

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION
ACEC SUIT NO. E022 OF 2025 (OS)

ETHICS AND ANTI-CORRUPTION COMMISSION.....PLAINTIFF

-VERSUS-

FELIX MECHA NYAKUNDI.....1ST
DEFENDANT
STELLAH NYABOKE OTWORI.....2ND DEFENDANT
BANTU HOTEL AND RESORT COMPANY LIMITED.....3RD
DEFENDANT
FESTEMAGRA INVESTMENT LIMITED.....4TH
DEFENDANT

RULING

This ruling relates to notice of motion dated 19th May 2025 in which the plaintiff seeks an order of injunction to restrain the defendants from disposing or dealing with 6 parcels of land belonging to the 1st defendant, 10 parcels of land belonging to the 2nd defendant, three parcels of land belonging to the 3rd defendant, three motor vehicles registered to the 2nd defendant, two bank accounts belonging to the 1st defendant, two Mpesa accounts belonging to the 1st defendant, three bank accounts belonging to the 2nd defendant, one Mpesa account belonging to the 2nd defendant, two bank accounts belonging to the 3rd defendant, one Mpesa till account belonging to the 3rd defendant, one bank account belonging to the 4th defendant and Kshs 4,260,000.00 cash seized from the defendants

pursuant to warrants of search issued in miscellaneous criminal application number E129 of 2024.

The application is supported by affidavit of Charity Muniu an investigator working with the plaintiff. Charity depones that the plaintiff conducted investigations into some allegations of unexplained wealth against the 1st defendant who at the material time was a Principal Land Registrar in the State Department of Lands and Physical Planning. The plaintiff completed the investigations and established that between January 2013 and March 2023, the 1st defendant exploited his official position of trust in the public service for private gain by involving himself in transactions that were in conflict with public interest.

She deponed further that while the 1st defendant was stationed in Kilifi Land Registry, he used his office to allocate public land to the 2nd defendant who is his wife within Mavueni B Settlement, Chakama Phase I and II Schemes. These parcels were Kilifi/Chakama Phase II Scheme/1851, Kilifi/Chakama Phase II Scheme/1072, Kilifi/Chakama Phase II Scheme/1095, Kilifi/Chakama Phase II Scheme/1259, Kilifi/Chakama Phase II Scheme/30, Kilifi/Chakama Phase II Scheme/491, Kilifi/Chakama Phase I Scheme/846 and Mavueni B Settlement Scheme/1000. These allocations were between 25-05-2012 and 23-04-2018. it was stated that the 2nd defendant was not among the verified and approved beneficiaries listed by Land Adjudication & Settlement department.

It was also deponed that the 1st defendant was associated with the 3rd and 4th defendants by fact that the 2nd defendant and his daughter Mecha Corazon are the only directors and shareholders.

The plaintiff averred further that during the period of investigations, the defendants accumulated assets in landed properties, motor vehicles and bank and Mpesa deposits which assets were disproportionate to their known legitimate sources of income. The accumulated assets are said to amount to Kshs 779,584,520.00 against known salaries and allowances of Kshs 7,691,298 leaving unexplained sum of 771,893,224.00.

According to the plaintiff, when the defendants were served with notices pursuant to Section 26 and 55(2) of Anti-Corruption and Economic Crimes Act (hereinafter referred to as 'ACEC') they provided explanation which the plaintiff reviewed and analysed and found a cumulative assets value of Kshs 58,170,000.00 satisfactorily explained leaving out an unexplained Kshs 713,723,223.00. The plaintiff believes that the injunctive orders would serve the purpose of preserving the assets so that they do not dissipate as the suit is pending.

The defendants opposed the application through an affidavit sworn by the 1st defendant on his own behalf and on behalf of the co-defendants. He admits that, the 2nd defendant is his spouse and a shareholder in the 3rd and 4th defendants. He begins by protesting that the 2nd defendant should not have been brought to the suit by mere fact that she is his wife as there are no basis laid to demonstrate that she had dealings with the ministry of lands. He asserts that the plaintiff has not established any nexus between the 3rd and 4th defendants and either the ministry or him.

