

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ANTI-CORRUPTION & ECONOMIC CRIMES DIVISION
ACEC MISC. NO. E028 OF 2025

ETHICS & ANTI-CORRUPTION
COMMISSION.....APPLICANT

VERSUS

KING GROUP COMPANY LIMITED.....1ST
RESPONDENT
KING REALTORS LIMITED.....2ND
RESPONDENT
KING CONSTRUCTION COMPANY LIMITED.....3RD
RESPONDENT
QUICK FIX AUTO GARAGE LIMITED4TH
RESPONDENT
LUB PLUS OIL AND ENERGY COMPANY LTD.....5TH
RESPONDENT
KIMANI WAMATANGI6TH
RESPONDENT

RULING

1. The ruling herein relates to the following applications;

- 1) Application dated the 23rd July, 2025 by the 3rd respondent/applicant.**
- 2) Application dated the 23rd July, 2025 by the 2nd respondent/applicant.**
- 3) Application dated the 23rd July, 2025 by the 4th respondent/applicant.**
- 4) Application dated the 23rd July, 2025 by the 5th respondent/applicant.**
- 5) Application dated the 22nd July, 2025 by the 1st respondent/applicant**

6) Application dated the 30th July, 2025 by the 6th respondent/applicant (herein referred to as the 1st, 2nd, 3rd, 4th, 5th, and 6th applications)

2. The 1st application is brought under **Article 50** of the **Constitution, Section 56** of the **Anti- corruption and Economic Crimes Act (ACECA), Sections 1A, 1B, 3A and 80** of the **Civil Procedure Act, Order 45 Rules 1 and 2, Order 51 Rule 1** of the **Civil Procedure Rules**. It is premised on the grounds set out on the body of the same, and it is supported by the annexed affidavit sworn by Anne Murugi Njoroge. Through the application, the applicant has sought the following Orders;

1) Spent.

2) The Honourable Court does Review, set aside, Vary, and/or otherwise Discharge the preservation order issued on 9th July 2025 prohibiting the applicants, by themselves, through their agents, servants, or any other person from withdrawing, transferring, disposing or in any way dealing with funds in Account No.046000028901 at Family Bank in the name of King Construction Company Limited.

3) The applicant be allowed unlimited, unfettered or otherwise unhindered access to their bank accounts maintained at Family Bank Limited whether maintained by them individually, jointly, or severally.

4) Any other relief the court deems fit and just in the circumstances and

5) Costs of the application.

- 3.** The applicant avers that the preservation Orders that were issued by this Honourable court, on the 9th July, 2025 were obtained using warrants issued without probable cause. That the Preservation order is pre mature as the award and execution of the tenders have not been impugned in any matter whatsoever before any court, Tribunal or other fora and that the alleged investigations by the Ethics and Anti-Corruption Commission (Commission) have just started and are at the investigatory stage.
- 4.** The applicant contends that in seeking the Preservatory orders, the Commission willfully and deliberately failed to disclose that it had no probable cause or reasonable basis to have sought for the said orders against the applicant on the alleged basis of abuse of position of trust, conflict of interest or any other prohibited activity in relation to the Tender for the various road works.
- 5.** That the Commission was at all material times aware that all the monies received by the applicant from the various road

agencies had been lawfully, regularly and legitimately paid to the applicants. Further, that the Commission with the Financial Reporting Centre had previously engaged the applicants' bankers to have their respective accounts frozen or otherwise preserved and the approach to court is merely an afterthought and a choreographed attempt at intimidating, running out of businesses and financially crippling the applicants for ulterior motives.

6. The 2nd application has been brought under the same provisions as the 1st application and it seeks the following orders;

1) Spent.

2) The Honourable Court does Review, set aside, Vary, and/or otherwise Discharge the preservation orders issued on 9th July 2025 prohibiting the applicant, by themselves, through their agents, servants, or any other person from withdrawing, transferring, disposing or in any way dealing with funds in Account No.046000012937 at Family Bank in the name of King Realtors Limited.

3) The applicant be allowed unlimited, unfettered or otherwise unhindered access to their bank accounts maintained at Family Bank Limited whether maintained by them jointly, or severely.

- 4) Any other relief the court deems fit and just in the circumstances and**
- 5) Costs of the application.**

7. The grounds in support are largely the same. The applicant avers that there was lack of probable cause for warrants informing Preservation Order, and therefore, the application is fatally defective and the preservation orders ought not to have been issued.

8. The applicant avers that up to the date the Commission procured the order, it had not engaged any procurement officer, accounting officer or any other responsible officer of KeNHA, KURRA or KeRRA that were allegedly influenced to award the applicant the subject tenders. That it was not until the 22nd July, 2025 that the local media indicated that the Commission had proceeded to invite, summon or otherwise engage the various Director General for road agencies to record statements or otherwise provide information related to the alleged irregularity on the procurement process. That contrary to the Commission's assertion, the applicant never received any monies or were the beneficiaries of any monies

disbursed, transferred or otherwise paid by Kenya Urban Roads Authority (KURA).

