

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ANTI CORRUPTION AND ECONOMIC CRIMES DIVISION -
MILIMANI LAW COURTS
ACEC SUIT NO. E049/ 2025

ETHICS AND ANTI COPRRUPTION COMMISSION.....PLAINTIFF

VERSUS

**BENSON GETHI WANGU T/A AS HIGHVIEW TRADING, SCHOOL WORK
ENTERPRISES NEWTOOL MART TRADING, RATEGO TECHNOLOGIES,
REALTOOL TRADING AND COMPTOOL
TRADING.....1ST DEFENDANT**

HORIZON LIMITED.....2ND DEFENDANT

**ELIZABETH WANGECI NGUGI T/A LIZ LINK GENERAL SUPPLIERS
.....3RD DEFENDANT**

SUSAN NYAMBURA T/A LINK GENERAL.....4TH DEFENDANT

JIMCHAR ENTERPRISE LIMITED.....5TH DEFENDANT

TISON LIMITED.....6TH DEFENDANT

SAMWEL MUNDAYI WACHENJE.....7TH DEFENDANT

BENARD KIPKOECH YATICH.....8TH DEFENDANT

BENARD NZIOKA KIOKO.....9TH DEFENDANT

JULIUS NYADIMO AIRO.....10TH DEFENDANT

JOHN NGANGA GICHARU.....11TH DEFENDANT

TITUS TROUBLE LIBONDO.....12TH DEFENDANT

ISAAC WAFULA KUNDU.....13TH DEFENDANT

JANE WANGECHI GICHUKI.....14TH DEFENDANT

CHEMOSS KORORIA NDIEMA.....15TH DEFENDANT

AND

RULING

INTRODUCTION

1. The applicants in this matter are the 5th and 6Th Defendants in the suit.
2. The two have moved this Court by way of a Certificate of Urgency dated 15th December 2025 seeking numerous orders. The matter went to the learned Honorable Lady Justice Njuguna who directed the parties to appear before me on the 22nd and canvass order number 5 in the Notice of Motion.
3. The instant Ruling is in respect of that specific order sought by the applicants. The order seeks the release of all vouchers and payments to the current Pending Bills Verification Committee for verification and recommendation on payment. The committee’s mandate expires on the 31st December 2025 thus the urgency of the matter.

APPLICANTS CASE

4. The applicants relied on the provisions of Section 1A, 1B, and 3A of the Civil Procedure Act and Order 40, Order 51 Rule 1 of the Civil Procedure Rules ,2010 and all other enabling provisions of the law.
5. The applicants are supported in their quest for the documents by all other Defendants who at the time of the hearing told the court that they would be adopting the submissions of Mr. Kirimi Counsel for the two applicants.

6. When the hearing of this matter came up, Mr Kirimi advocate for 5th and 6th told the court that the request to EACC to undertake investigations was limited to a sum of Ksh. 812 7000million and not the entire sum of Ksh. 6.1 billion since the Multi Agency team set up by the government which included representatives of the EACC had cleared some of the bills for payment.
7. The court was referred to two letters by the Hon Attorney General dated 16th March 2020 and 3rd December 2020. In both letters the Hon. Attorney General advised that the payments of the pending bills be made on the basis of the evaluation and vetting of each specific pending bill. The court has carefully perused the two documents.
8. The applicants contend that the life of the Pending Bills verification committee ends on 31st December 2025 and if the plaintiff is not compelled to release the documents to the NYS for transmission to the committee, the applicants will suffer prejudice in that their bills will remain unverified thus there would most likely never be any payments to them.
9. The applicants further argued that there is no guarantee that the life of the committee would be extended beyond the 31st day of December 2025.
10. Accordingly, the applicants urged the court to order the release of the payment vouchers and other accompanying documents for purposes of the committee exercising its mandate.
11. The applicants further argued that the plaintiff was represented in a multi-agency team of government which had cleared the bills for payment thus

there was no basis for the continued holding of the documents by the Commission.

12.It was further argued that the Hon Attorney General's Office advised the government to make funds available to honor the payments. The applicants counsel specifically referred this court to the advisory dated 3rd December 2020 at paragraph 12 which reads;- ***“ it is therefore our presumption that the National Treasury has reviewed and verified pending bills including initial and additional pending bills as submitted by Pending Bills -Multi Agency Team (PB-MAT) are payable and that funds required to pay the verified and authenticated pending bills are available in the FY 2020-2021 budgetary allocation.”***

13.It is on the basis of the clearance of the bills by the MAT Team and the Attorney Generals advise that the Pending Bills Verification Committee whose term ends on the 31st December 2025 was formed.

