

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MILIMANI**  
**ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION**  
**ACEC SUIT NO. E041 OF 2025**

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

**VERSUS**

**BENARD THEURI & 5 OTHERS.....  
DEFENDANTS**

**AND**

**COUNTY GOVERNMENT OF KIAMBU.....INTERESTED  
PARTY**

**RULING**

1. This ruling relates to two applications, one is dated the 30<sup>th</sup> October, 2025 and the other one dated the 10<sup>th</sup> November, 2025 (herein the 1<sup>st</sup> and the 2<sup>nd</sup> applications respectively).
2. The 1<sup>st</sup> application is brought under **Sections 1A,1B, 3, 3A and 63** of the **Civil Procedure Act, Order 40 Rules 1, 2, 3, 4 and 51** of the **Civil Procedure Rules, Sections 2 ,66 (1) (3b) (4)** of the **Public Procurement and Asset Disposal Act, 2015; Section 11 (1) (j)** of the **Ethics and Anti-Corruption Commission Act,2011; Sections 2, 23, 45, 51,**

**52, 53 & 56C** of the **Anti -Corruption and Economic Crimes Act** and all the enabling provisions of the law.

**3.** The application is premised on the grounds set out on the body of the same, and it is supported by the annexed affidavit sworn by Juliet Kavala, on the even date. Through the application, the plaintiff/applicant has sought the following Orders;

**1) Spent.**

**2) Pending the hearing and determination of this application, this Honourable Court be pleased to issue an interim order of injunction to restrain the Interested Party herein from paying the 4<sup>th</sup> Defendant Kshs. 166,295,500.00 being the balance of the contract price in respect of Tender No. 1223215 for the development, installation, testing, training, commissioning and support services of an enterprise resource planning system. (ERP)**

**3) Pending the hearing and determination of the plaintiff's suit, this honourable court be pleased to issue an interim order of injunction to restrain the Interested Party herein from paying the 4<sup>th</sup> Defendant Kshs. 166,295,500.00 being the balance of the contract price in respect Tender No.1223215 for the development, installation, testing, training, commissioning and support services of an enterprise resource planning system (ERP).**

**4) In the alternative to prayers 2 and 3 above, pending hearing and determination of the plaintiff's suit, this Honourable court be pleased to issue an interim order of prohibition to prohibit the Interested Party herein from paying he 4<sup>th</sup>**

***Defendant Kshs.166,295,500.00 being the balance of the contract price in respect of Tender No. 1223215 for the development, installation, testing, training, commissioning and support services of an enterprise resource planning system (ERP)***

***5) Costs of the application be provided for.***

**4.** The 2<sup>nd</sup> application is brought under **Order 40 Rules 5 and 7** of the **Civil Procedure Rules and Sections 1A, 1B and 3A** of the **Civil Procedure Act**. It is premised on the grounds set out on the body of the same, and it is supported by the annexed affidavit sworn by Max Muturi Chege on the 10<sup>th</sup> November, 2025. Through the application, the applicant has sought the following Orders;

***a. Spent.***

***b. This court be pleased to determine this application on a priority basis owing to the impending paralysis of the Applicant's functions.***

***c. This Honourable Court be pleased to vary and/or set aside its temporary injunctive orders issued on the 31st October 2025.***

***d. Costs be provided for.***

**5.** In the 1<sup>st</sup> application, the applicant avers that on or about the 30<sup>th</sup> March, 2023, the interested Party advertised an invitation for bids for tender which indicated the closing date for

submission of bids as 6<sup>th</sup> April, 2023, by which date the interested Party had received one bid from the 4<sup>th</sup> Defendant.

**6.** The applicants states that one of the mandatory technical requirements set out in the Tender document was the provision of Audited Financial Statements for the last three years (2022, 2021 and 2020) demonstrating: -

- i) Three years' average turnover of 400 million and above
- ii) Profitability of at least 100 Million per year
- iii) Positive cash flow
- iv) Asset base of not less than 500 Million

**7.** That in its bid for the tender, the 4<sup>th</sup> defendant provided financial statement for 2022, 2021 and 2020 purportedly audited by the firm of MSM Chris & Associates, and contrary to the representations by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants in the 4<sup>th</sup> defendant's bid document, the plaintiff's investigations established that the 4<sup>th</sup> defendant's financial statements for 2022, 2021 and 2020 were never audited by the said firm. That additionally, the 4<sup>th</sup> defendant provided bank statements for USD bank account number 8069940029 held at NCBA Bank

purportedly depicting a positive cash flow, which according to the applicant, were fraudulently and illegally edited to depict a purportedly healthy cash flow and profitability.

- 8.** Further, that in its bid document, the 4<sup>th</sup> defendant represented that, one, Evah Mukami and Kennedy Gitara are among its employees and provided their purported curriculum vitae but to the contrary, the said Evah Mukami and Kennedy Gitara were not employees of the 4<sup>th</sup> defendant as alleged.
- 9.** The applicant also averred that the contract agreement between the interested party and the 4<sup>th</sup> defendant was executed on the 24<sup>th</sup> April, 2023 and it stipulated the contract sum as Ksh. 230,000,000 with the contract period of 6 months which was to commence not later than 14 days from the date of execution.
- 10.** It was also the applicant's contention that the award of the tender to the 4<sup>th</sup> defendant, and the extension of the contract between the interested Party and the 4<sup>th</sup> defendant was illegal, fraudulent and a conspiracy by the defendants to confer a benefit and/or public funds to the 4<sup>th</sup> defendant and a

breach of fiduciary duty and/or trust on the part of the 5<sup>th</sup> and 6<sup>th</sup> defendants.

- 11.** That the 4<sup>th</sup> defendant has already received a total of Ksh. 63,704,500 being public funds that it fraudulently acquired in respect of the Tender and the applicant is apprehensive that pending the hearing and determination of the suit, the interested party is likely to pay the 4<sup>th</sup> defendant Ksh.166,295,500 being the balance of the contractual sum, hence, rendering the possibility of recovering the said funds extremely difficult, should its case succeed.
- 12.** The applicant contends that the 4<sup>th</sup> defendant did not meet the mandatory requirement of the Tender and ought not to have been considered for the award of the said Tender, as the same was fraudulent, illegal, unlawful and therefore null and void.
- 13.** The 4<sup>th</sup> defendant has opposed the application vide a replying affidavit sworn by Bernard Theuri, who is the 1<sup>st</sup> defendant and also the Director of the 4<sup>th</sup> Defendant. He has averred that by dint of an advertisement on 30<sup>th</sup> March, 2023, in the Daily Nation, for the said tender, it submitted its bid for the

open tender and the 4<sup>th</sup> defendant was the only entity that applied for the said tender.