The 1st defendant admits that he has been an employee of the ministry of lands since 13-11-2006 where he has served in various stations with his current station being Thika. He states that he has been stripped of his ability to provide for his family due to freezing of his assets which has been sustained for more than a year without basis. It is his argument that

there is nothing to link him to corruption other than the allegations that he has unexplained wealth.

The 1st defendant denies having influenced allocation of the properties to his wife and adds that she, like any other Kenyan is entitled to allocation of land by the government and the fact that his kin benefitted from the allocation should not be criminalized.

The 1st defendant added that the current values of the properties as given by the plaintiff are not reflective of the true value at the time of acquisition. He states further that the defendants acquired the properties at very cheap rates and the appreciation has been due to development through their toil and sweat and in that regard, statement of the current value is misleading and meant to show that he has immense wealth. He also states that the amounts linked to the defendants' bank and Mpesa accounts are not a reflection of the current balances but just deposits made over a period of time.

He has explained that within the deposits Kshs 467,764,517.60 and Kshs 104,766,477.12 are transactions in an Mpesa till number 7xxx31 for the 3rd defendant who operates as a hotel and resort which till is used by the hotel customers. He also avers that the sum of Kshs 50,633,376.47 in Equity Bank accounts numbers 144xxxxxx9689 and 1440xxxxxx192 which is in the name of the 3rd defendant are expended and the same were as a result of the business engagements of the 3rd defendant as a hotel.

The 1st defendant avers further that the 3rd defendant is a functioning hotel with over 30 employees and the plaintiff never examined or reviewed the books of accounts submitted to it to confirm and ascertain that indeed that, based on its balance sheet, the 3rd defendant was capable of purchasing its assets.

He concluded by stating that the amount of Kshs 78,782,681.65 in cooperative account number 0114xxxxxx3100 belonging to the 4th respondent was rent deposited over a period of time and had since been expended an explanation that had been given to the plaintiff.

The application was disposed of by way of written submissions. I have read the submissions of the plaintiff dated 7-08-2025 and those of the defendants dated 15-08-2025. This being an application for temporary injunction pending hearing and determination of the suit, the court is called upon to find whether the applicant has demonstrated a *prima facie* case with a probability of success and whether the plaintiff stands to suffer irreparable damages if the application is not granted. Once that is established, the application will have succeeded but if the court still holds doubts on the two, it would determine the application on a balance of convenience.

The suit herein has been brought pursuant to mandate granted to the plaintiff by Section 11(j) of Ethics and Anti-Corruption Commission Act which provides that;

‘In addition to the functions of the Commission under Article 252 and Chapter Six of the Constitution, the Commission shall institute and conduct proceedings in court for purposes of the recovery or protection of public property, or for the freeze or confiscation of proceeds of corruption or related to corruption, or the payment of compensation, or other punitive and disciplinary measures including proceedings for the recovery of property or proceeds of corruption located outside Kenya.’

The suit is also based on the provision of Section 55(2) of ACECA which provides that;

‘The Commission may commence proceedings under this section against a person if-

(a) after an investigation, the Commission is satisfied that the person has unexplained assets; and

(b) the person has, in the course of the exercise by the Commission of its powers of investigation or otherwise, been afforded a reasonable opportunity to explain the disproportion between the assets concerned and his known legitimate sources of income and the Commission is not satisfied that an adequate explanation of that disproportion has been given.'

For the plaintiff to establish a case against a public officer under Section 55(2), it is expected to have investigated, analysed and evaluated the known income of the public officer in question against their known wealth and seek explanation of any disproportion that may manifest. After calling for explanation under Section 26 of ACECA, the plaintiff should do a review and analyse the information and if it finds that there still is unsatisfactory disproportion between the known income and what it has identified, there will arise a cause of action.

