



Ethics & Anti-Corruption Commission v Chege & 8 others (Anti-Corruption and Economic Crimes Civil Suit E043 of 2024) [2025] KEHC 17920 (KLR) (Anti-Corruption and Economic Crimes) (3 December 2025) (Ruling)

Neutral citation: [2025] KEHC 17920 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
ANTI-CORRUPTION AND ECONOMIC CRIMES CIVIL SUIT E043 OF 2024
LM NJUGUNA, J
DECEMBER 3, 2025**

BETWEEN

ETHICS & ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

**ESTHER WANJIRU CHEGE 1ST DEFENDANT
ROBERT MACHARIA KIMOTHO 2ND DEFENDANT
CHRISTINE WARIGIA MWANGI 3RD DEFENDANT
JAMES CHEGE NJOROGE 4TH DEFENDANT
JAMES NGIGI KAMAU 5TH DEFENDANT
ROKAYS ENTERPRISES LIMITED 6TH DEFENDANT
RESWANS HOLDINGS LIMITED 7TH DEFENDANT
KAYDTECH ENTERPRISES LIMITED 8TH DEFENDANT
RESWAN ENTERPRISES LIMITED 9TH DEFENDANT**

RULING

1. This is a part-heard matter. When it came up in court for further hearing of the defence case, counsel for the defendants, Mr Muthomi Thiankolu informed the court that he had filed a further list and bundle of documents on the 13th October, 2025. He sought the leave of the court to have them admitted for the following reasons;



- a. The documents are relevant to the question of relationship between the 1st and the 4th defendants.
 - b. That they are relevant as to whether the EACC had prior knowledge of the defendants' sources of income.
 - c. As to whether the relevant notice was issued.
2. Counsel averred that the said documents have been adduced in evidence and they comprise of documents that the EACC gave to the defendants in the criminal case which were given to them very late. That the rest are documents that have been marked for identification by the defendants in the criminal case.
 3. Counsel stated that some of those documents were in possession of the Plaintiff herein and the defendants only managed to access them after the close of pleadings. That the defendants had difficulties in obtaining some of those documents as some disappeared after the raid.
 4. Counsel further submitted that the Plaintiff had an opportunity to challenge those documents in the criminal case and they will have another opportunity to do the same in this matter. He relied on Section 55 (8) of the ACECA which provides that evidence and documents given in a Civil court are admissible in the criminal court and argued that by parity of reasoning, evidence adduced before a criminal court should also be admitted in a Civil case as long as parties are the same.
 5. The application was opposed by counsel for the Plaintiff, M/s Lunyolo for the reason that the Plaintiff has already closed its case. She stated that the Plaintiff called two witnesses being the Investigating officer and the accounting officer who dealt with the issues of the finances. Further, that the issues being raised herein were raised in the criminal case and what is before this court is a Civil matter and parties are different.
 6. Counsel submitted that the Plaintiff's case is detailed in the Originating Summons and since all the defendants were served, they had every opportunity to raise all the issues that they are raising now including the issue of the relationship between the 1st and 4th defendants herein. Further, that some of the documents that they wish to introduce like the letter dated the 19th January, 2022 and the other one dated the 24th February, 2012 were within their possession and knowledge.
 7. That the defendants filed a replying affidavit in the month of February, 2025 and at that point they knew the relationship between the 1st and the 4th defendants and no issue had been raised in that regard. That the defendants ought to have filed a further affidavit instead, but none was filed. That the issue of the relationship came up in Cross examination of the defendant and what the defendants are doing is to patch their evidence.
 8. Counsel submitted that the defendants were served with the statements and the documents in the criminal case, on the 4th day of June 2025 and by then the Plaintiff had not closed its case herein and that being the case, the defendants ought to have filed these documents if they thought the documents were important to them. That it is them who recorded the statements and what they were recording was within their knowledge.
 9. Counsel contended that it would be prejudicial to the Plaintiff's case for the defendants to be allowed to introduce new documents after the defendants' main witness has already been cross examined as cross examination alone will not be enough to interrogate the documents. Reliance was placed on the case of Johana Kipkemei Too v Hellen Tum ELC No. 975 of 2012 in which the court disallowed production of documents as the same were sought to be introduced too late in the day.



10. In rejoinder, Counsel for the defendants submitted that by law, the only reason why a court should disallow production of a document is if they are irrelevant. That the court has not been told that the documents the defendants are seeking to introduce are not relevant. That the said documents were given to them in the month of June, by which time, the pleadings had closed and by withholding of the documents, the plaintiff was in breach of a legal and fiduciary duty.
11. That the Plaintiff's mandate is not only to produce documents that incriminate the defendants but they are also under duty to produce those that exonerate them, and they should not be allowed to be economical with the truth. That though the parties are bound by their pleadings, it is also true that parties should not plead evidence and that the defendants are not seeking to amend the pleadings.