**14.** That subsequently, the 4<sup>th</sup> defendant and the interested Party entered into an agreement dated the 28<sup>th</sup> April, 2023 as regards the ERP system and in discharge of its obligations under the contract it deployed an ERP System designed to meet and exceed the standards required by the interested party. That the system has enabled the interested party to register a Ksh.3 Billion increase in revenue translating to a 47X return on their investment which means the public has not lost any money with respect to the ERP system and the 4<sup>th</sup> defendant has not benefited unlawfully from public funds.

**15.** The 4<sup>th</sup> defendant avers that all payments have been made for the actual work done, and at present, it has an outstanding invoice of Ksh. 20,938, 056.56 and as it stands now, the 4<sup>th</sup> defendant has been funding the operations of ERP system out of its pocket which is not sustainable as its resources are finite and as such, the system will shut down anytime if the exparte Orders are not set aside. It has denied

that it falsified any documents so as to win the tender for the ERP system from the interested party.

**16.** The 4<sup>th</sup> defendant avers that the plaintiff has not established a prima-facie case, in that, the application and the pleadings the plaintiff has filed evinces the plaintiff's uncertainty as to whether there has been loss of monies by the interested party on account of deployment of the 4<sup>th</sup> defendant. Further, that contrary to the plaintiff's portrayal of an alleged fraudulent contract, the 4<sup>th</sup> defendant has diligently executed the contract, delivering tangible and verifiable value in light of the process of the tender, and owing to the excellent performance of the contract by the 4<sup>th</sup> defendant, the interested party has reported a KES 3 Billion increase in its own revenue.

**17.** That additionally, the system has streamlined operations, reducing revenue leakages that previously plagued the interested party prior to the installation of the system and granting of the orders would disrupt and paralyze public service delivery to the people residing within the interested party. Further, that the plaintiff has not demonstrated the

prejudice that it will suffer, and which harm cannot be compensated for by award of damages.

- 18.** That the 4<sup>th</sup> defendant has placed the interested party on notice that it will not accept any liability for any damage or loss occasioned by a shutdown of the system which damage may include a general collapse of the County systems and revenue loss.
- 19.** The 3<sup>rd</sup> defendant who has been sued as a shareholder of the 4<sup>th</sup> defendant reiterated and adopted the response filed on behalf of the 4<sup>th</sup> defendant. She has denied that any funds have been corruptly, fraudulently and illegally acquired in respect of the subject tender and no culpability has been established against the 4<sup>th</sup> defendant or any of its officials.
- 20.** She avers that although the plaintiff attempted to press charges on the basis of the same allegations set out in this matter, the Director of Public prosecutions took the position that the plaintiff's investigations had critical evidential gaps.
- 21.** That regarding the allegations touching on the contents of the documents submitted by the 4<sup>th</sup> defendant as part of its bid during the tender process and the merits of the award, the 3<sup>rd</sup>

defendant contends that there are prescribed avenues through which all such questions can be exhaustively interrogated either as part of the legislated recourse mechanisms, to tender processes or in the context of criminal trials where charges have been preferred and evidence taken. That the application does not disclose any cause of action against any of the Directors or Shareholders of the 4<sup>th</sup> defendant in a personal capacity.

**22.** The applicant filed a further affidavit sworn by Everlyne Wachira in response to the defendants replying affidavits. She avers that the basis of the plaintiff's suit and the application for injunction, is the fact that the contract at the heart of this matter stands on pertinent bid documents which were forged and therefore, if the basis upon which the contract was awarded to the 4<sup>th</sup> defendant is fraudulent, then the contract and its continued performance is a nullity and goes against public policy in the war on graft. That the 4<sup>th</sup> defendant did not meet the mandatory requirements of the tender and ought not to have been considered for the award of the said tender.

- 23.** She avers that any threatened shut down of the ERP system as alleged by the interested party and the 4<sup>th</sup> defendant would be in breach of Article 7.2.4 of the contract dated the 28<sup>th</sup> April, 2023 which states that “Justifiable delay in payment by the County Government of Kiambu shall not necessitate the developer to suspend/withhold access and/or operation of the ERP”.
- 24.** That a court order issued by a competent court prohibiting effecting of payments under the impugned contract pending the determination of the suit would constitute a justifiable delay within the meaning of Article 7.2.4 of the contract between the interested party and the 4<sup>th</sup> defendant. Further, that the interested party and the 4<sup>th</sup> defendant have not demonstrated, by way of evidence, the existence of a contract between them capable of being enforced by the 4<sup>th</sup> defendant to shut down the ERP system.
- 25.** She has stated that in line with the common law principle that no one should be allowed to benefit from her own illegal and wrongful acts, all the monies received by the 4<sup>th</sup> defendant should be forfeited to the state being proceeds of corruption

and/or related to corruption. That in Anti- corruption litigation, undertaken by the plaintiff, the criminal and civil processes are parallel with civil recovery proceedings being non conviction based.

- 26.** The applicant reiterates that the bank statements for USD bank account number 8069940029 held at NCBA bank provided in the 4<sup>th</sup> defendant's bid documents were fraudulently and illegally edited to depict a purportedly healthy cash flow and profitability and that the 4<sup>th</sup> defendant's financial statements for 2022 , 2021 and 2020 were never audited by the firm of MSM Chris & Associates.
- 27.** That the applicant is reasonably apprehensive that if the orders sought are not granted, it shall be impossible to recover the funds the subject of the application from the 4<sup>th</sup> defendant, should the plaintiff's suit succeed, thereby rendering the suit an academic exercise.
- 28.** The interested party opposed the application vide a replying affidavit sworn by Max Muturi Chege, the Director, Legal Services in the County Government of Kiambu, on the 11<sup>th</sup> November, 2025.

- 29.** He avers that sometime in 2022 following the conclusion of the 2022 General Elections, the interested Party, led by the Governor set out on a mission to improve the then prevailing structures within the County including, but not limited to healthcare, education and critically; revenue collection in the County. That from the onset, it was clear that the interested Party's revenue system was seriously lacking in efficiency and transparency, an issue that is a matter of public record as captured in numerous reports by the Office of the Auditor General.
- 30.** That desirous of altering the said status quo, on the 30<sup>th</sup> March, 2023, the interested Party advertised a National Tender Number 1223215 for the supply, Delivery, Installation, Testing, Training, Commissioning & Support Services of an Enterprise resource Planning (ERP) for the County Government of Kiambu and received one bid as at the closing date of 6<sup>th</sup> April, 2023.
- 31.** The interested party states that a letter of award of the tender was issued on the 21<sup>st</sup> April, 2023 to the 4<sup>th</sup> defendant, and on the 28<sup>th</sup> April, 2023, the interested Party entered into

a contract Agreement with the 4<sup>th</sup> respondent particularly for the development of an ERP system which included installation of all modules which were to be Geographic Information System (GIS) based.