14.The applicants also submitted that following the investigations by the plaintiff, an inquiry file was prepared and submitted to the Director of Public Prosecutions who upon perusal of the file declined to initiate prosecution.

15.The applicants contend that the initiation of the Civil suit by the plaintiff was actuated by malice and bad faith and is carefully intended to frustrate the payment of their pending bills by the Government.

16. The applicants went further to argue that the multiagency reports clearing the bills for payment have never been rescinded and that the plaintiff was party to those deliberations since the Commission actively participated in the deliberation.
17. The court was referred to a Report on Verification of Historical Pending Bills For National Youth Service By Inter-Agency Team October 2020 annexed and Marked "MTO 8". *At page 26 of the report EVAH WACUKA of EACC represented the Commission and appended her signature to the report which in recommendation 4 recommended the processing for payment pending bills amounting to Ksh. 5,374,624,655.00 and that vouchers for the sum of Ksh 812,100,000 be subjected to further investigation.*
18. The applicants urged the court to consider the life of the Pending Bills Committee is soon coming to an end hence the applicants stand to suffer prejudice if the applicant continues to withhold the documents.
19. According to the plaintiff suit is not likely to be compromised since all that the Defendants are craving for in the immediate, is release of documents for purposes of verification and not payment.
20. The applicants went on to submit that fraud is a criminal matter and the agency of government capable of dealing with the issue of fraud would be the office of the DPP which has already declined to prosecute. Counsel cited the case of **Ethics and Anti-Corruption Commission vs Granton Graham Samboja \$ Another; Kenyatta University \$**

Another (Interested Parties) {2021} KEHC 8610 (KLR) to back their argument that the Office of the Director of Public Prosecutions would be the proper authority to initiate proceedings.

21. The applicants argued that there being no pending investigation the plaintiff is basically holding onto the documents without any justifiable cause.
22. The rest of the Defendants who were represented at the hearing adopted and relied on the submission by counsel for the 5th and 6th accused.
23. The applicants also challenged the capacity of Ms Catherine Ngari to swear the affidavit on behalf of the plaintiff commission thus the applicants urged this court to ignore the affidavit in reply.

RESPONDENT'S CASE

24. The plaintiff opposed the application relying on the affidavit of Catherine Ngari sworn on 19th December 2025. Counsel for the respondent submitted that Ms. Ngari is an appointee of the Commission under Section 23 of the Anti-corruption and Economic Crimes Act
25. The plaintiff contended that if the vouchers and payment documents are released the suit will be rendered nugatory.
26. Counsel argued that the plaintiff has the statutory authority in law under Section 11 of the Anti-Corruption and Economic Crimes Act.

- 27.**According to the plaintiff the vouchers are fraudulent and any payment made based on them would be a perpetuating of fraud.
- 28.**The plaintiff did not dispute that the DPP declined to prosecute and ordered there are no imminent criminal proceedings.
- 29.**The respondent acknowledged that the term of the pending bills committee ends on 31st December 2025 but argued that there is no evidence that the committee's term is unlikely to be extended.
- 30.**The respondent further submitted that the Commission is within its rights to hold the documents in issue and since the NYS has not requested for the documents then the same should not be released.
- 31.**The respondent further submitted that there is need to preserve the matter and that this court has jurisdiction to order payment even after the mandate of the committee lapses.
- 32.**Counsel further submitted the Commission can initiate proceedings of a criminal nature simultaneously thus the failure by the DPP to prosecute should not disadvantage the plaintiff.
- 33.**The plaintiff concluded by submitting that the pending bills committee cannot oust the jurisdiction of EACC as well as that of the court.

- 34.**The court was further informed by the plaintiff that the delay in filing the suit was as result of the voluminous nature of the documents that required forensic examination.
- 35.**The respondent did not however contest having participated in the MAT-Pending Bills Committee deliberations which cleared the pending bills of over Ksh 5 Billion.
- 36.**In a brief rejoinder to the submission of the respondent, Counsel for the applicants submitted that the EACC ought to respect other agencies of government in the discharge of their duties and should not unnecessarily interfere in matters competently handled by other agencies.

ANALYSIS AND DETERMINATION

- 37.**This Court is called upon to issue what I consider to be a structural interdict otherwise known as structural injunctions. The nature of the injunction would be to provide temporary relief whilst conserving the matter for full hearing in respect of all other prayers in the application.
- 38.**The court is being urged to grant an interim relief aimed at ensuring that the pending bills committee has an opportunity to consider the Defendants claim before winding up their operations by 31st of December 2025.