- 9.** It was the applicant's further case that it is evident on the face of the procurement and resultant contractual works undertaken by the applicant under contract Nos. KeRRA/011/39/HB/MBT/39/51/CS/18/19-157 and KeRRA /011/39/ HB/KARA/39/51/PH/20/21-173 that any, and all monies it received were lawfully, regularly, contractually and legitimately due and owing arising from the provision of a service as per the prevailing public procurement mechanisms set out under the Public Procurement and Asset Disposal Act.
- 10.** That the respondent did not adduce any evidence that there was or has been interference with the procurement process at KeNHA and that, the Commission only belatedly attempted to summon or otherwise engage the procurement officers from KeNHA sometimes after 22nd of July, 2025 and if indeed there had been irregularity in any procurement process, they would have been the first ones to be interviewed.
- 11.** The applicant also avers that the Commission has not indicated any linkage between the Hon. Kimani Wamatangi

and the applicant, save for the fact that Directors of the applicant are his relatives. That the mere existence of a filial relationship between a serving public officer and corporation director or shareholder cannot be the basis of the presumption of any relationship whatsoever between the companies and the public servant.

12. That in the absence of any evidence that the procurement process was flawed, or the services procured for had not be provided as per the contract, or had been provided in a manner other than set out in the contract or payment had been effected in a manner other than as set out in the contract occasioning public loss of funds or misuse of public funds, the applicant is convinced that Commission has willfully orchestrated an assault on a law abiding corporate citizen who lawfully bid for contracts, provided for, and was paid for the services.

13. Further, that unless the preservation orders are set aside, the applicant will be unable to meet his statutory obligations when they fall due, pay salaries, settle various Bills which may

lead to a litany of suits before various courts for breach of contract arising from its inability to settle bills for suppliers.

14. The 3rd application has been brought under **Article 50** of the **Constitution, Section 56(4) and (5)** of the **ACECA, Sections 1A,1B, 3A** of the **Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules**. Through the application the applicant has sought the following orders;

1) Spent.

2) This Honourable court be pleased to discharge, vary and/or set aside the Preservation Order issued on 9th July, 2025 prohibiting the Applicant, their agents, servants or any other persons from withdrawing, transferring, disposing, or in any other way dealing with funds in the bank account Number 046000029171 domiciled at Family Bank Limited in the name of Quick Fix Auto Garage Limited.

3) This Honourable Court be pleased to allow the Applicant unlimited access to their bank account Number 046000029171 domiciled at Family Bank Limited in the name of Quick Fix Auto Garage Limited.

4) This Honourable Court be pleased to issue any other relief deemed fit and just in the circumstances.

5) Costs of this application be borne by the Applicant/Respondent."

15. The applicant has averred that in obtaining the preservation orders the Commission did not tender any evidence to demonstrate the culpability of the applicant other than the Motion filed before the lower court for warrants to investigate its accounts which were obtained through misrepresentation of facts to the effect that the 6th respondent owns the applicant herein.

16. That the Commission did not produce any iota of evidence to demonstrate that the funds held in the applicant's bank account No. 046000029171 domiciled at Family bank limited are proceeds of crime or are public funds. It averred that the Commission being in possession of various bid documents submitted by the applicant to the various Government institutions is well aware that it did not flout any procurement laws and regulations, and if any such law were flouted, no particulars were demonstrated by the Commission before it obtained the preservation Orders against the applicant herein.

17. The applicant submitted that the PPADA has elaborate provisions for challenge and sanction to address cases of irregular, unlawful and corruptly procured and influenced

tender awards. That such mechanisms include, but not limited to lodging proceedings for review and tender nullification to the Public Procurement and Administrative Review Board. Further, that complaints can be lodged to the Public Procurement and Regulatory Authority for investigations and action. As such, the Commission is not properly placed to handle, oversee or investigate any alleged procurement irregularities as the contracts entered into by the applicant and KeRRA were under the purview of the Public Procurement Review Board.

18. The applicant submitted that the contracts awarded to it were not awarded by the Senate's Committee on Roads, Transportation and Housing, but by KeRRA and no link has been established between the 6th respondent being a member of the said committee and the award of contract by KeRRA, which operates independently of the Senate.

19. That the preservation orders by the Commission against the applicant's bank account has completely halted the operations of the applicant without any justifiable cause as a consequence of which, the applicant finds itself unable to

meet its day to day operations as well as other development , statutory and tax obligations .That the applicant is now faced with the risk of completely grounding it's operations to a halt and being exposed to hefty debts and penalties from its employees, suppliers and Government Authorities.

20. The 4th application is by the 5th respondent and it's brought under the same Provisions as the 3rd application and it seeks similar Orders for review, setting aside, varying and/or discharging the orders relating to account No. 046000028902 at Family bank and that the applicant be allowed unlimited access to that account.

21. The applicant avers that the Commission obtained warrants from the lower court to investigate the account claiming that the 5th respondent may have received irregular payments from KURA, KeRRA and KeNHA as a result of certain unidentified procurement irregularities between the period 2017 to 2022 when the 6th respondent was a member of the Senate Standing Committee on roads and Transport.

22. That in a bid to convince the magistrate, the Commission alleged that the said companies are owned by the 6th

respondent, yet, he is neither a Director nor a Shareholder in the 5th respondent. That in an interesting turn of events, the Commission admitted at the High Court that the 5th respondent was merely associated with the 6th respondent which amounted to two conflicting claims barely days apart.

23. It was the applicant's contention that the said Orders were obtained without any basis being laid as the Commission has failed to identify the illegality committed by the 5th respondent in applying for, being awarded and executing any tender from any of the mentioned public entities; that neither of the public entities have ever lodged a complaint regarding any procurement irregularities touching on the 5th respondent ; no evidence was provided by the Commission indicating that the impugned yet unidentified tenders had been challenged anywhere and that the Commission has not provided any link between the 6th respondent and the award of any tenders to the 5th respondent.

