



**Ethics & Anti-Corruption Commission v Estama Investment Limited
& 9 others (Anti-Corruption and Economic Crimes Civil Suit
1 of 2018) [2025] KEHC 17247 (KLR) (25 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17247 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES CIVIL SUIT 1 OF 2018
BM MUSYOKI, J
NOVEMBER 25, 2025**

BETWEEN

ETHICS & ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

ESTAMA INVESTMENT LIMITED & 9 OTHERS & 9 OTHERS ... DEFENDANT

RULING

1. The defence counsel led by E.K. Mutua Senior Counsel raised an objection against production of a statement of one Abdulatif Ali the 18th defendant and a further statement by the same person. PW8 sought to produce the two statements as exhibits claiming that he is the one who took the statements from the said defendant. The grounds of objection are that the witness is not the maker and the same are not reliable as they are not evidence and amount to hearsay. They added that PW8 cannot vouch for the authenticity of the statement.
2. Miss Maina for the plaintiff opposed the objection. She stated that PW8 is the one who recorded the statement in the course of investigations and he is competent to produce the same. She added that the 18th defendant did not object to production of the statement during the pre-trials.
3. This court on 15/7/2025 ordered that the defendants do identify documents which they would be opposed to production by the PW8 for the court to make a consolidated ruling on production of documents. Pursuant to this order, the defendants identified a total of twelve documents following which I delivered a ruling on 24/11/2025. The statements being objected to now were not part of the documents the defendants identified.
4. I have gone through the plaintiff's trial bundle and at page 972, the statements are listed as document number 7 in the list of documents dated 3/5/2019. The defendants should have seen this when they were identifying documents they would wish to oppose. However, Mr. Mutua SC explained that they



were under the impression that the statements by the defendants were meant to be witness statements and not documentary evidence. That explanation is to me reasonable and understandable.

Section 35 (3) of the *Evidence Act* provides that: -

“Nothing in this Section shall render admissible any statement made by a person interested at the time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish”.

5. Obviously, the 18th defendant had an interest in the outcome of the anticipated proceedings during the time he recorded the statement. The fact that the statement seeks to exonerate the 18th defendant from the procurement process and somehow implicate others would require cross-examination of the said defendant by the other defendants.
6. The fact that PW8 is the one who recorded the statement does not make him the author of the words which came out of the 18th defendant’s mind or mouth. He was merely recording what the 18th defendant was saying.

In the circumstances the objection is sustained.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH 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. Mutua SC for the 7th, 14th and 19th defendants; and

Miss Mwinzi for the 20th defendant.