39.The applicants argue that if the term of the committee lapses without their claim being looked at, they are going to be greatly prejudiced yet the release of documents to the interested Party to enable them submit the documents to the committee would not prejudice the plaintiff's case.

40.The prayer is couched in the nature of a mandatory injunctive relief to compel release of the document to the relevant government agency the NYS for onward transmission to the pending Bills Committee.

41.In **Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others; Initiative for Strategic Litigation in Africa (Amicus Curiae) (Petition 3 of 2018) [2021] KESC 34 (KLR) (11 January 2021) (Judgment)**

The supreme court held:-

i) Article 23(1) and (3) of the Constitution were the launching pad of any analysis into the place and scope of interim orders in Kenya's human rights enforcement architecture.

Article 23(3) provided that for a violation of the Bill of Rights the court could grant any appropriate relief including, a declaration of rights, an injunction, a conservatory order, a declaration of legal invalidity of any law that denied, violated, infringed or threatened a right or fundamental freedom in the Bill of Rights that was not justified under article 24 of the Constitution, an order for compensation and an order for judicial review. The list of appropriate reliefs that the court could grant was not exhaustive.

ii) The Court of Appeal failed to consider Supreme Court decisions concerning interim reliefs that a court could issue to address the violation of a fundamental right. The appellate court appeared to shut

the door on the use of interim reliefs or structural interdicts in human rights and other constitutional litigation.

- iii) Article 23(3) of the Constitution empowered the High Court to fashion appropriate reliefs, even of an interim nature, in specific cases, so as to redress the violation of a fundamental right.
- iv) The doctrine of *functus officio* retained validity and vitality in both criminal and civil cases but in certain situations, the doctrine ought to give way. Subjecting article 23 of the Constitution, on the court's power to fashion appropriate reliefs for human rights violations, to the limitation of the Civil Procedure Act provisions on the court becoming *functus officio* after judgment, would stifle the development of court-sanctioned enforcement of human rights as envisaged in the Bill of Rights.
- v) Interim reliefs, structural interdicts, supervisory orders or any other orders that could be issued by the courts, had to be specific, appropriate, clear, effective, and directed at the parties to the suit or any other State agency vested with a constitutional or statutory mandate to enforce the order. Most importantly, the court in issuing such orders had to be realistic, and avoid the temptation of judicial overreach, especially in policy matters. When issuing interim orders the court could indicate that the orders were interim in nature and that the final judgment had to await the crystallization of certain actions.

- 42.**The court in this matter is yet to hear the entire application on all the prayers sought by the applicants. It is however necessary for the court to point out that this application comes at a crucial point considering the period left before the life of the Pending bills committee terminates on 31st December 2025. Any order issuing from this court at this stage would be temporary and only meant to ensure that none of the parties to the pending suit are put at a disadvantage as they await the hearing and determination of the suit.
- 43.**The parties agree that the committee was constituted by the treasury to look into all pending bills in order to determine which ones are payable and which ones are not. This court has of its independent reading established that the membership of the Pending Bills Committee to a large extent replicates the MAT-Pending Bills Committee. The Respondents are at liberty to make any representations to the committee on all pending Bills including those that touch on the applicants.
- 44.**This court is alive to the fact that the payments cleared by the MAT-Pending Bills Committee was to be done subject to verification as advised by the Attorney General, must do everything in its power to ensure that no Pending Bill escapes the scrutiny of the Pending Bills Committee. The argument by the respondent that the lapse of the life of the Pending Bills Verification Committee would not be prejudicial is with respect flawed.
- 45.**It is flawed because for the applicants to be paid if at all they were to emerge successful in this suit, the bills would require verification and there is no guarantee the government will extend the life of the present committee or even constitute another.

- 46.**It is the view of this court that a verification of the pending bill is not akin to payment. The two processes are undertaken by different bodies. Whereas the Pending Bills Committee would verify the Bills, payment would be done by the National Youth Service the Interested party herein.
- 47.**In a sense the committee is meant to ascertain the genuineness of claims by individuals against government. It would thus be possible if as alleged by the respondents that the claims are fraudulent, the Pending Bills Committee would also be able to establish as much.
- 48.**The plaintiff's counsel conceded that it is possible that upon consideration of the documents the Committee may reject some of the claims as it approves others.
- 49.**It would also follow that if any claims are found to be fraudulent by the committee, the same would be flagged for investigations and payment withheld.
- 50.**Counsel for the applicants stated that the committee is at liberty to receive information from anyone regarding any pending bills and therefore EACC would be at liberty to appear before the committee and make representation regarding the propriety of their bills or otherwise.
- 51.**The submission by counsel for the applicants was not contested by the plaintiff/respondent. The respondent did not rebut the submission that their member of staff sat in the MAT -Pending Bills committee and signed the minutes exhibited before this court sanctioning processing of payments in respect of some of the claims.
- 52.**The applicants right to property under Article 40 of the Constitution is clearly in issue and according to them, the realization of that right would be in jeopardy if the plaintiff does not release documents to the interested Party for onward transmission to the pending bills committee.