**32.** That the ERP system was to be developed with the following listed modules as per the system specifications;

***a) Revenue management and reporting***

***b) Hospital Management Information***

***c) Human resources Management***

***d) Fleet management***

***e) Land Management.***

***f) Case management module***

***g) Electronic Records management module***

**33.** The award of tender included delivery of hardware components to support the ERP system which included Point of Sale (POS) Machines for revenue collection, servers to host the ERP System, UPS power back up machines, data centre air conditioning machines, CCTV sets, main servers, small servers, sinology servers, data centre firewalls, to which, the 4<sup>th</sup> defendant has since delivered the hardware component.

**34.** The interested party avers that the payment under the contract is milestone based meaning that any payment made

by the interested party to the 4<sup>th</sup> defendant is tied to Actual work done and that explains why despite the contract being for a total of Ksh. 230 Million, only Ks. 63 Million has been paid out. That the ERP system is functional and continues to be used across all county Government's Departments, enabling the collection of significant revenue for Kiambu County, and any decision whose effect is to interrupt the running of the ERP system must then be carefully arrived at, considering the Public harm sought to be prevented by the issuance of such injunctive orders compared to the public harm as a result of the issuance of the orders.

**35.** That the ERP system has generated numerous benefits, chief amongst them the creation of an efficient and synchronized administrative structure in the interested party and a massive increment in revenue collection which has increased by more than Ksh. 3 Billion in just two years of the system as the system has sealed loopholes that enabled revenue leakage.

**36.** The interested party contends that the system itself has not been impugned and as such, the court cannot grant an injunction whose effect is to stop the running and

development of the system, as to do so would be to issue an open ended injunction which instead of addressing the sole grievance of forged documents it would invite consequences such as stopping the development of a system that is not under challenge. That it would prevent the public from having a system that the public not only needed, but is actually reaping the benefits, and it would be self-defeating and contrary to the Public interest.

**37.** That contrary to the applicant's assertion that the public has lost and will lose money, there cannot arise a loss where there is a benefit which, if quantified, far exceeds the quantum of the alleged loss of Ksh.63 Million and the same interested party has as a result of the system increased its revenue collection by Ksh 3 Billion.

**38.** The interested party further avers that the system is still ongoing and an interruption at the present moment means that the remaining modules will not be completed, leading to an incomplete system that covers certain functions and others which have no way of being on boarded, at least not at this point.

- 39.** That as a result of the initial temporary injunction issued by this court, the 4<sup>th</sup> respondent communicated that it shall not continue with the development of the system because they will not be paid for the work done and in their view, under the contract, execution of the works is contingent of a promise to pay at the completion of the works. Further, that an interruption in the running of the system will lead to services offered by the interested party including healthcare, waste management, disaster management and ECDE programmes grinding to a halt as no other system supports the said functions, and the interested party cannot revert to the old system as it no longer exists.
- 40.** The interested party contends that the claims by the applicant are majorly anchored on the fact that the 4<sup>th</sup> respondent uttered false documents or forged documents used to bid for the tender. That the same are criminal in nature and indeed, decisive pronouncement cannot be made by this court until the said criminal-centric claims have been prosecuted and which prosecution will not be by this court sitting as a civil court over the matter.

- 41.** Further, that this court cannot thus procedurally issue an injunction where the demonstration of a prima facie case is anchored on claims that are purely criminal in nature when this court lacks the subject matter jurisdiction to pronounce itself on criminal matters when the matter before it has been filed as a civil suit. The court has been asked to strike a balance between the public interest asserted by the applicant and the one asserted by the interested party and in so doing, the court is urged to adopt proportionate and pragmatic approach balancing accountability and public service continuity.
- 42.** In his replying affidavit, the 5<sup>th</sup> defendant, who is the head of Supply Chain Management at the interested party avers that on the 30<sup>th</sup> March, 2023, the interested party advertised an invitation for bids for tender number 1223215 for the development, installation, testing, training, commissioning and support services of Enterprise Resource Planning System (ERP). That the standard tender documents for procurement contained all that was required of the bidders and the tender evaluation criteria.

- 43.** That the bids were procedurally and lawfully opened and evaluated by the ad-hoc tender opening committees and he reviewed the tender evaluation report as provided for and required of him under **Section 84** of the **Public Procurement and Asset Disposal Act** and recommended approval of the award as proposed by the ad hoc evaluation committee.
- 44.** That there was nothing in the entire process thus far that would have constrained him to give an adverse opinion and any revelation that could only be known by in-depth investigation as is alleged by the plaintiff, were neither within the ambit of the evaluation criteria set out in the tender document nor reasonably known to him. Further, that **Public Procurement and Disposal Act 2015 Section 83 (1)** provides that on post qualification, due diligence MAY be conducted by the evaluation Committee and hence the Act does not provide anywhere that the due diligence shall or must be conducted by the head of the supply Chain.
- 45.** That on his part, he acted diligently and honestly in the performance of his duties to the County Government of

Kiambu and the particulars of breach of fiduciary duty are in his honest view, baseless and not founded on the known and verifiable facts of the subject tender from the inception upto and including rendering of his professional opinion.

**46.** On his part, the 6<sup>th</sup> defendant who is the Chief Revenue Officer, ICT, Supply Chain Management & Internal Audit at the interested Party, avers that he is aware the 4<sup>th</sup> defendant applied for the said tender and after the extensive and rigorous procurement process in line with The Public Procurement and Assets Disposal Act, the 4<sup>th</sup> defendant was successful and thereafter, entered into a contract agreement with the interested Party for the development of ERP system.