24. The applicant states that it has never been summoned by the Commission to record a statement or provide any such document necessary to progress the purported investigations

which leads to inescapable conclusion that the Commission is pursuing a vendetta against the 6th respondent, and the 5th respondent is simply collateral damage as there is no illegality that can be impugned on the 5th respondent.

25. That the preservation orders are tantamount to a liquidation order and when the same are issued on account of allegations which have not been subjected to a thorough legal process of ascertainment and judicial interpretation and determination, it amounts to unjustifiable violation of the right to access justice and the right to a fair hearing. That the 5th respondent who does not have other resources to rely on will be unable to meet statutory obligations including paying taxes and salaries, numerous contractual obligations exposing it to a risk of being sued.

26. The 5th application is by the 1st respondent. It is brought under **Order 51 Rules 1 and 15** of the **Civil Procedure Rules** and **Sections 1A, 1B, and 3A** of the **Civil Procedure Act**. It seeks to set aside the Orders that were issued on the 9th July 2025 with regard to Account No. 015000004190 at Family

bank and allow the applicant to access the account, and that the 1st respondent be expunged from the proceedings.

27. The applicant avers that the 1st applicant has only one director, namely Joseph Mwaura Kimani and a Company Secretary by name Victor Arara Were. That no nexus has been established between the said company officials and the 6th respondent so as to make an inference of beneficial interest or conflict of interest.

28. The applicant states that any payment received by the 1st respondent from KeRRA, KURA and/or KeNHA were lawful, legitimately due and arising from contracts awarded and executed as per the provisions of the **Public Procurement and Asset Disposal Act, 2015** and the regulations made thereunder. That there are elaborate regulations for challenge and sanctions to address cases of irregularity, unlawful and corruptly procured and influenced tender awards through the Public Procurement and Administrative Review Board and can also be lodged to Public Procurement and Regulatory Authority.

- 29.** That the applicant is aggrieved by the grant of the said Orders as the orders are threatening the commercial viability of the 1st respondent and it is exposing it to the likelihood of defaulting on numerous statutory obligations which will ultimately lead to the institution of solvency proceedings.
- 30.** The 6th application is by the 6th respondent. It is brought under **Articles 35** and **50** of the **Constitution** and **Section 4** of the **Access to Information Act**. Through the application, the applicant has sought for an order directing the Commission to avail to the 6th respondent and/or to court, the Preliminary investigations report alluded to in the application dated the 8th July, 2025.
- 31.** He avers that for the last one year, he has been a target of harassment and victimization by the Commission under the guise of conducting legitimate investigations into allegations of corruption, which harassment has since culminated in the filing of numerous miscellaneous applications before the Magistrates' court and this court, purportedly seeking orders to assist in investigations.

32. That in both applications before the Lower court and this court, the Commission alluded to preliminary investigations that had allegedly established that the 6th respondent engaged in some procurement irregularities which resulted in the award of tenders to the 1st to 5th respondents between 2017 to 2022 when the 6th respondent was a Senator and a member of the Senate Roads Committee.

33. The applicant contends that even if the Commission has referred to the said preliminary investigations and used their existence to obtain the orders from the court, they have to date failed to provide a report of the said investigations to this court, let alone to the 6th respondent. That the said report is crucial to the advancement of the 6th respondent's rebuttal or any cause of action meant to protect his rights because the assertions made by the Commission are irrational and lacking in reason for the reasons that the Senate Standing Committee on Roads and Transport does not award any tenders nor does it have oversight authority over KeRRA, KURA or KeNHA during any procurement process.

- 34.** The applicant avers that the Commission's applications have been based on conjecture and that even the remote reference to preliminary investigations is abstract and that there was no basis upon which the court was moved to issue the orders.
- 35.** That the orders have caused near irreversible damage to the 6th respondent in that he has been vilified and maligned in the media in a manner that has affected his standing amongst the residents of Kiambu County, and the Country in general. Further, that the Commission has used the grant of the said orders to stalk and surveil the 6th respondent and his family in a manner that has caused great emotional distress to the family.
- 36.** That to prevent the ongoing harassment, victimization and violation of the 6th respondent's rights, the alleged preliminary investigations report should be furnished to this court. He avers that **Article 35** of the **Constitution** guarantees him a right to access information needed to protect his rights and hence this application. Further, that the production of that report will advance the national values and principles of good governance and in particular, transparency and

accountability, and there is no identifiable danger in the disclosure of the said information sought and no justification has been provided for the secrecy with regards to the alleged preliminary investigations and the report.

37. The Commission filed a replying affidavit sworn by Danso Siba on the 21st August, 2025 who is a member of the team that conducted investigations in respect to the matters raised herein, and in opposition to all the applications. Through the deponent, the Commission avers that public interest in sustaining the preservation orders supersedes the respondents' perceived danger of law suits and debts, and the Commission has established a nexus between the 1st and the 6th respondents by demonstrating through bank documents that the 6th respondent is the sole signatory to the 1st respondent's bank account.

38. That in response to the 1st respondent's assertion that there are provisions to challenge irregular procurement and tender awards, the Commission states that the investigations herein relates to conflict of interest which is a corruption offence punishable by law and that investigations on corruption

offences related to procurement are not dependent on the outcome of the Public Procurement and Administrative Review Board as the 1st respondent seems to suggest.

