



**Ethics and Anti-Corruption Commission v Wambugu and Muriuki Advocates & another; Lotondo & another (Proposed Interested Parties) (Anti Corruption and Economics Crime Miscellaneous Application E034 of 2025) [2025] KEHC 17919 (KLR) (3 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 17919 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
ANTI CORRUPTION AND ECONOMICS CRIME  
MISCELLANEOUS APPLICATION E034 OF 2025**

**LM NJUGUNA, J  
DECEMBER 3, 2025**

**BETWEEN**

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

**AND**

**WAMBUGU AND MURIUKI ADVOCATES ..... 1<sup>ST</sup> RESPONDENT**

**STATE OF DEPARTMENT FOR AGRICULTURE-MINISTRY  
OF AGRICULTURE LIVESTOCK, FISHERIES AND CO-**

**OPERATIVES ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**ENG JOHN M LOTONDO ..... PROPOSED INTERESTED PARTY**

**ESTATE OF ROBERTSON DUNN ..... PROPOSED INTERESTED PARTY**

**RULING**

1. The ruling herein relates to the Notice of Motion dated the 26<sup>th</sup> August, 2025 brought under Order 1 Rule 10, Order 40 Rule 1 and Order 51 of the Civil Procedure Rules and all the enabling provisions of the law. It is premised on the grounds set out on the body of the same, and its supported by the annexed affidavit sworn by John M. Litondo, on even date.
2. Through the application, the applicant has sought the following orders;
  1. Spent.
  2. That this Honourable Court be pleased to join the proposed interested parties to these proceedings.



3. That upon the hearing and determination of this application, this honourable court be pleased to issue an order directing that the sum of Kenya Shillings one Hundred and Sixty one million (KES.161,000,000/-) held in account number 00150510020002 on behalf of the 2<sup>nd</sup> Respondent herein be released to the 2<sup>nd</sup> and 3<sup>rd</sup> Interested parties herein in part satisfaction of the award issued in HCCC 1655 of 1986.
4. That this Honourable Court be pleased to grant any other order it may deem just, fit and expedient in the interest of justice.
5. That costs of this application be provided for.
3. It is the applicants' case that a judgement was delivered on the 7<sup>th</sup> October, 2005 in High court Civil Case No. 1655 of 1986 (Halal Meat Products Vs The Hon. Attorney General and 2 others), in which the court entered judgement in favour of the Government for Ksh. One Billion, Eight Hundred and Seven Million, Seven Hundred and Seventy Two Thousand (1,807,772 /=-)
4. That in addition, the court also awarded Professional fees for the Plaintiff's surveyors, Engineers and contractors at 7% of the award, and the decision was affirmed by the court of appeal in Civil Appeal No. 114 of 2009, on the 29<sup>th</sup> July, 2016.
5. The applicants state that on the 8<sup>th</sup> day of December 2020, the court pursuant to an application by the Professionals directed that the award as granted to the professionals be paid to them directly, but to date, the said money has not been paid to them despite the proposed interested parties pursuing the payment relentlessly.
6. That the proposed interested parties have recently learnt that on the 20<sup>th</sup> December, 2024, the Principal Secretary of the respondents herein authorized the payment of the first tranche of the decretal sum to the tune of Ksh. Two Hundred and Seventy Five Million (KES 275,000,000), but the same was transferred to the Plaintiff's purported Advocates, the 1<sup>st</sup> respondents herein, as part payment of the Plaintiff's main award.
7. The applicants contend that while the Plaintiff in HCCC 1655 of 1986 is entitled to the award, the disbursed amounts were meant for the Professionals after intervention from the Head of the Civil Service, The Controller of Budget, The Honourable Attorney General and the Cabinet Secretary, Treasury.
8. That the second tranche of Ksh. One Hundred and Sixty-one Million (161,000,000) was about to be disbursed to the said Plaintiff's Advocates in further settlement of the award, when the applicant herein (EACC) obtained orders from this Honourable court to freeze the account from which the said funds were to be disbursed. That the said orders were obtained on the basis of suspicion of corruption and illegal benefits to state/public officers.
9. The applicants contend that the said corruption goes beyond the illegal benefits to state/public officers and goes to the root of the entire payout, because money that was meant for them as the Professionals, was paid out to the Plaintiff's purported Advocates in the said matter through a fraudulent Scheme. That they are seeking the intervention of the court in ensuring that the Ksh. 161,000,000 that is currently in the said account is not lost through fraudulent means or is not erroneously paid out to another party or its advocates.
10. The 1<sup>st</sup> respondent supported the application through the replying affidavit sworn by Robert Muriuki, on the 29<sup>th</sup> October, 2025. He avers that on or about the month of November, 2024, he was instructed by Ibrahim Mbogo Ngatia advocate who informed him that he was representing parties who were



following up on the payment of a decretal amount due to Halal Meat Products arising from various matters, including HCCC No. 1655 of 1986 – Halal Meat Products Vs The Attorney General & 2 others.

