated).
26. The Order by Ongund'i J for stay of proceedings was to last until the Anti- Corruption case before the Chief Magistrate was heard and determined. This forms the basis of the order sought herein for striking out of the suit for want of prosecution.
27. The applicants and the respondent hold different views on when the case before the trial court was determined. The applicants maintain that the case was finalized by the ruling delivered on the 9th March, 2018 while the respondent believe that it was finalized after the judgment by the Court of Appeal.
28. In my considered view, the case before the trial court was finalized after the 24th accused person was convicted, notwithstanding the pendency of the appeal by the 1st -23rd accused persons as the 24th accused person was part of the proceedings as he had been jointly charged with the other accused persons.



- 29. My further considered view is that the order staying the proceedings before the trial court lapsed upon the conviction of the 24th accused person whichever date it was. It is trite law that an appeal does not operate as stay of proceedings unless the court otherwise so orders.
- 30. However, this court has considered the circumstances obtaining in this case and the length of time it has taken before the applicants’ appeal could be heard before the High Court and the Court of Appeal. The respondent has demonstrated that the delay in prosecuting the suit was partly occasioned by the subsisting orders staying proceedings before the trial court which is understandable. The parties herein concentrated all their time and energy on the hearing of the appeals and must have forgotten the suit herein, until the judgement by the Court of appeal was delivered on the 2nd May, 2025.
- 31. Though there is delay in prosecuting the matter herein, justice would be better served if the suit is sustained rather than dismissing it as the applicants can be compensated with costs or damages, in any event.
- 32. The court notes that the suit herein is for recovery of colossal sums of money said to be public funds. To this end the court relies on the case of *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others* [2014] eKLR where the Supreme Court stated thus:

“Bearing in mind the nature of the competing claims, against the background of the public cause, we have focused our perception on the public interest, and the concept of good governance, that runs in tandem with the conscientious deployment of the scarce resources drawn from the public. Proper husbandry over public monetary and other resources, we take judicial notice, is a major challenge to all active institutions and processes of governance; and the Courts, by their established attribute of line-drawing, must ever have an interest in contributing to the safeguarding of such resources.”

- 33. An argument has been made by the applicants that all issues in this case were determined in the criminal case. The distinct nature of the criminal and civil processes of anti-corruption litigation was affirmed in High Court Anti-Corruption Suit No. E027 of 2023: *EACC v Mzalendo Kibunja & others* where this Honourable Court stated thus:

- “6. Notably, civil recovery proceedings for their part are not necessary to be predicated on prior conviction. They may as already stated above, be non-conviction based or be based on prior conviction.
- 7. In Anti-Corruption litigation by EACC, the criminal process and the civil process are parallel processes that can be undertaken simultaneously or consequentially. One of the subtle distinctions of the two processes is the standard of proof. While in criminal prosecution the standard of proof is that of beyond reasonable doubt, the standard of proof in civil recovery proceedings is that of a balance of probability (preponderance of evidence).

- 34. In the end and for the reasons that I have given hereinabove, I find that the application has no merits and the same is hereby dismissed with no order as to costs.
- 35. It is so ordered.

SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 22ND DAY OF OCTOBER, 2025.

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L.M. NJUGUNA



JUDGE

In the presence of:-

Mr. Kimani holding brief for Mr. Wandugi for the Applicants

No appearance for the Respondents

Court assistant - Adan

