

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION
ACEC SUIT NO. E014 OF 2024

ETHICS & ANTI-CORRUPTION COMMISSION.....PLAINTIFF

-VERSUS-

LENCER AKINYI ODIDA.....1ST DEFENDANT
SOLOMON OCHOGO2ND DEFENDANT
JOSEPH OMONDI OTIENO.....3RD DEFENDANT
MAURICE OCHIENG WAMBO.....4TH DEFENDANT

JUDGMENT

The plaintiff, a body corporate established under Article 79 of the Constitution and provisions of the Ethics and Anti-Corruption Commission Act has brought this suit in interest of the people of Homabay County for recovery of Kshs 1,247,864.00 from the defendants among other prayers. The specific prayers in the plaint dated 31st May 2024 are as follows;

- a) A declaration that the payment of monthly salaries amounting to KES. 1,247,864 between May 2015 to January 2020 to the 1st Defendant by the County Government of Homa Bay facilitated by the 2nd , 3rd and 4th Defendants was illegal and fraudulent.

- b) A declaration that the Defendants misappropriated public funds in the sum of KES. 1,247,864 from the County Government of Homa Bay.

- c) An order for restitution for the sum of KES. 1,247,864 to the Government of Kenya against the Defendants.
- d) General and exemplary damages for fraud and breach of fiduciary duty as against the 2nd, 3rd and 4th Defendants.
- e) Costs of this suit.
- f) Interest on (c) above at court rates from the date of accrual till payment in full.
- g) Any other order or further relief that the court may deem fit to grant.

The background of the case is that the 1st defendant who is an employee of the County Government of Homabay (hereinafter referred to as ‘the government’) as a nurse since 1-10-2014 was allegedly paid the claimed sum over and above her legitimate salary in a scheme which was deliberately meant to illegally benefit her through two sets of payrolls. There was the manual payroll and a system generated one they referred to as IPPD. The other defendants are said to have enabled and facilitated the payments by processing, approving and giving instructions while they were aware that the 1st defendant was not entitled to the said payments. It is alleged that the 2nd defendant was at the time the acting payroll manager, the 3rd defendant the payroll manager while the 4th defendant was a payroll officer.

The 1st defendant did not enter appearance or file any defence and interlocutory judgment was entered against her on 14-11-2024. The 2nd, 3rd and 4th defendants denying liability and pleading that they were not privy to the irregular payments.

The plaintiff called 4 witnesses while the 1st and 2nd defendants testified and did not call any other witnesses. The 4th defendant did not show up during the hearing

Plaintiff's case

Bob Collins Otieno a public policy and human resources consultant was the plaintiff's first witness. He told the court that he previously worked with the County Government of Homabay Public Service from 2014 to January 2025. Between 2022 and 2024, he served as County Director Human Resource Management and Development and as Chief Officer of Blue Economy from October 2024 to January 2025.

On 30/6/2025, he was summoned by EACC Kisii office to peruse documents that had been supplied by his predecessor. After perusing the letters of appointment, payslips and employment records of the defendants shown to him, he concluded that they were true copies of the records held by the government. He proceeded to produce the documents which were, the 1st defendant's payslips for May 2015 to February 2020, letters of appointment, employment records for the 2nd, 3rd and 4th defendants, an authorization of annual leave for 3rd defendant dated 11/12/2017, instructions for payment of salaries written to the bank by 2nd defendant and letters from Equity Bank.

The witnesses added that the IPPD payroll was centrally generated from the central government while the manual payroll was generated from the human resource unit which was abolished in March 2024. He explained that the role of payroll manager was to oversee management of the payroll, reporting to Human Resource Manager including producing payroll and submitting it to finance for payment. He would

also provide monthly reconciliations on reported changes which entailed ensuring that everything balanced and there were no duplications in manual and IPPD system.

The witness added that the 2nd defendant was a payroll officer until 2017 when he acted as payroll manager when 3rd defendant proceeded on leave. The 3rd defendant was the payroll manager between 2015 and 2017. The 4th defendant was working in the pay roll unit as a payroll officer.