**47.** That the said contract was executed on the 28<sup>th</sup> April, 2023 and was to last for six (6) months with five clear milestones as follows:-

***a) Milestone 1 (delivered June 19<sup>th</sup>, 2023): Submission of an inception report.***

***b) Milestone 2: Delivery, installation and operationalization of hardware equipment, revenue management & reporting module and hospital management module.***

**c) Milestone 3: Operationalization of development, building construction, land management, housing, estates and premises and surveying & Geoinformatics modules.**

**d) Milestone 4: Full operationalization of Human Resource, fleet management, case management and electronic records management modules.**

**e) Final module: Successful installation, operationalization and Commissioning of the entire ERP system.**

**48.** He avers that the interested party only authorizes payments for deliverables that have been completed and verified thereby ensuring value for money, and what has been paid so far relate to works performed and approved. That after the end of the six (6) months the 4<sup>th</sup> defendant had not completed the performance of the contract for the reason that inception report had proposed the upgrading of the existing Cisco routers to the Catalyst 9000 series, a change that affected the initial implementation plan necessitating adjustments to the ERP rollout.

**49.** That it was indeed necessary, reasonable and in public interest that an extension be considered, and all the requisite processes were adhered to leading to the execution of the extension contract by which time the interested party had

already paid a total of Ksh.23,000,000 upon submission of an inception report and therefore, liquidating the performance bond of Ksh. 11,500,000 would have meant that the interested party would lose Ksh.11,500,000

**50.** Further, that the critical hardware and software the 4<sup>th</sup> defendant was dealing with were at an advanced stage and that lack of extension would have meant that all these functions that the ERP system was to handle would have suffered, thus, effectively landing the operations of the interested party somewhere between the ICU and the mortician. That all the decisions were made in good faith and the extension is allowed under the Public procurement and Asset Disposal Act.

**51.** He contends that no money was lost and that adequate measures, steps and safeguards were taken within the contract to not only ensure value for each coin paid but also ensure proper audit and evaluation of revenue allocation. Further, that the documents that the plaintiff has complained about are not part of mandatory requirement and they have

not affected in any manner whatsoever the performance and/or execution of the contract.

- 52.** That the ERP system has been successfully rolled out, is fully operational and its actively being used across all departments within the County Government and it has greatly enhanced efficiency and contributes significantly to the County's revenue collection as evidenced by system -generated reports from various revenue streams.
- 53.** In the 2<sup>nd</sup> application, the supporting affidavit by Max Muturi Chege has reproduced the contents of the replying affidavit to the 1<sup>st</sup> application and it would not be prudent use of judicial time to reproduce it here, save for the critical segments of the same. The applicant avers that following the conclusion of the 2022 General Elections, the applicant led by the Governor set out on a mission to review the then prevailing structures within the County including healthcare, education and critically; revenue collection in the County.
- 54.** That desirous of altering the said status quo, the applicant sought to procure a system that would not only cure the leakage of revenue, but also ensure the County operated

within the scope of Article 10 of the Constitution. That the tender was advertised and was awarded to the 4<sup>th</sup> defendant and the 1<sup>st</sup> respondent has not challenged the procurement process but asserted that some of the documents used by the 4<sup>th</sup> respondent to win the tender were questionable.

**55.** That the ERP system covers basically all functions and powers exercisable by the applicant under the 4<sup>th</sup> schedule to the Constitution and as such, the ERP forms the cornerstone of the applicant's operations, and any decision whose effect is to interrupt the running of the ERP system must be carefully arrived at, considering the public harm sought to be prevented by issuance of such injunctive orders compared to the public harm as a result of the issuance of the orders.

**56.** That the system has led to efficient collection of county revenue which has in turn led to increased county revenue collection by more than Ksh.3 Billion in just 2 years of the system as the system has sealed all the loopholes that enabled revenue leakage. Further, that service delivery has been greatly improved as every resident of Kiambu regardless of where they are can use the system.

- 57.** The applicant avers that payment under the contract is milestone based meaning that any payment made by the applicant is tied to the actual work done and that explains why despite the contract being for a total of Ksh. 230 Million, only Ksh. 63 Million has been paid out.
- 58.** That the system itself has not been impugned and as such, the court cannot maintain an injunction whose effect is to stop the running and development of the system that would prevent the public from having a system that the public not only needed, but is actually reaping benefits of, and the court cannot issue an injunction that hurts the public in a case where to obtain the said injunction, the 1<sup>st</sup> respondent invoked public interest.
- 59.** That the impugned system has generated tangible benefits, and has in fact cured previously identified areas of loss of public funds prior to the procurement of the said system. As such, there cannot arise a loss where there is a benefit which if quantified far exceeds the quantum of the alleged loss. That, in the present case, public interest favours the continued running of the system that is not only conferring

great benefits to it, but whose interruption would actually result in substantial losses running into billions.

**60.** That an interruption in the running of the system will lead to the service offered by the applicant including health care, waste management, disaster management and ECDE programmes grinding to a halt as no other system supports the said functions as the old system no longer exists.

**61.** The applicant contends that this court cannot issue an injunction where the demonstration of a prima facie case is anchored on claims that are purely criminal in nature when this court lacks the subject matter jurisdiction to pronounce itself on criminal matters when the matter before it has been filed as a civil matter. That even in the event that the 5<sup>th</sup> respondent is found liable, there are prescribed sanctions under ACECA and which cannot be extinguished and/or rendered nugatory by mere fact that the interested Party has been allowed by this court to make payments to the 5<sup>th</sup> respondent for actual work done.

**62.** The plaintiff/1<sup>st</sup> respondent filed a replying affidavit sworn by Everlyne Wachira, on the 14<sup>th</sup> November, 2025. She has

reiterated all the averments as set out in the supporting affidavit sworn by Juliet Kavala dated the 30<sup>th</sup> October, 2025 in support of the plaintiff's application for injunction. In addition, she stated that the plaintiff's suit and consequent application for injunction, is the fact that the contract at the heart of this matter stands on pertinent bid documents which were forged.

**63.** That if the basis upon which the contract was awarded to the 4<sup>th</sup> defendant is fraudulent, then the contract and its continued performance is a nullity and goes against public policy in the war against graft. That this court ought to decline the invitation to exercise discretion in favour of a contract founded on forged documents.

**64.** She contends that any threatened shut down of the ERP system as alleged by the interested party and the 4<sup>th</sup> defendant, would be in breach of Article 7.2.4 of the contract dated the 28<sup>th</sup> April, 2023 and that, a court order issued by a competent court prohibiting effecting of payments under the impugned contract pending the determination of the suit would constitute a justifiable delay within the meaning of

Article 7.2.4 of the contract between the 4<sup>th</sup> defendant and the interested party.