Analysis and Determination

12. The court has considered the oral application by the Counsel for the defendants and the response by the counsel for the plaintiff. The only issue for determination by this court is whether the defendants have established good grounds on the basis of which the court can allow the application.
13. The documents sought to be introduced are contained in the 1st to 4th and 6th to 9th Defendants' Further List of Documents dated the 13th October, 2025. The said documents are as follows;
 - a. Certified typed court Proceedings in the Kajiado ACECA Criminal Case No. E296 of 2025: Republic v Esther Wanjiru Chege & 6 Others
 - b. Sub File E of the Prosecution File in Kajiado ACECA Criminal Case No. E296 of 2025: Republic v Esther Wanjiru Chege & 6 others
 - c. DMFI-1, DMFI-2 and DMFI-3 in the Kajiado ACECA Criminal Case No. E296 of 2025: Republic v Esther Wanjiru Chege & 6 Others.
14. Counsel for the defendants avers that the said documents are relevant to the question of the relationship between the 1st and the 4th defendants; that they are also relevant as to whether the EACC had prior knowledge of the defendants' sources of income and as to whether the relevant notice was issued. That the documents also comprise of the Certified copies of the proceedings for the criminal case in Kajiado and documents that EACC gave to the defendants in the Criminal case, which the defendants say were given to them very late. That the rest are documents in the criminal case which have been marked for identification by the accused persons, who are the defendants in this case.
15. Counsel has further stated that some of the documents were in possession of the EACC and they only managed to access them after the close of pleadings.
16. On her part, Counsel for the Plaintiff avers that the matter herein is different from the Criminal case and the Plaintiff's case is detailed in the Originating Summons. That all the defendants were served and they had every opportunity to raise the issues that they are now raising and the issue of the relationship between the 1st and the 4th defendants was within their knowledge.

Analysis And Determination

17. The court has looked at the documents that the defendants are seeking to introduce. Among them are the letters marked as DMFI-1, DMFI-2 and DMFI-3 in Kajiado ACECA Criminal Case No. E296 of 2025. DMFI-1 and the other letter on the page next to DMFI-1 are dated 19/01/2012 and 24/02/2012 respectively, and they originate from the office of Provincial Administration. The letters were written more than 13 years ago. The court has not been told why they were not availed to court earlier. There has not been any submission to the effect that they had been misplaced.



18. The other documents marked DMFI-2 and DMFI-3 are both dated the 20th May, 2025 from the Ministry of Interior and National Administration. Counsel for the defendants submitted that the said documents are relevant to the question of relationship between the 1st and 4th defendants. In this regard I do agree with the counsel for the Plaintiff that the issue of the relationship between the 1st and 4th defendants is and has always been within their knowledge and it is not something they have to struggle to prove.
19. As for the Certified copy of the proceedings, I have noted that the case was last in Court on the 24th September, 2025. All the defendants in this case are accused persons in the Criminal case. The defendants have no control in the manner and the speed at which the criminal case is prosecuted. As correctly submitted by Counsel for the defendants, the decision on when to close the Prosecution's case is that of the EACC, and that should not prevent the defendants from producing the proceedings in the Criminal case if the same were conducted late in the day compared to the proceedings in the Civil matter.
20. As for the defendants' witness statements in the Criminal case, counsel for the Plaintiff submitted that the Statements and the documents that the Prosecution intended to use were supplied to the defendants, on the 4th June, 2025 by which time the Plaintiff had not closed its case. On the 9th June, 2025 this matter was in court for further hearing and the defendants ought to have filed these documents if the documents were important to them. However, in the interest of justice, I will allow the defendants to introduce the witness statements as requested.
21. As it stands now, the Plaintiff has closed its case and has cross examined the main defendants' witness.
22. However, for the Certified copies of the proceedings, the same is an official record of proceedings taken by a court of competent jurisdiction involving all the parties who are the defendants herein and who are the accused persons in the criminal matter. I don't think there is any prejudice to be suffered by any of the parties if the proceedings in the Kajiado Criminal case and the witness statements are introduced in these proceedings, after all, all the parties herein have participated in the criminal trial up to the stage it has reached. The plaintiff reserves the right to recall any witnesses if need be.
23. In the end and for the reasons that the court has given hereinabove, the oral application by the defendants partially succeeds and the court makes the following orders;
 - a. The documents namely the certified copies of the proceedings in Kajiado ACECA Criminal Case No. E296 of 2025: Republic v Esther Wanjiru Chege & 6 Others and the witness statements in the 1st to 4th and 6th to 9th defendants further list of documents dated the 13th October, 2025 are hereby admitted as duly filed.
 - b. All the other documents in that further list of documents are disallowed.
24. It is so ordered.

SIGNED, DATED AND DELIVERED VIRTUALLY THIS 3RD DAY OF DECEMBER, 2025.

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L.M. NJUGUNA

JUDGE

In the presence of:-

Mr. Muthoni appearing with Dunstan Ondieki for the 1st, 4th and the 6th – 9th defendants



Mr. Muthomi for the 5th defendant

Miss Lunyolo for the plaintiff

Court assistant – Adan