39. The Commission contends that no good reason has been given to the court to justify the setting aside of the preservation orders as the same were granted for a good cause to preserve the monies for the eventual satisfaction of a decree since the respondents may interfere or frustrate the decree. The 6th respondent being the sole signatory to the subject bank accounts is a necessary party as the orders herein prohibit him from withdrawing monies from the said accounts and removing him from the suit will amount to an injustice.

40. In response to the 2nd respondent's averments that warrants were issued without a reasonable cause, the commission states that the applicants filed applications before the lower court challenging the issuance of the warrants, but the same were heard and a ruling was delivered on the 4th August, 2025 in favour of the Commission. That the tenders alluded to were awarded between 2017 and 2022 when the 6th respondent

was a member of the Senate committee and that the evidence of the linkage between the 6th respondent and the other respondents was available to court at the time the orders were issued.

41. That by the time the preservation orders were issued, investigations had just commenced and that statements of any person aiding in investigations are recorded at any stage of investigations, preservation orders notwithstanding. On the allegation that the Commission has no evidence of illegality, the Commission states that under **Section 56** of the **ACECA** the threshold for granting of the orders is set out and the Commission need not present the final finding of an illegality since the order is temporary to preserve the assets for a short time.

42. On the 3rd respondent's assertions that his right under **Article 50** of the **Constitution** has been violated, the Commission avers that the Article provides for a dispute to be resolved by the application of the law, and decided in a fair and public hearing before a court, or another independent and impartial tribunal or body and the provision applies to a hearing after

investigations have been concluded and findings made. That the Commission shall bring a suit against the 3rd respondent and it will be accorded adequate time, facilities and opportunity to challenge and/or adduce evidence as prescribed by the law.

43. The Commission contends that the directors of the respondents were invited by the Commission to record statements and shed light on the matters under investigations on conflict of interest but they declined to appear and requested to defer to far off dates only for them to file the applications herein.

44. That the preliminary findings of the investigations have been disclosed in the Commission's application before the court and in the replying affidavit filed in Petition 455 of 2025 which contains the preliminary findings awaiting the final outcome of the investigations. That the 6th respondent has failed to cooperate with the Commission by declining to provide the passwords of his mobile phones for purposes of electronic investigations thereby frustrating further investigations. Further, the Commission issued a notice dated 30th May, 2025

to the 6th respondent to explain sources of his wealth of Ksh.12,656,000 and USD13,353.00 retrieved from his premises during the search but to date he has not yet complied with the notice.

45. That the 4th respondent has severally been given an opportunity to appear before the Commission and record a statement and shed light on the issues under investigations but has failed to appear.

46. Regarding the linkage of the 6th respondent with the other respondents, the Commission states that according to the investigations, the 6th respondent was the main founding director of the respondents by virtue of having commanding shares at the time of incorporation of the respondents although at some point he relinquished the directorship. That the 6th respondent remained a mandatory signatory to the bank accounts and has been actively transacting in the said accounts as such, the ultimate beneficial owner.

47. As to the link between the 6th respondent and award of tender to the 5th respondent, the Commission states that the 6th respondent participated in providing oversight to

Government agencies which at the same time were awarding tenders to private companies which he incorporated and/or companies where he is a beneficial owner and/or companies whose directors are his close family members and where he is a bank signatory.

48. That the respondents cannot allege to be unable to meet their statutory obligations as the order does not extend to the running of their businesses, but only to the withdrawing of the monies in the bank accounts and the order does not stop the respondents from sourcing monies from elsewhere or opening other bank accounts.

49. In response to the assertion that the Commission obtained warrants for a period in 2025 when the investigations period is 2017-2022, the Commission avers that it is also investigating allegations of unexplained wealth under **Section 26 and 55** of the **ACECA** which information was disclosed at the time of applying for the warrants.

50. The Commission avers that unless the orders herein continue to subsist, the respondents will withdraw, transfer, dispose of money in order to defeat the course of justice.

51. The applications were disposed of by way of written submissions.

52. The 1st respondent submitted on the threshold for issuance of the preservation orders under **Section 56 (1) and (2)** of the **ACECA** and the burden of proof and stated that an Exparte applicant who approaches the court under this Section of the law is required to establish reasonable suspicion that the property or monies in issue were obtained through corrupt means. That such reasonable suspicion must be grounded on existing facts and not on mere allegations, conjecture or malice. Reliance was placed on the case of **Emmanuel Suipanu Siyang Vs Republic (2013) KEHC 868 (KLR)** on the question of reasonable suspicion and on the case of **Ethics & Anti-corruption Commission Vs Andrew Biketi T/A Mukuyu Petroleum Dealers (2019) KEHC 8946 (KLR)**.

53. It was the 1st respondent's contention that the Commission failed to provide any factual basis upon which its claim against it is hinged. That the Commission has also failed to

demonstrate any connection between the 5th respondent and the 1st respondent that would justify the alleged collusion.

