



**Republic v Ethics and Anti-Corruption Commission; Wambugu (Ex parte Applicant) (Anti-Corruption and Economic Crimes Judicial Review E002 of 2025) [2025] KEHC 15850 (KLR) (Anti-Corruption and Economic Crimes) (5 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 15850 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
ANTI-CORRUPTION AND ECONOMIC CRIMES  
ANTI-CORRUPTION AND ECONOMIC CRIMES JUDICIAL REVIEW E002 OF 2025  
LM NJUGUNA, J  
NOVEMBER 5, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**ETHICS AND ANTI-CORRUPTION COMMISSION ..... RESPONDENT**

**AND**

**MARTHA KARUNGARI WAMBUGU ..... EX PARTE APPLICANT**

**JUDGMENT**

1. The Ex-parte applicant herein filed the Notice of Motion dated the 9<sup>th</sup> day of May, 2025 brought under Sections 8 and 9 of the *Law Reform Act*, Cap 26 Laws of Kenya, Order 53 Rules 1 & 2 of the Civil Procedure Rules, 2010 and all other enabling Provisions of the Law. It is based on the grounds set out on the body of the same, and it is supported by the annexed affidavit sworn by the Ex-parte applicant, on the 18<sup>th</sup> March, 2025.
2. Through the application, the applicant has sought the following Orders;
  1. That an order of prohibition do issue against the Respondent prohibiting it from instituting legal proceedings against the Exparte Applicant for the sum of Kshs.18,292,965.50
  2. That an order of Certiorari do issue to bring into this court for purpose of quashing the Respondent’s demand titled, “Demand for Kshs. 18,292,965/- being illegal payments authorized by you on behalf of Nairobi City County to Jemishley Construction Limited, an unqualified supplier for goods not delivered dated 10<sup>th</sup> March, 2025.



3. That an order of certiorari do issue to bring into this court for purpose of quashing the Respondent's investigations with regard to the alleged loss by the Nairobi City County of Kshs.18,292,965/- as indicated in the Respondent's demand letter titled, "Demand for Kshs.18,292,965/= being illegal payments authorized by you on behalf of Nairobi City County to Jemishley Construction Limited, an un-qualified supplier for goods not delivered dated 10<sup>th</sup> March, 2025.
4. That the costs of this application be provided for.
3. The applicant who is a qualified accountant joined the Nairobi City Council in the year 2007 as a Revenue Officer 11 job Group J where her main duties were to prepare revenue and management reports and with time, she rose through the ranks to the rank of Director Asset Management.
4. She states that sometimes last year, herself and a number of other employees of the County Government were summoned by the respondent herein to record a statement with regard to certain payments made by the Nairobi City County for goods that the respondent alleged were not supplied. That she dutifully responded to the summons and recorded a statement stating that she did not at any time conduct herself in an unethical manner nor had she received any illegal benefit from any third party nor acted in any corrupt manner.
5. She further states that, to her surprise, she received a Demand Notice from the respondent dated the 10<sup>th</sup> March, 2025 in which the respondent alleged that she had abused her office for personal benefit by allowing payments to be made to a company called Jemishey Construction Limited for goods that were not supplied to the County Government.
6. She avers that the procurement of goods and services by the County Government is conducted under the Provisions of the *Public Procurement and Asset Disposal Act*, and the Regulations made therein, and the *Public Finance Management Act*. It is her case that under Regulation 7(2) of the Public Procurement and Asset Disposal (County Government) Regulations 2013, the County Government has Committees that oversee the Procurement process which Committees she is not a member of.
7. That she is not a member of Inspection and Acceptance Committee and as such, she only participated in one step of the process as the second approver after many other people had approved that the goods had been received as per the contract and Tender specifications and that, she approved the payments on the strength of the approvals of others that the goods had been received.
8. She contended that the Tenders were open Tenders which do not require a Bidder to be pre-qualified; that the tender did not call for complex and specialized goods, work and services as provided under Section 93(2) of the *Public Procurement and Asset Disposal Act*. She maintained that the respondent's demand to her was ill judged, biased and in breach of its mandate, as the County Government has not raised any charge of impropriety against her during the term of her employment.
9. She avers that the respondent's action in its demand is in breach of her Constitutional Right to a Fair Administrative action as the demand makes no mention to who raised the allegations and her ability to cross-examine them. She states that under the Provisions of *Public Finance Management Act*, the County Treasury is the body that has a right to discipline her with regard to expenditure of the County, and that if not restrained, the respondent will proceed to levy charges against her that will include the respondent seeking to freeze her assets including Bank accounts which actions will leave her destitute.
10. In opposing the application, the respondent filed a replying affidavit sworn by Juliet Kavala who is a Forensic Investigator with the respondent, and a member of the team tasked to investigate the allegations of embezzlement of Public Funds between the FY 2016/2017 and FY 2021/2022 through