11. That the applicants herein were part of the Professionals identified in the proceedings and judgement as entitled to benefit from the professional fees component of the decretal sum. That on or about the 31<sup>st</sup> December, 2024, the 1<sup>st</sup> respondent received payment of Ksh. Two Hundred and Seventy-Five Million (275,000,000) from the 2<sup>nd</sup> respondent and the 1<sup>st</sup> respondent acted solely on the basis of the written instructions that he received, which specified payments and retained Ks. 10,000,000 as legal fees.
12. He further states that the disbursement of the funds was effected through the firm's client account, in accordance with the authority letter dated 20<sup>th</sup> November, 2024. That he was informed that the applicants herein did not receive their Professional fees from the decretal sum, and hence he supports the position of the interested Parties to the extent that their claim is based on the express terms of the judgement and the court's recognition of their contribution and entitlement. That the 1<sup>st</sup> respondent neither withheld nor benefitted from any portion intended for the interested parties, and the firm's actions were undertaken in utmost good faith and professional diligence.
13. The EACC opposed the application vide a replying affidavit sworn by Beatrice Oduor, on the 2<sup>nd</sup> October, 2025. On behalf of the Commission, she avers that the application is misconceived, incompetent, frivolous, bad in law and an abuse of the court process. She states that the applicants have no locus to file the present application.
14. That the Commission received credible information that the Permanent Secretary together with other Senior officials of the State Department for Agriculture – Ministry of Agriculture Livestock, Fisheries and Cooperatives devised a scheme to embezzle public funds disguised as payment of compensation awarded to Halal Meat Products Limited against the Government pursuant to the judgement delivered in HCCC No. 1655 of 1986.
15. That on the 30<sup>th</sup> July, 2025 the commission sought and obtained preservation Orders to preserve Ksh. 9,352,874.00 held at DIB account No. 001505100200002 in the name of the 1<sup>st</sup> respondent, and Ksh. 161,000,000 held at KCB Account No. 1274665205 in the name of National Value Chain Support Programme. That the preserved funds are public funds that are not meant for settlement of the decree in HCCC 1655 of 1986 but are held in the 2<sup>nd</sup> respondent's account earmarked for the National Value Chain Support Programme.
16. The Commission avers that the National Value Chain Support Programme is under the State Department for Agriculture and that the State department for agriculture and the State department for livestock development are two distinct departments, each with its own budgetary allocation and accounting officer. That consequently, a court order relating to one department cannot be paid through an account belonging to the other as this would amount to diversion of funds which would prejudice the very purpose for which the funds were intended.
17. The Commission contends that the presence of the applicants would therefore introduce extraneous issues, prejudice the proceedings, and improperly divert this court from its role in adjudicating preservation proceedings under Section 56 of the ACECA, to that of enforcing private decrees arising from commercial disputes, yet, they have alternative remedies available to them under the Civil Procedure Rules to pursue satisfaction of their decree.
18. The Commission further contends that the decree in HCCC No. 1655 of 1986 has no bearing whatsoever on the question before the court, which is the preservation of the funds pending conclusion of investigations and/or recovery proceedings. That once the funds have been preserved under Section



56 of the ACECA, they cannot be alienated, transferred, or dissipated except in accordance with the express provisions of the Act and upon final determination of the matter.

19. That to allow the transfer of the preserved funds to a private creditor would defeat the very essence of the preservation orders, whose aim is to safeguard suspected proceeds of corruption for the benefit of the public and expose the Commission to liability by third parties. Further, that the applicants' attempt to attach or claim these funds through the back door of these proceedings is irregular, contrary to the law and amounts to an impermissible execution process against assets under preservation.
20. The application was disposed of by way of written submissions.