54. That the payments that the 1st respondent received from KeRRA, KURA and KeNHA were lawfully due, arising from duly awarded contracts executed in full compliance with the provisions of the **Public Procurement and Asset Disposal Act, 2015** and the attendant regulations. That in the absence of any evidence of involvement of the 1st respondent in any corrupt conduct, this court should not delve into the source of the funds received by the 1st respondent in its accounts. Reliance was placed on the case of **Ethics & Anti-corruption Commission Vs Equity Bank Limited & 4 others (2016) KEHC 5028 KLR.**

55. That the preservation orders were obtained on the basis of suspicion and the misconceived attempt to impute the alleged wrongdoing on the 6th respondent/applicant to the applicant company, and the applicant has rebutted these allegations by placing before this court unimpeachable evidence of its ownership, corporate independence, and the legitimate source of funds. Further, that a company is a distinct legal

entity under the well-established principle in **Salmon Vs Salmon & company Limited (1897) AC 22** which has been consistently applied in our jurisdiction.

56. On the part of the 2nd respondent, it was submitted that there are no allegations against the 2nd respondent as there is no mention of any impugned tender or corrupt conduct specific to the 2nd respondent, but instead, the Commission relies on vague familial links to the 6th respondent without evidence of influence or impropriety. That the Commission has failed to provide any specific allegation of irregularity in tender procurement, award and execution of works by the 2nd respondent, any irregularity in any sums, amounts or any other transactions undertaken in the bank accounts of the 2nd respondent, any evidence of corrupt practices or conflict of interest.

57. That there was material non-disclosure by the Commission when it obtained the preservation orders by failing to disclose that the 6th respondent resigned from related companies, predating any impugned contracts; there was no prior engagement with procuring entities to verify irregularities and

that the preliminary report was merely an affidavit from Constitutional Petition No. E 455 of 2025 lacking originating complaints, witness statements, forensic analysis or investigator notes thus constituting a misrepresentation. Reliance was placed on the case of **Manfred Walter Schmitt & another Vs Attorney General & others (2014) eKLR** as cited in **Ethics & Anti-corruption Commission Vs National Bank of Kenya & another (2017) eKLR**.

58. The 2nd respondent/applicant states that there is evidence undermining reasonable suspicion, in that, the ODPP reviewed the EACC'S inquiry file received on the 28th July 2025 which recommended charges including conflict of interest, unlawful acquisition of public property and acquisition of proceeds of crime and identified critical evidential gaps that require to be covered by way of further investigations and directed the file's resubmission to the Commission. That this rejection by the ODPP of the file for insufficiency of evidence is compelling proof that the threshold under **Section 56(1)** of the **ACECA** has not been met.

59. The 3rd respondent/applicant submitted that the Commission did not meet the legal threshold for issuance of the preservation orders under **Section 56** of the **ACECA** as its application contained no information regarding the balances in these accounts, the sources of the funds in each account or any analysis connecting specific deposits to alleged corrupt practices.

60. That the preservation application was devoid of specific impugned tender processes or even a hint of procurement irregularity that may have formed the substratum of reasonable suspicion, claims of inflated contract values, allegations of sub-standard work or delivery of or any interaction between the parties' EACC sought to have their accounts frozen, with the officers of the procuring entities. That these omissions are fatal to the Commission's case. Reliance was placed on the case of **Ethics & Anti-Corruption Commission vs Promo Masters Limited (2022) KEHC 13492**.

61. The 3rd respondent further submitted that, the Commission's application contains sweeping allegations that the 6th

respondent influenced tenders worth approximately 1.28 billion during the period between 2017 and 2022 without any specificity regarding the tenders that were allegedly influenced, when and how such influence was exercised and which companies benefitted from which specific tenders. That the Commission sought to freeze accounts belonging to four separate legal entities (applicants herein) without establishing any specific nexus between each entity and alleged corrupt conduct.

62. That the Commission's approach treats these entities as a single unit based solely on historic connections ignoring the fundamental principle of corporate personality and that the court ought to have been satisfied that there are reasonable grounds to suspect that the specific property was acquired through corrupt conduct. Reliance was placed on the case of **Ethics & Anti- corruption Commission Vs National bank of Kenya & another (2017) eKLR.**

63. On the threshold for variation and rescission of the preservation orders, the applicant contended that it has provided an account for the entirety of the preserved funds

and has demonstrated that the Ksh.420,782,675.70cts received in its bank account frozen by the court, consists of payments made by KeNHA for Luanda -K'otieno -Bondo road maintenance and improvement project. That the Commission is in possession of the bank statements which means that they have had access to the same transactional data that supports the applicant's accounting and it has not challenged any component of the applicant's breakdown.

64. That the Business registration service records establishes that the 6th respondent resigned from his directorship of the 1st respondent and all the preserved funds were earned through contracts awarded and executed entirely after these resignations and therefore, any suggestion by the Commission that the 6th respondent exercised influence over procurement processes during the period when the preserved assets were earned becomes factually impossible.

65. The 3rd respondent further submitted that there is no allegation that the public failed to receive value for their money or that the contracts were inflated above market rates or that the work performed was sub-standard or that there

was loss of public funds. That the contract completion certificates by KeNHA provides an independent confirmation that the 3rd respondent delivered full value for all the payments received, and such outcomes are incompatible with corrupt procurement arrangements, which typically result in substandard delivery and public loss.

66. On its part, the 4th respondent submitted that there was no reasonable suspicion of corrupt conduct on its part by the Commission. That it bid for various tenders, lost some and some were awarded to it. Additionally, it diligently carried out and executed the work it was sub-contracted to perform which is evidenced by the completion certificates that were issued to it by different entities.