fictitious procurement contracts awarded to Companies not prequalified, and payments effected whereas no goods were delivered nor services rendered to the County.

11. He states that pursuant to its Statutory mandate, the Commission commenced investigations into the aforesaid allegations and established, in relation to the Ex-Parte applicant that;
  - a. The applicant together with the Defendants in ACEC Suit No. E012 of 2025 EACC vs Jemishey Construction Company Limited & 10 Others, conspired to defraud Nairobi City Council, public funds amounting to Ksh.78,983,689.70cts through fictitious procurement contracts
  - b. The Ex-parte applicant, being an approver in the IFMIS system, failed to undertake due diligence before approving payments on the IFMIS platform thereby facilitating the fraudulent transfer of public funds.
12. He further stated that the Commission has already instituted ACEC Suit No E012 of 2025 for the recovery of the said sum and, therefore, the Order sought by the applicant prohibiting the Commission from instituting a Civil Suit has been overtaken by events. Further, that contrary to the allegation by the Exparte applicant, the Commission in exercise of its mandate investigated the allegations and established that she negligently and/or knowingly participated in the fraudulent acts that resulted in the loss of the Ksh. 18,292, 965 belonging to the County Government of Nairobi necessitating the recovery suit against her.
13. He states that the Notice of Motion herein is misconceived, incompetent, frivolous, bad in law and an abuse of the court process for the reasons that investigations conducted by the respondent pursuant to its mandate is not an administrative action within the meaning of Article 47 of *the Constitution*, as the orders sought herein if granted will amount to curtailing the Commission's Statutory mandate of investigation and institution of Civil proceedings for the recovery of Public property under Section 11 (1) (j) of the ACECA, 2011.
14. That the issues posited by the Ex- parte applicant are triable issues that can be canvassed in ACEC Suit No. E012 of 2025 in which, the Ex-parte applicant will have a chance to defend herself and an adjudication of the issues raised herein will amount to usurpation of the jurisdiction of the trial court and a trespass into the arena of the trial court.
15. The application was disposed of, by way of written Submissions and the parties complied with directions on filing of the same.

#### Applicants Submissions

16. The applicant submitted that the actions by the respondent are subject to Judicial review remedies should the court find that the respondent overstepped its mandate and that the respondent is bound by the Provisions of Article 47 of *the Constitution*. She avers that all the safeguards provided under Section 4(3) of the *Fair Administrative Action Act* (FAA) Act were not offered to the Ex-parte applicant, in that, the respondent failed to reveal to her the source of the complaint leading to the accusations against her, yet, everyone has a right to a fair administrative Action under Article 47 of *the Constitution*.
17. The applicant submitted that the failure by the respondent to adhere to the rights afforded to the Ex-parte applicant render the demand by the respondent illegal, and hence the Ex-parte applicant has the right to Petition this court for the Orders sought in the application. That, the procurement of goods and services by County Government is conducted under the Provisions of the *Public Procurement and Asset Disposal Act*, but by virtue of Section 6(d) of the *Public Finance Management Act*, it is the County Treasury that has the oversight over the expenditure of the County Government.



18. It was also submitted that the failure to adhere to the Rules of natural justice renders the decision making of the respondent wrong and referred the court to Judicial Review Law Procedure and Practice 2<sup>nd</sup> Edition by Peter Kaluma where it is stated;

“An authority cannot base its decision on any material or evidence which the affected party has not been given a chance to see and rebut. Natural justice is infringed if a body decides a matter on the basis of confidential enquiries and information. The right to know the materials on which the authority is to rely is part and parcel of the right to defend oneself”.  
(underlining ours)

19. The applicant relied on the case of Republic Vs Commissioner of Income Tax ex-parte SDV Transami (Kenya) Limited and the case of Commissioner of Lands Vs Kunste Hotel Limited (1997) eKLR.