The 1st defendant has admitted that he is a public officer and in that case, he has an obligation to explain any disproportion detected by the plaintiff. This explanation must cover not only assets registered under his name but those of his spouse and children under 18 years. The plaintiff has shown and it has not been disputed that the 1st defendant's known income in form of salaries and allowances during the period in question was Kshs 7,691,298.75. It has been demonstrated in form of titles and search certificates that the 1st defendant owns landed property with estimated value of Kshs 139,100,000.00 and motor vehicles valued at Kshs 5,050,000.00. Even without going to the bank and Mpesa accounts

deposits and balances which the 1st defendant has said were misleading, it is clear that the he has an explanation to make in respect of his wealth.

Going through the affidavit in reply, one cannot fail to see an evasive way of answering to the plaintiff's pleaded facts. The 1st defendant has not given any explanation on how he and his co-defendants acquired the properties and from which sources. He has actually not disclosed a single source of the funds used to start the business of the 3rd and 4th defendants neither has he disclosed what the 2nd defendant does for a living other than running the 3rd and 4th defendants' businesses.

I do appreciate that the 1st defendant is not a director or shareholder of the 2nd or 3rd defendants and he obviously does not directly receive dividends from the businesses and if he does, it must be through his wife and daughter who are directors and shareholders but the court cannot ignore the relationship between the 1st defendant and his wife and daughter. He has not explained any other sources of income other than his salary.

According to the documents submitted by the 1st defendant in compliance with legal requirement of declaration of wealth for public officers, he was as at 31-10-2023 worth Kshs 2,841,120.00 as income, Kshs 8,880,850.00 in land, shares, insurance and assorted household goods with liabilities of Kshs 4,075,662.00 while his wife was worth income of Kshs 480,000.00 and Kshs 9,500,000.00 in form of land, shares, insurance and assorted household goods. This means that he had underdeclared his wealth which in itself is a corrupt conduct and an offence.

The 2nd, 3rd and 4th defendants have similarly not bothered to explain their wealth to court leaving the 1st defendant to give general statements that the hotel ran by the 3rd defendant

generates income and has thirty employees while the 4th defendant's income comes from rent.

They defendants have alleged that the plaintiff did not go through the accounts for the 3rd and 4th defendants which was submitted to it hence the averments in the supporting affidavit are misrepresentations. If that is so, nothing prevented the defendants from supplying the court with its audited accounts showing flow of income. According to annexure 'CM2' of the supporting affidavit, the 2nd defendant was registered on 23-02-2017 while the 4th defendant was registered on 19-02-2015. The defendants have not shown the court how the companies rose to own properties worth the amounts shown in the pleadings within a period of eight and ten years respectively and what was the sources of the funds which promoted the companies.

The 3rd and 4th defendants have made attempts to hide behind the corporate veil which to me is an exercise in futility. Companies are run by human beings and investments therein are made by their promoters or shareholders and when the source of the funds invested in the companies is in question, the plaintiff will be within its mandate and the court must assist it to go for the investments. The 2nd defendant is a spouse of the 1st defendant and her investments in the 3rd and 4th defendants cannot escape the dragnet of scrutiny when it comes to dealing with matters of this nature. The reason behind requirement for a public officer to declare their spouses' and minor children's wealth is that spouses do collaborate in matters of the other's interests and the minor children are under the care of their parents. In my view, the limited liability companies cannot escape scrutiny when we come to unexplained wealth especially where they have close links with a public officer.

The 1st defendant has argued that there is no demonstration that there was a corrupt conduct on his part. I have already stated that under declaring wealth is in itself a corrupt

conduct as the public officer would be obviously hiding something from the eyes of government agencies. It has also been shown to my satisfaction that the 2nd defendant benefitted from a settlement scheme where her name had been listed as a beneficiary for three acres but she got more during the time the 1st defendant was in stationed in Kilifi lands registry which was in charge of the allocations. The allocation calls for an answer and the fact that the 2nd defendant has a right to be allocated land does not shield her from the claims of impropriety in the allocation. The defendants opted to go silent on this issue safe their argument that the plaintiff has failed to priced evidence that the 2nd defendant was not in the list.