53. This Court is under duty to ensure that the rights of individuals are respected, protected, promoted and upheld in accordance with Articles 3, 20 (3), 21(1), 22(1), 23 (1) of the Constitution.
54. The court can only ensure that by giving parties to any dispute that comes before the court a fair hearing as envisaged under Article 50 of the Constitution. The equality of arms demands that each party gets to prosecute their case not from a position of disadvantage as compared to the opposing party. To argue that there is possibility of getting orders for payment from this court directing payment of the Pending Bill should the case fail, is to ask the court to speculate on whether or not there will ever be another Pending Bills verification committee. The court declines that invitation by the respondent.
55. An interim order that would facilitate the fair resolution of a dispute should not be declined without sufficient cause. The court must strive to ensure that any threat to a fundamental right is remedied at the earliest opportunity to obviate situations that may compromise the entire suit.
56. In **Munya v Kithinji & 2 others (Application 5 of 2014) [2014] KESC 30 (KLR) (2 April 2014) (Ruling)** the supreme court while dealing with interlocutory orders and injunctions had this to say;- "These are issues to be resolved on the basis of recognizable concept. The domain of interlocutory orders is somewhat ruffled, being characterized by injunctions, orders of stay, conservatory orders and yet others. **Injunctions, in a proper sense, belong to the sphere of civil claims, and are issued essentially on the basis of convenience as between the parties, and of balances of probabilities.** The concept of "stay orders" is more general, and merely denotes that no party nor interested individual or entity is to take action until the Court has given the green

light. “Conservatory orders” bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the supplicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.

57. The import of the holding by the Supreme court is that courts are liberty to consider the appropriate order to issue in a given set of facts and circumstances. The principles of injunction as enunciated in the celebrated case of **Giella Vs Cassman Brown \$ Co. Ltd (1973) E.A 358** require that where a party presents a prima facie case with a probability of success and demonstrates that if the order of injunction is not granted, he is bound to suffer irreparable harm, that party should benefit from the equitable relief of an injunction.

58. The applicants are staring at the possibility of the Pending Bills verification Committee winding up its business without looking at their vouchers and payment documents thus comprising their chances of being paid even if the suit by the respondent is decided in their favor. Clearly, that is a threat to their right to property which can be remedied by making an order that would allow the committee to complete its work seamlessly and still protect the interests of justice in the instant suit.

- 59.**The applicants have not received any payment from public coffers on the strength of the vouchers in issue.
- 60.** The DPP has not commenced any prosecution against any of them in relation to the documents. As it were, the claim by the plaintiff/respondent that the documents are fraudulent is yet to be determined.
- 61.**Vouchers and the annexures thereto are accountable documents which should ordinarily be held by the Accounting officer of a government agency.
- 62.**The documents should ordinarily therefore, be kept in the custody of accounting officer of the government agency from which they originate.
- 63.**In the instant case they are admittedly held by the Eacc pursuant to their investigative power. The investigations were concluded and a decision thereon rendered by the DPP.
- 64.**Ideally, the vouchers and other documents connected therewith should have been returned to the agency from which they were obtained. However, that did not happen and the respondent now says they intend to them in the civil matter. It is the view of this court that releasing the documents to NYS for onward transmission to the Pending Bills Committee for verification would not undermine the suit by the plaintiff.
- 65.**The applicants have not argued that the documents be released to them but to the NYS (the third party). The accounting officer of the interested Party would in turn sent them for consideration by the Pending Bills Verification Committee.
- 66.**It thus follows that the documents would remain in the hands of proper officers of government throughout and the EACC would be able to retrieve them for use in this case in the future.

67. To allay the fears by the respondent that the suit may be compromised, this court would only release the documents under strict conditions to the NYS.