### **Respondent’s Submissions**

20. The respondent submitted that the applicant’s invocation of Judicial Review is fundamentally misconceived as the respondent undertook its investigations in discharge of its Constitutional and Statutory mandate which does not amount to an administrative action within the meaning of Article 47 of *the Constitution* and therefore, cannot be subjected to Judicial Review on that basis. It relied on the case of EACC Vs Prof. Tom Ojienda & Associates Advocates & 2 others; Petition Nos. 30 and 31 of 2019 (consolidated) (2022) KESC 59 (KLR) in support of that submission.
21. The respondent further submitted that, it follows therefore that, the applicant cannot properly anchor these proceedings on Article 47 of *the Constitution* or the FAA Act as the investigative process does not fall within their purview. That to hold otherwise would unduly fetter the respondent’s mandate under Article 252 of *the Constitution*, and the Anti-Corruption and Economic Crimes Act, by exposing every investigation to premature judicial intervention.
22. The respondent also submitted that the application is misconceived both in substance and the law as the applicant has sought Orders of Prohibition and Certiorari, anchored on allegations that the Commission’s investigations and demand letter breached Section 4 of the FAA Act and none of those Prayers are tenable. That the prayer for prohibition has been overtaken by events and prohibition being a forward looking remedy designed to forestall a public authority from acting unlawfully, it cannot be used to undo what has already been done, as the proceedings the applicant seeks to prohibit have already been instituted, and therefore, the prayer is moot and incapable of being granted.
23. That the applicant’s contention that the Demand letter fails to meet the requirements of Section 4 of the FAA Act is misconceived in law and in fact, in that, a Demand letter by its very nature is not a determination of Rights, obligations and interests but it is merely a communication that appraises a party of certain facts and requests for a response or compliance and such correspondence does not fall within the meaning of administrative action as contemplated under Article 47 of *the Constitution* or Section 4 of the FAA Act.
24. Lastly, the respondent submitted that the issues raised herein are triable issues in ACEC Suit No. E012 of 2025 and the applicant shall have an opportunity to defend herself in that suit. Reliance was placed on the case of Sofia Mohammed Vs Ethics & Anti-Corruption Commission (EACC) & 3 others (2018) eKLR.



## Analysis and Determination

25. The court has considered the Notice of Motion and all the material that has been placed before it including the written submissions. The only issue for determination is whether the Ex-parte applicant's application has merits and if the same should be allowed.
26. The Ex-parte applicant has sought for Orders of Prohibition to issue against the respondent prohibiting it from instituting legal proceedings against her demanding from her the sum of Ksh.18,292, 965.50cts, an order of Certiorari to issue to bring to this court for purpose of quashing the respondent's demand letter for the aforesaid amount being illegal payments authorized by her on behalf of Nairobi City County, and an Order of Certiorari to bring to this court for purposes of quashing the respondent's investigations with regard to the alleged loss by the Nairobi City County.
27. The applicant in her affidavit has averred that she has been a hardworking and diligent employee of Nairobi City county until sometime last year when she was summoned by the respondent herein to record a statement with regard to certain payments made by Nairobi City County for goods that the respondent alleges were not supplied. That she recorded her statement in which she denied conducting herself in unethical manner or receiving any illegal benefit from any third party or acting in any corrupt manner.
28. She has, in an elaborate manner, explained the process of procuring goods and services by the County Government under the Provision of the *Public Procurement and Asset Disposal Act* and the regulations therein, and the Provisions of *Public Finance Management Act*. It is her case that she only participated in one step of the process as the second approver after many people had already approved that the subject goods had been received as per the contract and Tender specifications.
29. She disputed the claims that she approved the payment for the goods that were not supplied and avers that since she was not a member of Inspection and Acceptance Committee, she cannot be held responsible for that. She contends that the respondent's action and demand is in breach of her Constitutional Right to a Fair administrative action as the demand makes no mention of who raised the allegations and her ability to cross-examine them.
30. The applicant has argued that the respondent's actions leading to the demand are a breach of Section 4(3) of the FAA Act, for the Ex-parte applicant received summons which did not disclose the person who made the complaint against her nor did the respondent inform her as to the information, materials and evidence it relied upon. As such, the demand fails the Statutory Demand of Section 4 of the FAA, thus rendering the said demand illegal.
31. To begin with, the court notes that the Ex-parte applicant has sought Orders of prohibition against the respondent prohibiting it from instituting legal proceedings against her. The respondent in its response stated that it has already instituted civil proceedings against the Ex-parte applicant jointly with others, in ACEC Suit No. E012 of 2025. The court has taken the liberty to peruse the aforesaid Suit which was filed on the 11<sup>th</sup> April, 2025. At paragraph 16 of the Plaintiff, the plaintiff has alleged that, the Ex-parte applicant herein together with some of the defendants in that suit, being approvers in the IFMIS system failed to undertake due diligence before approving payments on the IFMIS platform thereby facilitating the fraudulent transfer of public funds to Jemima Mercy Achieng through Jemishley Construction Limited, Diasto Company Limited and Mercy Jemima Achieng t/a Kerola Agencies.
32. The respondent has further pleaded that the Ex-parte applicant herein together with the other defendants in the said suit jointly and severally engaged in fraudulent practices, illegality and breached prudent public financial management, and procurement laws and regulations, particulars whereof