67. That the 4th respondent is not owned by the 6th respondent but it is a limited liability company which has been carrying on business for the last 14 years independently from the 6th respondent and therefore, the Commission's claim against it is based on suspicion and in line with **EACC Vs Fastlane Freight Forwarders Limited & EACC and EACC Vs Andrew Biketi**, suspicion must be grounded on objective,

cogent material facts and not mere conjecture or political associations.

- 68.** That the applicant has explained and substantiated the sources of the deposits in its bank accounts which are attributable to its awarded tenders and sub-contracted tender works as shown in the affidavit of Mary Esther Njeri Wambui.
- 69.** On reasonable suspicion, the 6th respondent submitted that **Section 180(1)** of the **Evidence Act** requires that there must be some level of demonstration through proof on oath before a conclusion of “reasonable suspicion” can be arrived at. That the Commission bore the burden of placing before the court tangible and credible factual basis to found a “reasonable suspicion”. That at no point has the Commission stated that the tenders in question were not properly awarded or that the awardees should not have been awarded because they failed to meet any mandatory requirement.
- 70.** The 6th respondent submitted that upon undertaking the investigations and forwarding the file to the DPP with recommendations that charges be brought against the 6th respondent/applicant, the DPP returned the file to the

Commission on the basis that the information therein was not enough to sustain any charges, and therefore, the Commission did not have any basis for obtaining the investigative orders and the subsequent freezing orders.

71. That the Commission misrepresented information to the court by alleging that the 1st to 5th respondents are owned by the 6th respondent/applicant but later it shifted its stance to a vague claim that the companies were associated with him. Further, that the entire theory of “conflict of interest” hinges on the 6th respondent’s membership in the Senate Standing Committee on Roads and transportation and as a matter of law and public knowledge, this committee has no power to award tenders. That the Parastatals in question operate independently of the Senate in their procurement process.

72. The 6th respondent states that he is entitled to the information sought herein so as to protect his rights and the unexplained refusal to avail the same cannot be countenanced by this court.

73. The Commission filed its submissions on the 16th October, 2025. It submitted that under **Section 56** of the **ACECA**, the

threshold upon which the court grants preservation orders is not evidence as suggested by the applicants herein but “on reasonable suspicion”, and that the evidential facts need not answer the description of any specific offences of corrupt conduct, provided that, they point to that possibility. The Commission has relied on the case of **Ethics & Anti-Corruption Commission Vs National Bank of Kenya & another (2017)** in support of this submission.

74. That the Commission demonstrated evidential facts pointing to that probability that the 6th respondent being a public officer and a member of the Senate parliamentary committee on roads and transport, and agent of Government of Kenya knowingly held a private interest in the subject contracts which private interest was in conflict with his powers and functions of the public office he held and explicitly illegal and unlawful payments were received by him through the 1st to 5th respondents/applicants pursuant to the subject contracts.

75. That further evidential facts include and is not limited to; the fact that the 6th respondent was a signatory to the bank accounts of the 1st to 5th respondents whose directors are his

wife and siblings, it is reasonably suspected that the inward remittance proceeds into the respondents accounts constitute payments being benefits conferred to the 6th respondent by virtue of the office he holds. That arising out of contracts founded on unlawfulness and illegality as a result of conflict of interest and abuse of office and that by engaging in private contracts 1st to 5th respondents herein with the agencies responsible for roads and transport, the 6th respondent unlawfully obtained a benefit to the tune of Ksh.700 Million.

76. On the principles applicable to discharge of preservation orders, it was submitted that a party must satisfy the court on a balance of probability that the property in respect of which the order is discharged or varied, was not acquired as a result of corrupt conduct and this burden lies with the party seeking to have the orders discharged. The Commission avers that the respondents have failed to discharge that burden. That the respondents have failed to controvert the evidence by the Commission and the allegations they have relied on in their applications and submissions to discharge the preservation orders are not grounds enough to set aside the orders.

77. The Commission has further submitted that its investigations on corruption and economic crimes are independent and not subject to any proceedings or findings of another Tribunal like PPRA as is being suggested by the 5th respondent. That in response to the allegation that it has no evidence on illegality in the tender award process to justify issuance or maintenance of the preservation orders herein, the Commission has submitted that under Section 56, it need not present the final finding on an illegality at that point since the order is temporary meant to preserve the assets for a short period of six months.

78. That the respondents have been frustrating the ongoing investigations by refusing to appear and by making unreasonable demands through counsel. The case of **Ethics & Anti- Corruption Commission Vs Lydia Ngingi Lentinina (2018) KEHC 3631 (KLR)** was relied on. That the 4th respondent has severally been given an opportunity to appear before the Commission to record a statement and shed light on the issues under investigations, but has declined to do so and has instead chosen to give his explanations through its

affidavit that it has filed in court. Reliance was placed on the case of **Ethics and Anti-Corruption Commission Vs Kanani & 4 others (Miscellaneous application E059 of 2022 (2023) KEHC 3401 (KLR))**.

79. On the prayer by the 6th respondent to be furnished with the preliminary investigations findings, the Commission has submitted that prior to the filing of the application, the respondents had written to the Commission requesting for the same and each of the respondents was furnished with a physical copy of an affidavit containing the findings of the investigations at a preliminary stage together with the documents/evidence that had been collected at that stage. That investigations are still ongoing and upon conclusion, the report shall be forwarded to the ODDP as required under **Section 35** of the **ACECA** who will review the same and make a decision to charge.