- 65.** She asserts that the interested party has not given sufficient reason to warrant the varying and/or setting aside the temporary injunctive orders issued on 31<sup>st</sup> October, 2025.
- 66.** The interested party filed a replying affidavit sworn by Max Muturi Chege, on the 17<sup>th</sup> November, 2025. He avers that the interested party does not and cannot condone any form of fraud or forgery and that the submission of false documents during the tender process is a matter of criminal conduct pertaining to the 4<sup>th</sup> defendant's credentials.
- 67.** The interested party avers that to establish a prima facie case warranting an injunction against the ERP system, the plaintiff must demonstrate that the alleged fraud at the tender stage translates into an imminent and demonstrable risk that the public is not receiving value for money. That a prima facie case cannot be founded on the sin of the bidder where the delivered service is of undeniable virtue.
- 68.** That the plaintiff's reliance on Article 7.2.4 of the contract is not only speculative but highlights the inconsistency of its

own case, in that on one hand, it asserts the entire contract as a nullity due to fraud and on the other hand, it seeks to invoke a clause within that very contract to justify non-payment, thereby implicitly recognizing the contract's operational existence.

- 69.** That the plaintiff's suggestion that the county can revert to a manual system or that county officers can be designated to receive payments is not only astonishingly simplistic but demonstrates a profound disregard of the public interest.
- 70.** Both applications were disposed of by way of written submissions.

### **Plaintiff's submissions for the two applications**

**71.** The applicant identified three issues for determination as follows;

- a) Whether the court has jurisdiction to determine the plaintiff's application.***
- b) Whether the interested Party's replying affidavit sworn on the 17<sup>th</sup> November, 2025 and filed on the 18<sup>th</sup> November, 2025 is properly on record.***
- c) Whether the plaintiff has met the threshold for grant of orders of injunction.***

- 72.** On the 1<sup>st</sup> issue, the plaintiff submitted that in its mandate to deal with matters relating to corruption, the plaintiff has a latitude to elect to proceed by way of criminal prosecution or civil proceedings and that the two processes can be undertaken simultaneously.
- 73.** On the 2<sup>nd</sup> issue, it was submitted that the interested party's replying affidavit aforesaid was not only filed without leave of the court but was also filed unprocedurally as the interested party had no right to respond to the plaintiff's further affidavit, that, the same should be expunged from the record.
- 74.** On the 3<sup>rd</sup> issue, the interested party submitted that interlocutory injunctions are discretionary remedies that are granted on the basis of evidence and sound legal principles. Reliance was placed on the cases of **Paul Gitonga Wanjau vs Gathuthi Tea Factory Company Limited & 2 others (2016)** and that of **Mrao Limited vs First American Bank of Kenya Ltd & 2 others (2003)**
- 75.** That the plaintiff has demonstrated that the award of tender No. 1223215 to the 4<sup>th</sup> defendant and the resultant contract and extension of contract agreement between the interested

party and the 4<sup>th</sup> defendant are fraudulent, illegal, unlawful and therefore null and void.

**76.** The plaintiff has further submitted that there is a threat of irreparable damage if the interested party proceeds to pay the 4<sup>th</sup> defendant the balance of Ksh. 166,295,500 on the strength of the impugned contract, as the plaintiff has demonstrated that the 4<sup>th</sup> defendant has already withdrawn and utilized all the money received from the interested party on the strength of the impugned contract. That if the orders are not granted, it will be impossible to recover the funds from the 4<sup>th</sup> defendant and it is doubtful that the 4<sup>th</sup> defendant has any attachable assets.

**77.** On the balance of convenience, it was submitted that the same tilts in favour of the applicant. The case of **Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2018) eKLR** was relied on. The applicant contended that it has demonstrated that if the orders are not issued, it will be impossible to recover the funds. Further, that in the event that the ERP system is shut down as alleged, the interested party can still collect revenue through other means as provided under

**Section 31(1) and (2) of the Kiambu County Finance Act, 2024,** and that no evidence has been provided to the court by the interested party to indicate that service delivery will be crippled in the event that the orders sought by the plaintiff are granted.

**78.** The plaintiff has also submitted that the matter is one of public interest as it involves not only public funds but also the implementation of the public policy in the war against graft and it is only fair and just that this court grants the orders sought in the application.

**79.** On the 2<sup>nd</sup> application, the plaintiff identified two issues for determination as follows;

***a) Whether the interested party has met the threshold for grant of the orders to vary or set aside the temporary injunctive orders issue on the 31<sup>st</sup> October, 2025.***

***b) Whether the court can grant remedies not specifically pleaded in the interested party's application dated the 10<sup>th</sup> November, 2025.***

**80.** On the 1<sup>st</sup> issue, it was submitted that the orders sought for are discretionary in nature and an applicant must demonstrate to the court that there is a sufficient reason to warrant the grant of the orders. Reliance was placed on the

case of **Sweet R Us limited Vs M'Oriental Bank Limited & another (2025) KEHC 14921 (KLR).**

**81.** The rest of the submissions are the same as what was submitted in support of the 1<sup>st</sup> application.

**Interested Parties Submissions to both applications**

**82.** The interested party identified four issues for determination as follows;

*a) Whether the procurement of the ERP system was necessitated by any public interest and whether the said public interest has been realized since.*

*b) Whether the plaintiff has met the threshold for the grant of the conservatory orders sought*

*c) Whether the grant of the Orders sought will be beneficial or injurious to the interest of the public*

*d) Whether the interested party should have been joined as such or as a respondent in this suit.*

**83.** On the 1<sup>st</sup> issue, it was submitted that the ERP system was developed out of necessity to replace an old system that was extremely offensive to the principles of good Governance and the principles of public finance under Article 201 of the Constitution. That the interested party suffered from massive revenue leakages and the same spilled over to service

delivery which was inevitably inefficient and the ERP has done exactly that and even more.

**84.** That the system has led to increased OSR collection which has generated further benefits such as increased development to wit: construction of over 300 Early Childhood Development Education centres and school feeding programme; provided bursaries to needy students ; constructed 26 new level 3 health facilities; distributed free certified farm inputs and livestock to farmers; constructed trading centers and over 20 modern markets across Kiambu County; improved road networks ; installed over 8,000 solar street lights, drilled solarized boreholes and implemented various youth , women, and persons with Disabilities empowerment programmes.

**85.** On the 2<sup>nd</sup> issue, it has been submitted that the plaintiff has sought a conservatory order, and given the public-minded nature of the alleged risks, the court should be guided not solely by the principles in **Giella Vs Cassman Brown** for private disputes, but by the broader principles governing conservatory orders in public interest matters. The interested

party urged the court to be guided by the principles in the case of **Munya Vs Githinji & 2 others (application 5 of 2014) (2014) KESC 30 (KLR) (2 April)**.