In cross-examination, the witness stated he only supplied payslips and electronic certificate while the other employment records had been provided by his predecessor. He added that there were many payroll officers and he wouldn't know specific roles from each of them. He also wouldn't know when the 2nd defendant was employed but he was emphatic that he was working in the payroll unit when the witness joined the government. From the records, there was no letter appointing him to the payroll manger or acting payroll manager. He stated further that there was nothing showing that someone was paid twice through the IPPD system. He didn't know who was the in charge of manual payroll between 2017 to 2020 and between 2014 to 2017.

He added that it was one of the duties of human resource director to oversee management of the payroll under which his team prepared it and the director certified. The payroll manager would generate monthly schedule and salaries for specific months then submit to the director who was mandated to certify the documents as true copies from his department. He added that the director was not required to conduct reconciliations which was the role of someone from the

treasury, who examined the summary and confirmed from the Chief Officer Finance who in turn confirmed that everything was okay. He added that it was possible for double payments to go through the systems without detection and that it was the responsibility of the payroll unit to detect any errors. He also stated that his role in this matter was to provide payslips only and that he did not come across any document that suggested that the error of double payments came from the payroll unit. He also did not come across any authorization for payment signed by 3rd defendant.

He added that the instructions for payment was emailed to the bank accompanied by the details of those who were to be paid but he had no evidence to show that irregularity of double payments originated from the payroll unit. He added that the 3rd defendant served as the payroll manager from 1/6/2015 up to when he proceeded on compulsory leave on 11/12/2017. He also said that manual system was in excel system with no pay slips which he had not produced and that he wouldn't know whether the excel had issues.

Nichodemus Amakaka Akalo was the second witness for the plaintiff who worked as the operations manager with Equity Bank, Mbita branch. He testified that he received a court order requesting for account statements, account opening forms and instructions to execute payments for account number 1500163641697 belonging to the 1st defendant.

He added that the bank would receive money from the government to its suspense account then they would pay after receiving instructions from the government to pay salaries. They would receive written instructions which were usually accompanied by a list of employees and how much they should be paid. He added

that the instructions to pay the salaries were being issued by the payroll manger. He went on to narrate some of the amounts paid to the 1st defendant's account as salaries and which the plaintiff had flagged out as multiple payments.

When the witness was cross examined by Mr. Kisilah for the 2nd defendant and Mr. Achillah for the 3rd defendant, he told the court that when she opened the account, the 1st defendant indicated that she was a business woman. The account was opened the account an ordinary one.

He added that he used to interact with the 2nd defendant and he could not recall him going to his office to learn how the payment system worked. He added that if the mistake was with the bank there could be someone missing salary as it would mean there was a short and he was not aware whether the government took steps to correct. He confirmed that the schedule for payment is available and that they printed it and gave to the investigating officer.

He added that he did not see payment instructions issued by the 3rd defendant and he was not able to tell who had issued the instructions unless personal number of the person issuing the instructions was indicated in the statement. He confirmed that the narration of the payment in the issue did not indicate in the account statement whether they were salaries or allowances. It only indicated Homabay County. He added that they noticed that some people were getting double payment in January 2018 and they queried the government because they saw double credit. He admitted that without the payment schedule, there was no evidence that the name of the 1st defendant appeared twice.

The 3rd witness for the plaintiff was Jimmy Usiku Obel, a senior administrative

officer at the payroll department in the government. He told the court that he provided payslips for the 1st defendant for the period of May 2015 to February 2020. He went on to point out the double allowances and salaries paid to the 1st defendant and how different allowances are computed in the government. He stated that all the allowances in the county were paid through payslips.

He added that the 4th defendant was a senior payroll officer and was in charge of the manual payroll system and other duties allocated to him by the payroll manager. He added that the 2nd defendant was working in the payroll unit as an acting payroll manager while the 3rd defendant was the payroll manager at the time the witness joined the government.

When placed under cross-examination, PW3 stated that his duties at the payroll unit were majorly clerical but he was later given rights as an operator where he could deal with IPPD in which the employees' information and data such as deductions, salaries and allowances were automated. He was not able to tell whether the process was similar in manual payroll because he was not handling the manual payroll.