I think I have said enough on the test of a *prima fascie* case with probability of success. A *prima fascie* case does not mean a case that must succeed. If there is enough basis for the court to return a verdict that the applicant's case raises an issue which would require consideration with likelihood of success, a *prima fascie case* is established. In ***Pius Kipchirchir Kogo v Frank Kimeli Tenai (2018) KEELC 2424 (KLR)***, Honourable Justice Ombwayo held that;

'Prima Fascie case has been explained to mean that a serious question is to be tried in the suit and in the event of success, if the injunction be not granted the plaintiff would suffer irreparable injury. The burden is on the plaintiff to satisfy the court by leading evidence or otherwise that he has a Prima Fascie case in his favor of him. A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed.'

The plaintiff is a public body which carries out mandate of protecting public property and enforcing ethical conduct of public officers. In the event the defendants will fail to explain the wealth to satisfaction of the court, the law provides that it shall be deemed to have been

obtained corruptly and liable to forfeiture to the government. That is the purport of definition of unexplained wealth in Section 2 of the ACECA thus;

"unexplained assets" means assets of a person-

(a) acquired at or around the time the person was reasonably suspected of corruption or economic crime; and

(b) whose value is disproportionate to his known sources of income at or around that time and for which there is no satisfactory explanation.

I take it that what the 1st defendant declared in 2023 is what the defendants were willing to be known to the government. That means that the rest of the properties if not preserved by this court, will be exposed to danger of disposal and dissipation. In these circumstances, I believe that the plaintiff and the taxpayers will not be able to reach the properties by the time the main suit herein is determined unless orders of injunction prayed in the plaintiff's application are granted.

Having found that the plaintiff has established a *prima facie* case with a probability of success and that there is a likelihood of irreparable damages, I do not think that I need to interrogate the test of balance of convenience.

The upshot of the above discussion is that the plaintiff's application is allowed in the following terms;

1. **THAT** pending the hearing and determination of this suit, an order of injunction be and is hereby issued restraining the respondents, their agents, servants and/or any other persons from selling, transferring, charging or further charging, leasing, developing, subdividing, disposing, wasting, or in any other way (howsoever described) alienating the following properties:

| S/No | Property Details | Registered owner | Date of Registration/acquisition |
|-------------|--|----------------------------------|---|
| 1. | C.R 41556 – LR 9122/57 | Felix Mecha Nyakundi | 28/02/2017 |
| 2. | C.R 41557 – LR 9122/58 | Felix Mecha Nyakundi | 28/02/2017 |
| 3. | Mombasa/Block X/105 | Felix Mecha & Stellah Nyaboke | 15/12/2023 |
| 4. | Lamu Mainland/Block1 (Bargoni) /795 | Felix Mecha Nyakundi | 28/01/2019 |
| 5. | Gatuanyanga /Ngoliba block 3/47 | Felix Mecha Nyakundi | 26/08/2014 |
| 6. | LR 6845/1136 IR 203944 Original no. 6845/12/273 | Felix Mecha Nyakundi | 30/01/2019 |
| 7. | Kilifi /Chakama phase II Scheme / 1851 | Stella Nyaboke Otwori | 25/05/2017 |
| 8. | Kilifi /Chakama phase II Scheme /1072 | Stella Nyaboke Otwori | 23/04/2018 |

| | | | | |
|-----|---|---------------------------------|---------|------------|
| 9. | Kilifi /Chakama phase II Scheme /1095 | Stella Otwori | Nyaboke | 23/04/2018 |
| 10. | Kilifi /Chakama phase II Scheme /1259 | Stella Otwori | Nyaboke | 23/04/2018 |
| 11. | Kilifi /Chakama phase II Scheme /30 | Stella Otwori | Nyaboke | 05/07/2017 |
| 12. | Kilifi /Chakama phase II Scheme /491 | Stella Otwori | Nyaboke | 13/03/2018 |
| 13. | Malindi /Chakama phase I /846 | Stella Otwori | Nyaboke | 24/09/2012 |
| 14. | Mavueni B settlement scheme/1000 | Stella Otwori | Nyaboke | 21/02/2018 |
| 15. | Mavueni B settlement scheme/2186 | Stella Otwori | Nyaboke | 19/04/2018 |
| 16. | LR 6845/2799 IR 200522 Original no. 6845/146/8 | Stellah Otwori | Nyaboke | 19/06/2018 |
| 17. | Nairobi/Block 105/ 13772 | Bantu Hotel & Resort Co. Ltd | | 12/03/2020 |