**86.** On the 3<sup>rd</sup> issue, the interested party has submitted that the plaintiff's case while raising serious allegations, suffers from a critical disconnect fatal to this interlocutory application as the alleged wrong, of utterance of false documents is a criminal conduct pertaining to the bidders' credentials. That the remedy sought is aimed at the performance and output of the contract itself and the plaintiff has not bridged that gap.

**87.** That the judicial structure provides clear, separate mechanisms to address the alleged criminal conduct including prosecution and administrative proscription of the bidder. That the validity of the documents is a substantive issue for a different forum and potentially for the main suit and it does not on its own form a prima facie basis to injunct a demonstrably beneficial public system at an interlocutory stage. On the requirements for the grant of conservatory orders, the interested party relied on the case of **Board of Management of Uhuru Secondary School vs City**

**County Director of Education & 2 others (2015) HEHC (KLR)** and averred that the plaintiff's allegations fails to meet the test for a prima facie case in the context of this application for a conservatory orders.

- 88.** On whether the public has lost money, the interested party relied on **Section 51** of **ACECA** for definition of loss of public funds and contends that the impugned system has generated tangible benefits, and that there cannot arise a loss where there is benefit which if quantified far exceeds the quantum of the alleged loss as there has been an increase in revenue collection.
- 89.** The interested party further contended that the court cannot procedurally issue an injunction where the demonstration of a prima facie case is anchored on claims that are purely criminal in nature as the matter herein is a civil matter.
- 90.** The interested party has urged the court to weigh the two competing interests, one claimed by the plaintiff and the other by the interested party and allow the uninterrupted running and development of the ERP system as the same offers the public the greater benefit.

**91.** Finally, it was submitted that the designation of the county Government of Kiambu as an interested party amounts to misjoinder because its status in this case exceeds the scope of an interested party. Reliance was placed on the case of **Murutetu v Republic; Kenya National Commission on Human Rights & 2 others (Interested parties) Petition 15 and 16 of 2015**. That the determination of this matter has a direct effect on the interested party who is the beneficiary of the ERP system and therefore, it deserves to have a standing in a suit that allows it freedom to ventilate all such issues. It urged the court to order joinder of the interested party as a respondent for the effective ventilation of its grievances.

### **1<sup>st</sup> and 3<sup>rd</sup> respondent's submissions**

**92.** The two respondents identified only one issue for determination; Whether the applicant has met the threshold for grant of interim order of injunction. They have relied on the case of **Hannah Njeri Vs Equity Bank Limited (2021) eKLR** on the parameters to be met by an applicant in such an

application. They have submitted that beyond the allegations of forgery in some documents submitted as part of the bid during the tendering process, the applicant has not demonstrated that the ERP system has not met its expected deliverables in facilitating the effective operation and management of the critical County infrastructure and in collection of revenue from various sources.

**93.** That the applicant has not demonstrated any financial loss or otherwise that would arise if the court declines to grant the orders sought, and that any loss can be adequately remedied by an award of damages should the court ultimately find that the 4<sup>th</sup> respondent was not entitled to the payment. That the balance of convenience tilts in not granting the orders sought as the public stands to suffer a greater inconvenience in the event that the orders are granted. The case of **R vs Capital Markets Authority Exparte Joseph Mumo Kivai and that of R vs County Secretary, County Government of Elgeyo Marakwet & 2 others; Exparte Elijah K Kibet (2021) KEHC 512 (KLR)** were relied on.

## The 4<sup>th</sup> respondent's Submissions

**94.** The 4<sup>th</sup> respondent identified two issues for determination as follows;

*a) Whether the court can make definitive and final orders at an interlocutory stage; and*

*b) Whether the plaintiff has met the threshold for the grant of the injunctive orders.*

**95.** The respondent relied on the case of **Kenya Electricity transmission company vs Agnes Ongadi (2018) KECA (KLR)** and that of **Mugenda & another vs Okoiti & 4 others (civil appeal 3 & 11 of 2016) KECA 663 (KLR)** and **Vivo Energy Kenya Limited vs Maloba Petrol Station 7 3 other (2014) KECA 153(KLR)** in which, the respondent submitted that the courts have refused to issue final orders before putting the plaintiff's allegations to evidential test.

**96.** That the plaintiff has not met the threshold for grant of injunctive orders as per the principles laid out in the case of **Giella Vs Cassman Brown (1973) EA 358**, as it seeks to establish a prima facie case on unverified and untested

allegations of fraud that have been vehemently denied by the 4<sup>th</sup> defendant.

**97.** The respondent further submitted that the plaintiff has not demonstrated the nature of the irreparable harm that will ensue, but only alludes to undisclosed dire consequences. That the plaintiff has not identified what specific loss is likely to occur or how such loss would be incapable of compensation through the statutory recovery mechanisms contemplated under the Anti-Corruption and Economic Crimes Act. To the contrary, the interested party will suffer irreparable loss from the grant of injunctive orders if the ERP system is shut down. The case of **Lenolkulal & 2 others Vs Republic ( criminal appeal E008 and E009 of 2024 (2025) KEHC 1607** was relied on in support of this submission. That it follows that the balance of convenience tilts in favour of the 4<sup>th</sup> defendant.

### **5<sup>th</sup> Respondent's Submissions**

- 98.** The respondent urged the court to admit the interested party's affidavit out of time and cited **Order 19 Rule 7** of the **Civil Procedure Rules**.
- 99.** On the test for grant of temporary injunction, she made reference to the case of **Giella vs Cassman Brown (1973) E.A 358** and the case of **Hezron Kamau Gichuru vs Kianjoya Enterprises Limited and another (2022) eKLR**.
- 100.** On whether the plaintiff has established a prima facie case, the respondent averred that there is no single suggestion by the plaintiff that either the 5<sup>th</sup> or the 6<sup>th</sup> defendants or the interested party were involved in procuring the impugned documents.
- 101.** It was also submitted that the plaintiff has failed to demonstrate what irreparable loss it will suffer which damages cannot be compensated by damages. Reliance was placed on the case of **Pius Kipchirchir Kogo Vs Frank Kimeli Tenai (2018) eKLR**.
- 102.** On balance of convenience, the respondent has submitted that the interested party stands to suffer greater harm should the plaintiff's motion be allowed.