The witness added that the payroll manager was reporting to the finance section and if there was double payment, the second payment was outside the IPPD system. He added that there were other payments that were outside the payroll which the payroll manager would not be aware of. He would only remember daily subsistence allowance as the one of those paid outside the payroll.

He added that manual payroll was being processed by the 4th defendant who was a senior payroll officer reporting to the payroll manager. He explained that the

payroll manager would produce payroll from IPPD system then give it to the 4th defendant to consolidate it with the manual payroll for payment.

The plaintiff's 4th witness was Augustine Mukwekwe who investigated the case. He told the court that the case entailed payment of double salaries to the 1st defendant who was an employee of the government. In his investigations which covered the period between May 2015 and January 2020, they requested for documents from the government and Equity bank in writing. The documents included list of employees' payroll, employees' account numbers and names of the employees where the 1st defendant was one of them.

He added that they received the information through an inventory which revealed that the 1st defendant was being paid salary through Equity bank following authorization by the payroll manager. He stated that the payroll authorizations were signed by the 2nd defendant. The witness set the claim against the defendants as follows; the multiple payments were paid to the 1st defendant which was enabled by the 2nd defendant as an acting payroll manager, the 3rd defendant as the payroll manager and the 4th defendant as a payroll officer. Against the 2nd and 3rd defendants, the witness stated that they authorised the payroll while the 4th defendant was in charge of preparation of the manual payroll.

The witness added that upon analysis of the bank statements as compared to the payslips, a sum of Kshs 1,247,864/= was paid for the period under investigations upon which they invited the 1st defendant for recording statement and explaining why she was paid twice. When the 1st respondent turned up, she asked the plaintiff to given her an opportunity to settle the amount. He produced an email to that effect which quoted the amount claimed which according to her was mistakenly paid by the government.

PW4 added that they established that all allowances were paid through payslips and therefore the amounts paid over and above what was indicated in the payslip was unlawful and irregular. He concluded by stating that their investigations showed that all allowances were paid through the payroll and captured in the payslips.

In cross examination, PW4 said that their investigations aimed at finding out where the money went and found that it ended in the 1st defendant's account which fact was admitted. He denied that the 1st defendant repaid the money and insisted that she wrote and requested to repay which letter the plaintiff did not respond to. He maintained that all the defendants should be ordered to pay because they held different offices which were responsible for the loss. He pointed out that the 2nd defendant was in payroll office from 2014 but he did not know the number of officers at the payroll unit.

He added that salaries were processed through IPPD and manual systems and that there were consolidations done by the payroll manager then sent to the commercial banks for payment with a schedule for payment but admitted that he had not produced the schedule. He added that he had no evidence in court to show that the payment schedules were prepared by the payroll officer. He stated further that he did not write letters to the 2nd and 3rd defendants requiring them to explain the circumstances under which the payments were made.

He added that they were not in a position to establish movement of the payroll from one officer to another but they established the role of each officer. He said that the plaintiff did not sue the director of human resource because their

investigations showed that the payroll manager was in direct conduct with commercial banks and they were able to pick officers who were responsible for the fraud. He alleged that the bank statement was clear that two credits every month were from instructions of the payroll manager who was the 3rd defendant.

Defendants' case

There being interlocutory judgment against the 1st defendant, it was not expected that she would testify. The 4th defendant did not turn up for hearing despite having entered appearance and filed defence. The 2nd and 3rd defendants testified without calling any other witnesses.

The 2nd defendant started by protesting that the plaintiff did not take statement from him before it filed the suit. He also denied receiving any demand letter before the suit was filed. He told the court that he started acting as the payroll manager in December 2017 and that he was given password and credentials by the 3rd defendant after 11th December 2017. He added that he was only given the password and not any other material in regard to the role of the payroll manager. There was no formal communication that gave him the functions and roles of the payroll manager neither was there briefing of what he was to do.

The 2nd defendant admitted that he had rights in the payroll as an administrator and supervisor. When he assumed the role of acting payroll manager, he was given right which would allow him to effect changes in the payroll such as loans and statutory deductions. He could also effect changes in the biodata.