80. On whether the respondents have met the threshold for varying the preservation orders, it was submitted that Section 56 of ACECA under which the preservation orders were issued does not envision a situation where the same would be

varied/discharged on grounds of hardship. In any event, the respondents have not demonstrated that the hardship outweighs the risk of the money in the accounts being transferred and concealed as was the holding in the case of **Ethics and Anti-Corruption Commission Vs Catherine Nkirote Maingi & 2 others (2017) eKLR.**

81. That public interest in sustaining the preservation orders herein supersedes the respondents' perceived danger of law suits and debts and if the orders are discharged at this stage, the intended civil recovery proceedings will be rendered nugatory if the assets reasonably suspected to constitute the proceeds of corruption and Economic crimes are allowed to dissipate. That the Commission has made remarkable progress into the investigations including recording of statements, obtaining information from other agencies, as such, discharging the preservation orders will render the efforts so far, the investigations and subsequent intended asset recovery proceedings by the Commission nugatory.

Analysis and determination

82. The court has considered all the six applications and the supporting affidavits by the respective applicants, the replying affidavit by the Commission and the submissions filed herein. The composite issues for determination are as follows;

- a) Whether the Commission met the threshold for issuance of the preservation orders under Section 56 of the ACECA.***
- b) Whether the respondents have met the threshold for variation of the preservation orders***
- c) Whether the Commission acted within its mandate in investigating the 6th respondent***
- d) Whether the 6th respondent should be furnished with the preliminary investigations report as he has sought.***
- e) Whether the 1st respondent's should be expunged from the proceedings.***

83. On the 1st issue, the respondent herein moved this court vide an Exparte application dated the 8th July, 2025 under **Section 56** of the **Anti-Corruption and Economic Crimes Act, No.3 of 2004**. Upon considering the application this court issued preservation Orders on the 9th July, 2025 for preservation of monies that are being held in the accounts in the names of the 1st to 5th defendants/applicants herein.

84. The applicants in the six applications under consideration by this court are seeking to set aside and/or vary the said orders,

save for the 6th applicant, and have stated their grounds in their respective affidavits in support of their applications.

85. The jurisdiction of the court to issue preservation orders is donated to it by **Section 56** of the **Anti-Corruption and Economic Crimes Act herein (ACECA)**. Under the said Section the court may make an order prohibiting the transfer or disposal of or other dealings with property if it is satisfied that there are reasonable grounds to suspect that the property was acquired as a result of corrupt conduct.

86. In that Section, “corrupt conduct” means;

a) Conduct that constitutes corruption or economic crime; or

b) If it had taken place after this Act came into operation, would have constituted corruption or economic crime.

87. The meaning of “reasonable grounds to suspect” was examined by the court in the case of **Ethics and Anti-Corruption Commission Vs National Bank of Kenya & another (2017) eKLR** in which the court observed that reasonable suspicion must be grounded in existing facts that would lead a reasonable and objective observer to the same conclusion. The principle was also elucidated in the case of

Timothy Isaac Bryant & 2 others vs Inspector General of police & 7 others (2015) eKLR in which the court held that reasonable suspicion involves less than a belief but more than a mere possibility. There must be some factual basis for the suspicion; reasonable suspicion is not arbitrary”.

88. In the case of **Emmanuel Suipanu Siyanga Vs Republic (2013)** the court has this to say about the question of reasonable suspicion;

“such suspicion must have been reasonable and it follows that the factual basis which would make any suspicion which is actually formed a reasonable one must also exist at the material time: a suspicion cannot be held to be reasonable if it is founded on non-existent facts. This would be a subjective suspicion and must be based upon grounds existing at the time of its formation”

89. The applicants/respondents have averred that there were not reasonable grounds that were advanced by the commission to warrant issuance of the preservation orders, and that there was lack of probable cause for warrants informing the preservation orders. That the warrants to investigate the accounts were obtained through misrepresentation of facts to

the effect that the 6th respondent/applicant owns the applicants herein.

90. The applicants/respondents have contended that the preservation orders issued in this matter were premature as the award and execution of the tenders have not been impugned in any manner whatsoever before any court of law, any Tribunal and that all the monies that were paid to the respective applicants by the subject Agencies was lawfully, regularly and legitimately paid to them. The applicants further averred that up to the date the commission obtained the preservation orders it had not engaged any procurement officer, accounting officer of any of the subject Agencies that were allegedly influenced to award the applicants the subject tenders.

91. It was the applicants' further contention that the commission has not established that there was or has been interference with the procurement process and that in obtaining the preservation orders the commission did not tender any evidence to demonstrate any culpability of the applicants. That no iota of evidence was tendered by the commission to

proof that the funds are proceeds of crime and that they are public funds.

92. It is also the applicants' case that the Public Procurement and Asset Disposal Act has elaborate provisions for challenge and sanction to address irregular, unlawful and corruptly procured and influenced tender awards, which mechanisms include, but not limited to lodging proceedings for review and tender nullification to the Public Procurement and Administrative Review Board.

93. In the case of **Ethics and Anti-Corruption Commission vs National V Bank of Kenya & another (2017) eKLR**, the court stated;

“provided there are some evidential facts at the ex-parte stage to enable the court to exercise its discretion to find reasonable grounds have been established, there are no other pre-conditions to grant the ex-parte orders”.