## **6<sup>th</sup> Defendant's Submissions**

**103.** The 6<sup>th</sup> defendant has submitted that the plaintiff has not established a prima facie case in that, although the plaintiff has raised concerns on the contract dated 28<sup>th</sup> April, 2023, the plaintiff has not identified any specific right that has clearly been violated by the defendants or the interested party that makes injunctive relief necessary. That the allegation of forgery raised by the plaintiff cannot, in law, be conclusively established at this interlocutory stage.

**104.** On the irreparable loss, the defendant submitted that no loss has been occasioned, and no loss will be suffered in the future, in that, the payments were structured around the project milestones and were only to be released after the milestone has been properly and effectively achieved. That the interested party authorizes payments only for deliverables that have been completed and verified thereby ensuring value for money.

**105.** On balance of probability, the respondent made reference to the case of **Amir Suleiman vs Amboseli Resort Limited**

**(2004) eLKR** and averred that the broader public interest and constitutional context weigh heavily against extending the interim orders of the 31<sup>st</sup> October, 2025.

### **Analysis and Determination**

**106.** The court has considered both applications and the materials that have been placed before it, including the submissions by all the parties. The issue for determination is whether the temporary injunctive Orders issued on the 31<sup>st</sup> October, 2025 should be confirmed or varied and/or set aside.

**107.** This court issued temporary injunctive Orders, on the 31<sup>st</sup>, October, 2025 pending the hearing and determination of the 1<sup>st</sup> application.

**108.** Being aggrieved by those Orders, the interested party filed the 2<sup>nd</sup> application seeking to vary and/or set aside those Orders.

**109.** The orders were mainly predicated on the assertion that the procurement of the tender No. 1223215 for the development, installation, testing, training, commissioning and support services of an enterprise resource planning system (ERP) was

fraudulent, illegal, unlawful and therefore, null and void. The Plaintiff has contended that the 4<sup>th</sup> defendant did not meet the mandatory requirements of the tender and ought not have been considered for the award of the said tender for the reasons that have been set out on the body of this judgement and more particularly that 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants fraudulently and/or illegally presented forged documents in the 4<sup>th</sup> defendants bid documents to secure the award of the tender.

**110.** Pursuant to the contract that was entered between the 4<sup>th</sup> defendant and the interested Party, the 4<sup>th</sup> defendant has been paid the sum of Ksh. 63,704,500.00 by the interested party leaving a balance of Ksh. 166,295, 500.00 being the balance of the contractual sum which the plaintiff avers may not be possible to recover if it's suit succeeds.

**111.** The defendants have filed responses with similar grounds with those of the interested party. According to them, the ERP system has generated numerous benefits, chief among them the creation of an efficient and synchronized administrative structure in the interested Party, and a

massive increment in revenue collection by more than Ksh. 3 Billion in just two years of the system; the system has led to efficient health care access and efficient utilization of scarce public resources by enabling integration of health facilities to ensure continuity of patient care and service delivery has been greatly improved as every resident of Kiambu regardless of where they are can use the same.

**112.** According to the defendants and interested party, by granting an injunction, the public would be prevented from having a system that they not only needed, but is actually reaping benefits from, and that the court cannot issue an injunction that hurts the public in a case where to obtain the said injunction, the Plaintiff invoked public interest.

**113.** The 4<sup>th</sup> defendant and the interested party have also argued that there cannot arise a loss where a benefit, which if quantified, far exceeds the quantum of the alleged loss because while the Plaintiff asserts that the interested party has so far lost Ksh. 63 Million, the same interested party has, as a result of the same system that is said to be the cause of

the loss, increased its revenue collection by Ksh. 3 Billion a staggering difference of 4.761%.

**114.**The plaintiff and the interested parties moved the court mainly under **Order 40** of the **Civil Procedure Act**. In addition, the plaintiff has also come under Sections of Public Procurement and Assets Disposal Act and Ethics and Anti-Corruption Commission Act.

**115.**The plaintiff herein is a body corporate established under **Section 3** of the **Ethics and Anti-Corruption Commission Act, 2011** and it is mandated under **Section 11(1) (j)** of the Act to institute and conduct proceedings in court for the purposes of the recovery or protection of public property, or for freezing or confiscation of proceeds of corruption or related to corruption, or the payment of compensation, or other punitive and disciplinary measures. To undertake this mandate, the plaintiff is empowered under **Section 11(1)(d) and 13(2)(2)(c)** of the **EACC Act** to conduct investigations either on its own initiative or on a complaint made by any person.

**116.** This is a special mandate given to the plaintiff and it is pursuant to that mandate that it investigated the allegations surrounding the tender No. 1223215 involving mainly the 4<sup>th</sup> defendant and the interested party herein, and it is pursuant to those investigations that the plaintiff alleges that it established that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants fraudulently and illegally presented forged documents in the 4<sup>th</sup> defendant's bid documents to secure the award of the tender.

**117.** The 4<sup>th</sup> defendant and the interested party have argued that the claims by the plaintiff are majorly anchored on the fact that the 4<sup>th</sup> defendant uttered false documents or forged documents used to bid for the tender which allegations are criminal in nature. They contend that decisive pronouncement cannot be made by this court until the said criminal centric claims have been prosecuted and which prosecution will not be by this court sitting as a civil court over this matter. Further, that this court cannot thus procedurally issue an injunction where the demonstration of a prima facie case is anchored on claims that are purely

criminal in nature when this court lacks the subject matter jurisdiction to pronounce itself on criminal matters when the matter before it has been filed as a civil suit.

**118.** The EACC is a Statutory body mandated to deal with matters relating to Corruption and Ethics. In executing its mandate, it has the latitude to elect to proceed by way of criminal prosecution or Civil proceedings. When it comes to civil proceedings, it can elect to base them on a Conviction, or even still file civil recovery proceedings without there having been a conviction, in other words the proceedings are non-conviction based. In Anti-Corruption litigation by the EACC, the criminal and Civil processes are parallel that can be undertaken simultaneously or consequentially.

**119.** Consequently, this court begs to differ with the proposition by the counsel for the defendants and the interested parties.

**120.** The case herein turns in large part on the legality of the contract entered into by the 4<sup>th</sup> defendant and the interested party. This court has read through the 4<sup>th</sup> defendant's replying affidavit and though it has denied that it falsified the bid documents so as to win the tender for the ERP system from

the interested party, it avers that this can only be demonstrated at the appropriate forum during the hearing of this matter. The court has noted that a lot of what is contained in its replying affidavit is on how the ERP system has been successful and beneficial to the people of Kiambu County.

