



**Ethics & Anti-Corruption Commission v Estama Investment Limited & 9 others
(Anti-Corruption and Economic Crimes Case 1 of 2018) [2025] KEHC 17124 (KLR)
(Anti-Corruption and Economic Crimes) (24 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17124 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
ANTI-CORRUPTION AND ECONOMIC CRIMES CASE 1 OF 2018
BM MUSYOKI, J
NOVEMBER 24, 2025**

BETWEEN

ETHICS & ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

**ESTAMA INVESTMENT LIMITED & 9 OTHERS & 9
OTHERS DEFENDANT**

RULING

1. In the mid of testimony of PW8, Mr. Waudo for the 1st to 5th defendants raised objection to the said witness producing document identified as a procurement plan for the Ministry of Health for 2014-2015 financial year. The other advocates for the defendants led by Senior Counsel Mr. Eric Mutua supported the objection. The basis of the objection was that the witness who was the investigating officer in the matter was not the maker of the document and he had not laid basis of why the maker of the document could not be called to produce it.
2. Miss Maina for the plaintiff opposed the objection and stated that the witness being the investigating officer and having stated that he had obtained the documents from the ministry of health, he was competent to produce the said document. She claimed that the witness had laid enough basis and asked the court to overrule the objection. The counsel added that the documents was a public document and Section 79 of the *akn ke act 1963 46 Evidence Act* should apply. She urged the court to distinguish the authority cited by the defendants in that the same involved production of expert report.
3. The court directed the defendants to identify all the other documents which they would oppose being produced by PW8 in order for the court to make a consolidated ruling on all of them and ensure that the trial is not convoluted by subsequent objections. The defendants then identified the following documents;



- a. Annual procurement plan for the ministry of health for 2014 2015 financial appearing at pages 140 -145 of the plaintiff's trial bundle;
 - b. MTC minutes of 21 3 2015 appearing at pages 163 - 177 of the plaintiff's trial bundle;
 - c. Internal memo dated 12 5 2015 appearing at page 160 of the plaintiff's trial bundle;
 - d. MTC minutes of 29 6 2015 appearing at pages 183 to 187 of the plaintiff's trial bundle;
 - e. Letter of appointment dated 3 6 2015 appearing at page 191 of the plaintiff's trial bundle;
 - f. Letter of appointment dated 8 6 2015 appearing at page 192 of the plaintiff's trial bundle;
 - g. Tender opening register dated 11 6 2015 appearing at page 193 of the plaintiff's trial bundle;
 - h. Minutes for tender opening committee dated 11 6 2016 appearing at pages 195 -197 of the plaintiff's trial bundle;
 - i. Bank statement for account number 012000019014 in the name of the 2nd defendant appearing at pages 680 - 916 of the plaintiff's trial bundle;
 - j. Mails register (PMFI 3) appearing at pages 415-417 of the plaintiff's trial bundle;
 - k. Tender document for Abbex Limited appearing at pages 234-285 of the plaintiff's trial bundle; and
 - l. Letter dated 29 6 2015 appearing at page 410 of the plaintiff's trial bundle.
4. I have gone through the documents identified above and considered the submissions of the counsel for the parties. Section 35 (1) of the *kenya Evidence Act 1963 46 Evidence Act* Chapter 80 of the Laws of Kenya provides that;

‘In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied, that is to say-

- a. if the maker of the statement either
 - i. had personal knowledge of the matters dealt with by the statement; or
 - ii. where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters; and

- b. if the maker of the statement is called as a witness in the proceedings:

Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or cannot be found, or is incapable of giving evidence, or if his attendance cannot be procured without an amount of delay or expense which in the circumstances of the case appears to the court unreasonable.’



5. Documents in items numbers (a) to (h), (j) and (l) originated from the ministry of health. They are signed by different authors including some of the current defendants and some of the former defendants who were removed through amendments. The provision of the law I have cited above is clear that before a document can be produced by a person other than the author (of course where an objection is raised), the party seeking to produce it must justify that by fitting its circumstances under the proviso to the Section.
6. The plaintiff's witness has been not laid basis that could justify production of the documents by person other than their authors. The said witness has not told the court that he has ever worked in the said ministry. A simple task of getting someone from the ministry cannot be said to be expensive or difficult. Even those who left employment can be compelled under the law to attend court and testify to the contents of the documents.
7. In addition to the above, some of the documents are not properly signed or easily identifiable to a particular or specific person or office. In these circumstances, it is not enough for PW8 to say that he got the documents from the ministry. He did not even state which specific office or officer of the ministry he got the documents from. He will not definitely be competent to answer to any issues arising from the same documents.
8. The purpose of the law requiring that the makers of documents be called to produce them is to ensure that the integrity and authenticity of the source of the documents are not compromised. This ensures that the parties' right to adequately question and test evidence levelled against them is not violated.
9. The plaintiff has argued that the documents are public documents under Section 79 of the *Kenya Evidence Act 1963* and as such PW8 should be allowed to produce them. In my view, the objection was not in respect of classification of the documents. I also do not think that Section 79 exempts public documents from the provisions of Section 35(1) of the same Act. As much as PW8 is a public officer, that does not make him competent to produce evidence he cannot speak into or whose source or custody he did not have.
10. Although document in item (k) bears the name of the ministry, it has been filled and completed by a private company and whatever the facts the plaintiff seeks to prove by production of the document should be spoken to by someone who has information of its origin.
11. Document in item (i) is a bank account statement and it is doubtful that it was obtained from the ministry. PW8 is not competent to produce the same for the same reasons given in respect of the other documents.
12. Based on the above it is my finding that unless the plaintiff fits the circumstances of the case within the proviso to Section 35(1) of the *Kenya Evidence Act 1963*, PW8 is not competent to produce the said documents. The objection is therefore sustained to the extent that the documents referred to in this ruling will not be produced by PW8.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF NOVEMBER 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT

Judgment delivered in presence of;

Miss Maina for the plaintiff;

Mr. Waudo and Mr. Muchiri the 1st to 5th defendants;



Mr. E.K. Mutus SC for the 7th, 14th and 19th defendants; and
Miss Mwinzi for the 20th defendant.