68. This Court is aware that for Forfeiture proceedings the Eacc would not need to prove the commission of a criminal offence. In **Assets Recovery Agency v Odaye (Anti-Corruption and Economic Crimes Case E001 of 2025 [2025] KEHC 12245 (KLR) (Anti-Corruption and Economic Crimes) (27 August 2025) (Judgment)** Lucy Njuguna J held as follows:- Forfeiture proceedings such as this one before the court are civil in nature, and the standard of proof is on a balance of probabilities. In the case of *Assets Recovery Agency vs. Ali Ibrahim* (2022) eKLR, the court cited the case of *Assets Recovery Agency vs. Pamela Aboo*; EACC Interested Party (2018) eKLR stating thus: -“Forfeiture proceedings are civil in nature and that is why the standard of proof is on a balance of probabilities. See Section 92(1) of proceeds of crime and Anti- Money Laundering Act. In the case of Director of Asset Recovery and others, Republic vs. Green & others (2005)

EWHC 3168 the court stated as follows:-“In civil proceedings for recovery under part 5 of the Act, the Director need not allege the commission of any specific criminal offence but must set out the matters that are alleged to constitute the particular kind or kinds of unlawful conduct by or in return for which the property was obtained.64. The proceedings before this court are to determine the criminal origins of the property in issue and are not a criminal prosecution against the respondent where presumption of innocence is applicable. In the case of *ARA & others vs. Audrene Samantha Rowe & others* civil Division Claim No. 2012 HCV 02120 the court of appeal stated:-“.....that in deciding whether the matters alleged constituted unlawful

conduct when a civil recovery order is being made is to be decided on a balance of probability. Civil recovery proceedings are directed at the seizure of property and not the convicting of any individual and thus there was no reason to apply the criminal standard of proof.....” (Emphasis mine)

69. The suit herein is said to be premised on the provisions of Section 11 of the Ethics and Anticorruption Commission Act which gives power to the commission to institute recovery proceedings. The court will not at this stage go into the merits or otherwise of the suit.

70. All that this court will concern itself with is the making of an order that serves the ends of justice for all parties to the suit. The rest of the matters will await the hearing of the instant application and the suit.

71. The court has to give an order that is proportionate and answers to the concerns of each party and the interests of justice. The proportionality test was discussed in **Queen v Big M Drug Mart Limited [1985] 1SCR 295**. The court held that ‘...although the nature of the proportionality test will vary depending on the circumstances, in each case courts will be required to balance the interests of society with those of individuals and groups....’

72. The respondent in filing the suit seeks to protect the loss of public property. The applicants on the other hand are pursuing payment of what they believe is rightfully theirs and a Multi-Agency Team of government has weighed into the matter through its reports and the Attorney General through his advisories to Government.

73. There are indeed triable issues in the whole matter and the scales of justice must be evenly balanced. The right to property of the applicants is

at stake and if the committee winds up its business without considering their pending bill, certainly there will be prejudice occasioned to them.

74. Willian A. Fletcher in his article “**The discretionary Constitution: Institutional remedies and Judicial legitimacy,** ”91 Yale L.J,635, 696(1982) (“**The Discretionary Constitution**”) states;- “Indeed, the greatest benefit of legitimating Judicial power may not be that it permits the Court to act but rather it may force the political bodies to perform their functions.”

75.It is now that moment when the court must intervene to ask the Chief Executive officer EACC, the Accounting officer National Youth Service, the Pending Bills Verification Committee to perform their respective roles on the matter of the applicants pending bill even as they await the determination of the suit.

76.The committee was constituted by government to perform a certain function and it cannot do so if the tools or documents required for it to verify the bills are kept away from them.

77.The committee does not pay thus there is no risk of government losing any money. The mandate of the committee includes identifying the Bills that ought not to be paid.

DISPOSITION.

78.Accordingly, this court grants the order that the Vouchers and payment documents held by the respondent shall be released to the Accounting officer NYS not later than the close of business today for onward transmission to the Pending Bills Verification Committee for consideration in line with their mandate.

79.The vouchers and payment documents shall be returned to the EACC CEO on or before the 14th January 2026 by the Accounting officer National Youth Service.

80.For the avoidance of doubt, this court has not sanctioned any payment of the pending Bills pending the hearing and determination of this suit. The accounting officer NYS is directed not to effect any payments pending the final hearing and determination of this Notice of Motion or until otherwise ordered by the court.

81.The orders of this court shall be extracted and served upon all parties for immediate compliance given the limited time left for the Committee.

82.It is so ordered.

**DATED, SIGNED and DELIVERED IN VIRTUAL COURT at NAIROBI this
24th day of DECEMBER 2025.**

A. M. MUTETI

JUDGE

In the presence of:

Habiba: Court Assistant

Mr. Kirimi for the Applicants

Mr. Murei & Ms Kamau for the Respondents