have been set out in the plaint. Further, that the Ex-parte applicant and some of the other defendants acted unlawfully and breached their fiduciary duty as approvers and whose functions concern the administration of public revenue thereby occasioning loss of public funds.

33. The plaint at paragraph 23 shows that a demand was issued to the EX-parte applicant and his co-defendants before the suit was instituted and among the remedies sought in the plaint against the Ex-parte applicant is restitution to the Government of Kenya of the sum of Ksh.18, 292, 065.50cts.
34. The other Prayers are for quashing of the demand letter and the investigations by the respondent on the alleged loss by Nairobi City County. A demand letter as has been rightly submitted by the respondent, is not a determination of rights, obligations or interests. It is merely a communication that appraises a party of certain facts and calls for a response or compliance and as such, the demand letter that was done by the respondent to the Ex-parte applicant cannot be said to be in breach of Section 4 of FAA Act and in any event, the demand letter served as a notice of the impending suit.
35. In my considered view, the remedies sought by the Ex-parte applicant have been overtaken by events, in that, the respondent has already filed a suit against her. The issues that have been raised herein are the same as those raised in the plaint and she will have an opportunity to defend herself in that suit. The matters that she has raised in this application will form part of her defence in the substantive suit and the court will make a determination upon hearing the parties and pronounce itself on the issues before it.
36. Lastly, an issue has been raised as to whether the Ex-parte applicant's invocation of judicial review is tenable and procedurally correct. In this regard, the Supreme court had the opportunity to address this issue in the case of EACC & Director of Public Prosecutions Vs Prof. Tom Ojienda & 3 others in Petition No. 30 of 2019 (consolidated with Petition No. 31 of 2019) which matter involved the respondent herein. In the said Petitions, one of the substantive issues the Supreme court was called upon to determine is whether investigations by EACC (respondent herein) constitute an administrative action within the meaning of Article 47 of *the Constitution*.
37. In its judgement, the Supreme court found that the investigative powers exercised by the respondent cannot be described as "administrative action" within the meaning of Article 47 of FAA Act. On the contrary, these are special powers conferred by a specific legal regime, to be exercised for a special purpose. Am bound by that decision by the Supreme Act and I do agree with it.
38. In the final analysis I find that Exparte applicant's application has no merits and it is hereby dismissed with costs
39. It is so ordered.

**SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 5<sup>TH</sup> DAY OF NOVEMBER 2025**

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**L. M. NJUGUNA**

**JUDGE**

In the presence of:-

Mr. Makori holding brief for Miss Wambugu for the Respondents

M/s Ngome holding brief for Miss Ochieng for the Applicant

Court assistant - Adan