He confirmed that there were two payrolls, the IPPD one and the manual one and that the 4th defendant had the role of handling manual payroll while the IPPD was

developed by Director of Personnel Management in Nairobi. He added that reports would be generated after the payroll was run then go to relevant authorities such as banks, insurance and Saccos. He also explained that the IPPD reports were given to the 4th defendant for consolidation with product of the manual payroll and an excel sheet was run for those who did not have personal numbers.

The 2nd defendant denied ever handling the manual payroll and added that when he assumed the role of acting payroll manager, he was given the role of extracting reports and change particulars which could not be done by the other officers. He denied knowing how the unusual payments arose because it started before he became the manager. He added that, when he got the position of the payroll manager, he detected an employee known as Linda Akumu and the 1st defendant herein were being paid twice and he stopped that in January 2018. He added that he did not know that people were being paid more than they deserved and denied that he benefited from any money the 1st defendant received.

In cross-examination, the 2nd defendant stated that he stopped double payments to the 1st defendant in February 2020. He added that he stopped the payment from the manual as the money she was receiving through the system was not justified. He added that as a payroll officer, he was reporting to the 3rd defendant and that it was the 3rd defendant who would extract and forward the report to the finance office or the bank for payments.

The 3rd defendant told the court that he was still working for the government as director administration department of Blue Economy, Fisheries, Mining and Digital Economy. He added that the government's employees who were on the manual payroll were engaged on authority of the County Public Service Board through the

County Secretary. He stated that he was not the payroll manager between the period in question and the manual payroll was not within his mandate.

He stated further that he did not have authority to issue instructions to the bank as the mandate lied with either the County Secretary or the Director of Human Resource. He added that during the period of interest in this case, the mandate to pay came from the Director of Finance which role he never played. He maintained that he would hand over summary of IPPD payment to the Finance and that there was no evidence that the summary he gave to the Finance had the name of the plaintiff appearing twice. He stated further that he could not explain where the double payments came from as he was not aware of the manual payroll which was under the 4th defendant.

He stated in cross-examination that he was the payroll manager between May 2015 and December 2017 having been issued with appointment letter dated 29-05-2015 which outlined his duties as payroll manager. He denied that the 4th respondent worked with him as he was under Director, Human Resource. He stated further that as a payroll manager, he did not give any authorization to the bank and that such authorizations were given from the finance department but admitted that he had a duty to provide updated payroll but he was not in a position to detect double payments.

Analysis and determination.

I have gone through the evidence produced by the parties in this matter together with submissions dated 11th September 2025, 15th September 2025 and 23rd October 2025 by the plaintiff, the 2nd defendant and the 3rd defendant respectively. I have also noted and considered that this suit is similar to this court's suit number

E023 of 2024; *Ethics and Anti-Corruption Commission versus Lilian Achieng Okumu & the 2nd, 3rd and 4th defendants in this suit (hereinafter referred to as ‘the former suit)* whose judgment I delivered on 7th November 2025. The only difference between the two is the 1st defendant and their roles in the government and the amount claimed. Just as in the former suit, the 1st did not enter appearance and interlocutory judgment was entered against her on 20-01-2025.

Judgement having been entered for the plaintiff against the 1st defendants as aforesaid, the pecuniary claim of Kshs 1,247,864.00 could have been final had it not been for prayers for declaratory orders and general damages. This is pursuant to Order 10 Rule 6 of the Civil Procedure Rules which provides that;

‘Where the plaint is drawn with a claim for pecuniary damages only or for detention of goods with or without a claim for pecuniary damages, and any defendant fails to appear, the court shall, on request in Form No. 13 of Appendix A, enter interlocutory judgment against such defendant, and the plaintiff shall set down the suit for assessment by the court of the damages or the value of the goods and damages as the case may be.’

The interlocutory judgement against the 1st defendant for Kshs 1,247,864.00 is therefore hereby made final. The analysis herein will concentrate on the case against the 2nd, 3rd and 4th defendants in respect of all the prayers and against the 1st defendant in respect of all the prayers except prayer (d).