94. Being guided by the above case, are there evidential facts pointing to that probability?

95. From the available evidence by the commission;

a) The 6th respondent/applicant is a signatory to the bank accounts of the 1st to 5th respondents/applicants whose

Directors are the wife of the 6th respondent and his siblings. This fact has not been denied by the 6th respondent.

- b) The 6th respondent/applicant was at the material time, serving in the Senate Committee on Roads, Transportation and Housing which is a Parliamentary Committee mandated to consider all matters related to transport, roads, public works, construction and maintenance of roads and rails.**
- c) During the period of interest, the 1st to 5th respondents were awarded tenders by KeRRA, KURA and KeNHA. The monies that were paid to the 1st - 5th respondents were deposited in the accounts in issue in these proceedings and the 6th respondent is a signatory to those accounts which accounts received numerous unexplained remittances by virtue of him being a signatory, it means that he has an interest in the affairs of the 1st - 5th respondents.**
- d) The court also notes that the 6th respondent/applicant is the main founding director of the respondents by virtue of having commanding shares at the time of incorporation of the companies and though at some point he relinquished the directorship, he remained a mandatory signatory to the bank accounts and has been actively transacting in the said accounts. He can, therefore, not be heard to say that he has no interest in them.**

96. On the 2nd issue, under **Section 56(5)** of the **ACECA**, a preservation order may be varied only if the court is satisfied,

on a balance of probabilities, that the property in respect of which the order is discharged or varied was not acquired as a result of corrupt conduct. The applicants herein avers that the preserved funds were lawfully, regularly, contractually and legitimately owing. This has been denied by the respondents. The commission avers that though it has undertaken some preliminary investigations, it has been difficult for it to complete the same because the applicants have refused to co-operate with it.

97. The degree of proof under Section 56 (5) is higher than that required under Section 56(1). The respondents/applicants herein have made assertions, the veracity of which can only be tested during the hearing of the forfeiture proceedings. Weighing the evidence produced by the 1st to 5th respondents/applicants against that of the commission, and the degree of proof placed on them under **Sections 56(5) and 56(1)** of the **ACECA**, respectively the court is persuaded that the balance tilts in favour of the commission.

98. On whether the commission acted within its mandate, it is the respondents' contention that the Public Procurement and

Disposal Act has elaborate provisions to address the issues raised herein and not the court. As correctly submitted, the Commission is a body established under the Constitution whose mandate is to investigate corruption related offences and illegally acquired wealth. It is therefore within its mandate to investigate and file any proceedings following completion of its investigations and that mandate cannot be curtailed by an Act of Parliament.

99. On the 4th issue, the 6th respondent/applicant has prayed for an order that he be supplied with the preliminary investigations report. In its response, the commission states that the applicants had requested for the report and the commission furnished each of them with a physical copy of the affidavit that contained the findings of the investigations at a preliminary stage complete with documents/evidence collected at that stage.

100. Section 35 of the **ACECA** requires the Commission to prepare a report at the conclusion of the investigations. The commission avers that investigations are still ongoing and upon conclusion of the same, the report shall be forwarded

to the DPP who will independently review the same and make an independent decision to charge.

101. My reading and understanding of that Section is that, the report should be made to the DPP. That notwithstanding, the commission states that the 6th respondent/applicant has been supplied with some materials in the form of an affidavit which fact he has not denied. According to the commission, the materials contained in that affidavit contains documents/evidence collected at that stage. The commission has pointed out that the 6th respondent has made it difficult for it to complete its investigations because he has refused to co-operate and has made it difficult for it to complete the investigations. He cannot blame the commission for failing to complete the investigations.

102. It is important that the respondents herein do co-operate with the commission as their failure to co-operate would amount to a criminal offence in law as Justice Gikonyo correctly observed in the case of **Ethics & Anti-Corruption Commission (EACC) v Lydia Ngingi Lentinina [2018] KEHC 3631 (KLR);**

“EACC has explained that the delay in completing investigations on the matter was inter alia caused by: (1) complexity of the case and numerous numbers of suspects to be interviewed who are about 60; and (2) the lack of full cooperation from the Respondent and her employer, the County Government of Samburu. Let me deal with the 2nd fact first. Other than submission from the bar, the Respondent did not expressly controvert the said fact. That notwithstanding, EACC has wide coercive powers to summon suspects and witnesses in an investigation. They did not show any effort made to procure cooperation from the County of Samburu. I expect the County government of Samburu not to impede corruption investigations as such would amount to a criminal offence in law.”

103. On whether the 1st respondent should be expunged from the proceedings; as the court has already pointed out, the 6th respondent is a mandatory signatory to the accounts held by the applicants herein including the 1st respondent. A connection having been established between it and the 6th respondent, it follows that the 1st respondent is an interested party in these proceedings and justice cannot be served were it to be expunged from the proceedings at this stage.

104. In the end, and for the reasons that the court has given, it is my finding that all the applications have no merits and they are all dismissed with costs.

Signed, dated and delivered virtually on this 19th day of November, 2025

.....
L.M. NJUGUNA
JUDGE

In the presence of:-

Miss Murugi for the Applicant

Mr. Okatch for the 1st respondent

Mr. Dennis Nkarichia holding brief Mr. Mogere for the 2nd and 3rd applicants/respondents

Mr. Ligunyu for the 6th respondent/applicant

Mr. Muchiri appearing with Mr. Paul Wanga for the 4th Respondent/applicant

Court Assistant - Adan