### **Applicants' Submissions**

21. The applicants identified three issues for determination as hereunder;
  - a. Whether the professionals have demonstrated a direct legal stake and interest in the subject matter to warrant joinder under Order 1 Rule 10.
  - b. Whether the EACC'S argument regarding the sources of the funds (Value Chain Support Programme) should override the proven purpose of the transfer (Decree Settlement in these exceptional circumstances).
  - c. Whether this Honourable court should exercise its inherent jurisdiction to order the immediate release of the traceable Ksh. 161,000,000 to the applicants to prevent double injustice.
22. The applicants submitted that they have locus standii and their claim is not "extraneous issue" or a private decree, but it is a matter of protecting the integrity of a High court decree that has been systematically and fraudulently frustrated.
23. That the fraudulent payment of Ksh. 275,000,000 was executed using forged documents purportedly from the 1<sup>st</sup> proposed interested party according to the replying affidavit of Litondo and this makes the Professionals essential parties to determine the true ownership of the remaining funds. It is, therefore, the submission by the applicants that they have identifiable stake and legal interest in the proceedings which are proximate and have demonstrated the prejudice to be suffered if non-joined. Reliance was placed on the case of *Trusted Society of Human Rights Alliance Vs Mumo Matemo & 5 others* (2014) eKLR (Supreme Court)
24. The applicants have submitted that the legal system to Section 3A of the *Civil Procedure Act* grants this court inherent powers to issue necessary orders to achieve the ends of justice or to prevent the abuse of the court process, notwithstanding any provisions of the Act. He invited the court to act to ensure fairness and prevent misuse of the legal system even if there is no specific rule in the Act that covers the situation, as long as it is for ends of justice.
25. It was the applicants' contention that whether the EACC's Order is obtained in circumstances that threaten to prejudice an innocent decree-holder, the court must use its inherent power to balance the public interest in fighting corruption with the Public interest in protecting judicial decrees. That to deny joinder would be to condone the further victimization of the Proposed interested Parties by administrative delay and legal complexity.
26. That the diversion of the funds into a "National Value chain support programme" account is merely the modus operandi of the corrupt officials and the court should not allow the corrupt administrative error to defeat the legal right of the decree -holder and that the funds are therefore traceable to the Decree in equity, notwithstanding the name of the holding account.



27. The applicants made reference to Section 2 (1) and 2(3) of the *Government Proceedings Act*, and averred that they are entitled to the funds as the award is specific, distinct, and traceable arising from the High court ruling dated the 8<sup>th</sup> day of December, 2020 which directed that the applicants be paid directly. That they should, therefore, not be denied their right to enjoy the fruits of their judgement. Reliance was placed on the case of Republic Vs Town Clerk of Webuye County Council & Another (HCCC 448 of 2006).
28. That the preservation Orders must not be to nullify the decree of the High court in HCCC 1655 of 1986 and for that reason, the Ksh. 161,000,000 earmarked for the decree, must be treated as money belonging to the decree-holders in equity. That the EACC's suggestion that the applicants pursue alternative remedies will be met with the defence that funds are preserved by superior Court and any alternative remedy is therefore illusory while the preservation order subsists.
29. That allowing the EACC to tie up these funds, only to recover them through lengthy civil recovery proceedings would subject the 88 year old 1<sup>st</sup> proposed interested party and the Estate, to years of further delay effectively compounding the injustice perpetrated by the corrupt officials.

### **Respondent's Submissions (EACC)**

30. The respondent submits that the application is misconceived, incompetent, frivolous, bad in law and an abuse of the legal process as the interested parties (applicants) are strangers to the preservation proceedings and they lack locus standi to file the present application.
31. The respondent has submitted that Section 56 of the *Anti-Corruption and Economic Crimes Act* (ACECA) is special and sui generis, limited to the Commission and the respondents (State Department for Agriculture- Ministry of Agriculture Livestock, Fisheries and Cooperatives) against whom the preservation orders are sought. Reliance was placed on the case of Ethics & Anti- Corruption Commission Vs Isika & 3 Others (2023) KEHC (KLR). That the proceedings under Section 56 are investigative in nature and not intended for third parties interventions and the said proceedings do not contemplate the participation of third parties seeking to assert private interest over preserved funds, and any attempt to introduce execution or satisfaction of Civil decrees into such proceedings is beyond the scope of the Statute and an abuse of the process.
32. That the presence of the applicants would improperly introduce extraneous Civil dispute that will prejudice the integrity of the ongoing investigations and divert the court from its Statutory role under ACECA to that of enforcing a private commercial decree. That to allow transfer of such funds to private creditors at this stage would defeat the very object of the preservation orders.

### **Analysis and Determination**

33. The court has considered the application together with all the materials that have been placed before it. In my view the only issue for determination is whether the applicants (proposed interested Parties) should be enjoined to these proceedings and whether upon joinder, the subject funds in the sum of Ksh. 161,000,000 should be released to them.
34. The applicants have moved the court under Order 1 rule 10, Order 40 Rule 1 and Order 50 of the Civil Procedure Rules. They have sought to be enjoined as parties to the proceedings herein and upon joinder, the funds in the sum of Ksh 161,000,000 held in the 2<sup>nd</sup> respondent's account be released to them.
35. They aver that they are decree holders in HCCC 1655 of 1986 in which judgement was entered against the Government for Ksh 1,807,772/= on the 7<sup>th</sup> October, 2005, out of which, the court awarded the