**121.** The legal principles governing applications for interlocutory injunction were long espoused in the celebrated case of **Giella Vs Cassman Brown and Co. Limited**. These principles are;

- h) The plaintiff must establish that he has a prima facie case with high chances of success.*
- i) That the plaintiff would suffer irreparable loss that cannot be compensated by an award of damages*
- j) If the court is in doubt, it will decide on a balance of convenience.*

**122.** The said principles have been reiterated in numerous cases in Kenya. In **Moses C. Muhia Njoroge & 2 others Vs Jane W. Lesaloi and 5 others**, the court while making a determination on the issue of a prima facie case with a probability of success cited the Court of Appeal decision in the

case of **Mrao Limited Vs First American Bank of Kenya and 2 others** where the Court of Appeal held;

***“A prima facie case in a civil application includes and not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later.”***

**123.** The plaintiff contends that it has demonstrated by way of evidence that one of the mandatory technical requirements set out in the tender document, was the provision of Audited Financial Statements for the last three years (2022, 2021 & 2020) demonstrating;

- i) Three years' average turnover of 400 million and above.***
- ii) Profitability of at least 100 Million and above***
- iii) Positive cash flow***
- iv) Asset base of not less than 500 Million.***

**124.** In its affidavit in support of the application, the plaintiff in paragraph 10 of the affidavit has set out part of the bank statement for USD bank account that was provided by the 4<sup>th</sup> defendant for account number 80699400029 held at NCBA Bank which the plaintiff contends, was fraudulently and

illegally edited to depict a purportedly healthy cash flow and profitability. The plaintiff subjected the signatures of Christopher Mutunga Musau the proprietor of the MSM Chris & Associates who purportedly audited the 4<sup>th</sup> defendants accounts, to the document examination and it was found to have been made by a different person. Further, the signatures of Eva Mukami and Kennedy Gitara who were said to be employees of the 4<sup>th</sup> defendant were also subjected to document examination and were both found to have been made by different people. This has not been denied by the 4<sup>th</sup> defendant. In fact, the 4<sup>th</sup> defendant has said nothing much about those signatures or the edited accounts, but general denials.

**125.** On the issue of irreparable loss, the interested party and the 4<sup>th</sup> defendant have not denied that the 4<sup>th</sup> defendant has already been paid Ksh. 63,704,500.00 out of the total contract sum of Ksh.230, 000,000.00 leaving a balance of Ksh. 166,295,500.00. The 4<sup>th</sup> defendant has not indicated anywhere in his affidavit that he is capable of refunding the money should the plaintiff succeed in its claim. As I have

already stated, the gist of the plaintiff's application and indeed the main suit, is premised on the legality of the contract that was entered into between the 4<sup>th</sup> defendant and the interested party and whether the same was vitiated by fraud and/or illegality.

**126.** The plaintiff has moved the court under the provisions of the Public Procurement and Asset Disposal Act, and am alive to the fact that, I am not determining the main suit and my role is to determine whether the applicant has established a prima facie case against the respondents so as to qualify for the orders sought in the application under consideration so that if not, this court will then disallow the same in which case the interested party's application will carry the day.

**127.** The plaintiff has challenged the legality of the contract that was entered into, between the 4<sup>th</sup> defendant and the interested party. In the case **of Benson Anyona Ombaki & 5 others** Kimaru J, (as he then was) stated;

***“This court therefore holds that the entire procurement process was tainted with illegality. In fact, it was criminal. Therefore when the 1<sup>st</sup> to 4<sup>th</sup> appellants made a prepayment to the 6<sup>th</sup> defendant , they were compounding an illegal and***

***criminal act that commenced when the direct procurement process was put in place by the 1<sup>st</sup> appellant. ....”***

**128.** The courts have been consistently categorical that they will not aid those who would seek to use the judicial process to enforce contracts that bear the blight and blemish of corruption or illegality, and are against public interest. The court of Appeal stated in the case of **Kenya Pipeline Company Limited vs Glencore Energy (UK) limited (2015):**

***“In Standard Chartered Bank vs Intercom Services Limited, this court, differently constituted, accepted the submission made that once an issue of a breach of a Statute is brought to the attention of the court in the course of the proceedings, then in the interest of justice the court must investigate it because the court’s fundamental role is to uphold the law. The court upheld and endorsed the old English case of HOLMAN vs JOHNSON (1775-1802) ALL ER 98 where the Chief Justice Mansfield stated:***

***“The principle of public policy is this:***

***EX dolo malo no ovitur action. No court will lend its aid to a man who found his cause of action on an immoral or illegal act. If, from the plaintiff’s own stating or otherwise, the cause of action appears to arise ex turpi causa, or the transgression of a positive law of the country, there the court***

***says that he has no right to be assisted. It is on that ground the court goes, not for the sake of the defendant, but because they will not lend their aid to such a plaintiff.”***

**129.**By way of caution, this court has not made any conclusive finding on the legality or otherwise of the contract between the 4<sup>th</sup> defendant and the interested party, but on the basis of the material that has been placed before the court by the plaintiff, this court is convinced that the plaintiff has established a prima facie case.

**130.**Regarding the issue of on the preliminary objection raised by the plaintiff as to the admissibility of the interested party's affidavit sworn by Max Muturi Chege on the 17<sup>th</sup> November 2025 in further response to the plaintiff's affidavit dated the 14<sup>th</sup> November 2025, it is the finding of this court that the argument is a technicality that Article 159(2)(d) of the Constitution can countenance. Further, the plaintiff has not demonstrated what prejudice, if any, that it will suffer if the affidavit is admitted. In the premises, I do allow the same as part of the record.

**131.** Lastly, the interested party has based its argument on the gains that the ERP system has achieved and the loss that it will suffer if the orders are not set aside. For the reasons that I have given, this court cannot hesitate to grant the orders that are sought for in the plaintiff's application dated the 30<sup>th</sup> October, 2025. Prayer (3) is allowed. It therefore follows that the interested Party's application is hereby dismissed.

**132.** No order as to costs.

**133.** It is so ordered.

**Signed, dated and delivered virtually on this 17<sup>th</sup> day  
of December 2025.**

.....  
**L.M. NJUGUNA  
JUDGE**

**In the presence of:-**

*Mr. Munla for the 5<sup>th</sup> defendant*

*Miss Bundi for the 4<sup>th</sup> defendant*

*Miss Nyaga holding brief for Mr. Okatch for the 6<sup>th</sup> defendant*

*Mr. Mwangi Kang'u appearing with Mr. Melly for the 1<sup>st</sup> and 3<sup>rd</sup> defendant*

*Mr. Lingungu appearing with Mr. Ometto for the Interested party*

*Court assistant - Adan*

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