| | | | |
|-----|-----------------------------|---------------------------------|------------|
| 18. | Nairobi/Block 105/ 13773 | Bantu Hotel & Resort Co. Ltd | 12/03/2020 |
| 19. | Nairobi/Block 105/ 13774 | Bantu Hotel & Resort Co. Ltd | 01/04/2019 |
| 20. | Nairobi/Block 105/ 13775 | Bantu Hotel & Resort Co. Ltd | 24/11/2020 |

2. **THAT** pending the hearing and determination of this suit, an order of injunction be and is hereby issued restraining the respondents, their agents, servants and/or any other persons from selling, transferring, disposing, wasting, or in any other way (howsoever described) alienating the following motor vehicles:

| S/No | Property Details | Registered owner | Date of Registration/acquisition |
|------|------------------|------------------|----------------------------------|
| 1. | KDG 086B | Stellah Nyaboke | 17/12/2023 |
| 2. | KCW 500Y | Stellah Nyaboke | 05/11/2019 |
| 3. | KCG 098Y | Stellah Nyaboke | 21/04/2016 |

3. **THAT** pending the hearing and determination of this suit, an order of injunction be and is hereby issued restraining the respondents, their agents, servants and/or any other persons from withdrawing, transferring, disposing, wasting, or in any other way (howsoever described) dealing with funds held in the following bank and mobile money Mpesa Accounts:

| S/No | Account | Account Holder | Total Deposits |
|------|---------|----------------|----------------|
|------|---------|----------------|----------------|

| | Details | | |
|-----|--|-------------------------------------|---------------|
| 1. | Cooperative Bank 0110001787150 0 | Felix Mecha Nyakundi | 50,398,428.00 |
| 2. | NCBA BANK - 1002195069 | Felix Mecha Nyakundi | 16,323,000.00 |
| 3. | Mpesa- 0722226389 | Felix Mecha Nyakundi | 27,760,908.00 |
| 4. | Mpesa - 0717999279 | Felix Mecha Nyakundi | 9,334,194.00 |
| 5. | Equity Bank - 1440179887489 | Stellah Nyaboke | 2,062,665.30 |
| 6. | Equity Bank - 1440180507475 | Stellah Otwor | 12,242,381.50 |
| 7. | Equity Bank - 1440164969154 | Stellah Otwor | 88,088,547.86 |
| 8. | Equity Bank Investment - 147496-0004 | Stellah Otwor | 13,150,000.00 |
| 9. | Mpesa - 0724584639 | Stellah Otwor | 14,221,858.00 |
| 10. | Equity Bank - 1440272559689 | The Bantu Hotel & Resort Co. Ltd | 33,090,148.39 |
| 11. | Equity Bank - 1440278828192 | The Bantu Hotel & Resort Co. Ltd | 17,543,228.08 |

| | | | |
|-----|---|-------------------------------------|--------------------|
| 12. | Mpesa Till - 763531 | The Bantu Hotel & Resort Co. Ltd | 104,766,477.1 2 |
| 13. | Cooperative Bank - 0114855883310 0 | Festemagra Investment Limited | 78,782,681.65 |

4. **THAT** pending the hearing and determination of this suit, an order of injunction be and is hereby issued restraining the respondents, their agents, servants and/or any other persons from demanding the sum of Kshs. 4,260,000.00 seized pursuant to a search conducted by the plaintiff in Miscellaneous Criminal Application Number No. E129 of 2024.

5. **THAT** the costs of the application shall be in the cause.

Dated, signed and delivered at Nairobi this **14th** day of **November** 2025.

B.M. MUSYOKI
JUDGE OF THE HIGH COURT.

Ruling delivered in absence of the plaintiff and in presence of Mr. Kinyua for the defendant.