- Professional fees for the Plaintiff's surveyors, Engineers and Contractors at 7% of that total award. The court went further and directed that the money be paid to them directly, and since then, they have been pursuing the payments relentlessly.
36. The applicants learnt that on the 20<sup>th</sup> December 2024, the Principal Secretary of the 2<sup>nd</sup> respondent herein authorized the payment of the first tranche of the decretal sum of Ksh 275,000,000 but the same was fraudulently transferred to the Plaintiff's purported advocates (the 1<sup>st</sup> respondent herein) as part of the Plaintiff's main award.
  37. As the 2<sup>nd</sup> tranche was about to be disbursed, the respondent herein (EACC) obtained preservation orders on the basis of suspicion of corruption and illegal benefits to State/Public officers. The applicants are asking this court to release the preserved amount to them in satisfaction of the aforementioned decree.
  38. The respondent (EACC) has opposed the application for the reasons that this court has set out herein before.
  39. An interested party is one who has an identifiable stake in the proceedings though he/she was not a party to the cause ab initio. He or she is the one who will be affected by the decision of the court when it is made, either way. Such a person feels that his or her interest will not be articulated unless he himself or she herself appears in the proceedings, and champions his or her cause".....see the case of Trusted Society of Human Rights Alliance Vs Mumo Matemo & 5 Others (2014) eKLR and the case of Francis K. Muruatetu & Another Vs Republic & 5 Others (2016) eKLR (Supreme court)
  40. The applicants herein state that their interest is founded on the decree that was issued in HCCC No. 1655 of 1986 in which the court directed that part of the money that was awarded in that case be paid to them directly. Their apprehension is grounded on the fact that on the 20<sup>th</sup> December, 2024 the 1<sup>st</sup> tranche of the decretal sum being a total of Ksh. 275,000,000 was fraudulently paid out and transferred to the 1<sup>st</sup> respondent herein and the balance of Ksh. 161,000,000 was about to be disbursed to the 1<sup>st</sup> respondent when the EACC obtained preservation orders for preservation of the said amount.
  41. The proceedings before this court were commenced by the EACC under Section 56 of the ACECA by way of the Originating Motion dated the 29<sup>th</sup> July, 2025. This court issued preservation Orders to preserve Ksh. 161,000,000 and Ksh. 9, 352, 874.00 held by the 1<sup>st</sup> and the 2<sup>nd</sup> respondents respectively.
  42. The applicants are claiming legal interest in the preserved funds pursuant to a decree that was issued in HCCC 1655 of 1986. They have averred that the money is part of what they are entitled to in satisfaction of the aforesaid decree. On their part, the EACC states that the funds are public funds belonging to the National Value Chain Support Programme, under the State Department of Agriculture and not private funds that can be used to satisfy the applicants decree.
  43. The 2<sup>nd</sup> respondent has intentionally chosen not to participate in this application, yet, it could have shed some light on the purpose for which it is holding the money and who is/are the beneficiaries of the funds. According to the applicants, the funds are meant for satisfaction of the decree. On the other hand, the EACC contends that it is public funds.
  44. The applicants have not provided any evidence to this court to prove that the preserved funds are meant to be utilized for the satisfaction of the decree which was issued in their favour.
  45. Section 56 of the ACECA under which the initial application for preservation was made, does not anticipate an application like the one before this court. The Section provides for only three permissible applications:



- a. An application for preservation orders.
  - b. An application to extend such Orders.
  - c. An application to discharge or vary the orders on evidence that the subject property was not acquired as a result of corrupt conduct.
46. The current application does not fall within the three scenarios provided for in Section 56. As correctly submitted by the EACC, the jurisdiction of the court under Section 56 is special and Sui generis and its only limited to the EACC and the 1<sup>st</sup> and 2<sup>nd</sup> respondents against whom the preservation Orders are sought or any third party whose interests falls within the scenario set out at Par. 45 (c) above.
47. The application by the applicants herein does not fall within the scope of Section 56 of the ACECA. It is seeking to enforce a decree that was issued in a different matter and this can be done through the avenues provided for under the Civil Procedure Act and the Rules made thereunder.
48. For the reasons that I have given, I find that the application has no merits and it is hereby dismissed.
49. It is so ordered.

**SIGNED, DATED AND DELIVERED VIRTUALLY THIS 3<sup>RD</sup> DAY OF DECEMBER, 2025.**

.....

**L.M. NJUGUNA**

**JUDGE**

In the presence of: -

Miss Biwott holding brief for Miss Wambugu for the applicant/respondent

Miss Amutavi holding brief for Mr. Okatch for the Interested Parties

Miss Wahome holding brief for Mr. Iredi for the 1<sup>st</sup> Respondent

No appearance for the 2<sup>nd</sup> respondent

Court assistant – Adan