Section 11(1)(j) of the Ethics and Anti-Corruption Commission Act provides as follows;

In addition to the functions of the Commission under Article 252 and Chapter Six of the Constitution, the Commission shall—

- (j) *institute and conduct proceedings in court for purposes of the recovery or protection of public property, or for the freeze or confiscation of proceeds of corruption or related to corruption, or the payment of compensation, or other punitive and disciplinary measures including proceedings for the recovery of property or proceeds of corruption located outside Kenya.*

As I held in the former suit, where a statute gives a body specific mandate, the said body cannot operate outside the said mandate and should not be seen to pursue benefits, reliefs, remedies or orders which would be *ultra vires* the limits of the parent statute. In that case, the plaintiff's mandate being limited as provided in the above section, it cannot pursue for general damages of whatever nature. In my view, the issues left for my determination in this matter are;

- a. Whether the 2nd, 3rd and 4th defendants were responsible for the multiple payment to the 1st defendant.
- b. Whether the said defendants are liable to reconstitute the government of the sum irregularly paid to the 1st defendant.

The plaintiff's claim against the 2nd, 3rd and 4th defendants is based on the argument that the defendants were responsible for management of the payrolls and their actions or inactions resulted to the multiple payments to the 1st defendant. I do not need to spend much time in answering this question as I already done so in the former suit. My holdings in that suit in respect of liability will obtain in this matter whose ultimate results is that the 2nd and 3rd defendants cannot be held liable for the said multiple payments.

The only thing I would like to add in this matter is that the 4th defendant was found liable in the former suit because there had been entered a default judgment against him. In this suit however, the 4th defendant entered appearance and filed defence and counterclaim dated 15th July 2024 thereby joining issues with the plaintiff and as such the plaintiff had a duty to prove its case against him.

The 4th defendant was working in the Human Resource Department as a data entry clerk and that alone cannot make him liable for the payments unless it is shown that his actions or inactions were deliberate and fraudulent on his part. Just like for the 2nd and 3rd defendants, it has not been shown that the 4th defendant deliberately failed to perform his duties or performed them with intention of defrauding the government. There was nothing to connect him to the loss of the funds neither is there anything to show that he benefited from the double payments.

The plaintiff claimed that the 4th defendant was overseeing the manual payroll but he has denied the same in his defence by stating that he was serving as a data base officer who acted on instructions from the payroll manager, the 2nd defendant, a fact which comes out from the plaintiff's evidence. The manual payroll or payment schedule having not been produced in evidence, this court has no basis to conclude that the double payments were enabled by actions or inactions in the manual payroll.

The only evidence we have is that the 1st defendant received multiple payments. As to who was responsible for the same, one can only speculate. Having found that the 2nd defendant is not liable, I do not see any reason to load the 4th defendant with the same liability.

The 4th defendant did not turn up to prosecute his counterclaim. However, in my view, even if he had shown up, I find the manner in which the counterclaim was drawn wanting. All that he pleaded was to ask the court to dismiss the claim without asking for any relief. The same is unmerited and it is dismissed.

Flowing from the above discussion and noting my findings in the former suit, this court is not convinced that the 2nd, 3rd and 4th defendants were liable for the multiple payments to the 1st defendant.

Consequently, I give the following orders;

1. Judgment is entered for the plaintiff against the 1st defendant for Kshs 1,247,864.00.
2. The plaintiff's suit against the 2nd, 3rd and 4th defendants is dismissed with costs.
3. The plaintiff's costs of the suit shall be met by the 1st defendant.
4. The decretal sum in (1) above shall attract interests from the date of filing this suit until payment in full.

Dated signed and delivered at Nairobi this **18th** day of **December** 2025.

B.M. MUSYOKI
JUDGE OF THE HIGH COURT.

Judgment delivered in presence of;

Mr. Kisaka for the plaintiff;

Mr. Miss Mwangi holding brief for Mr. Kisilah for the 3rd defendant.

Mr. Achillah for the 3rd defendant; and

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