



REPUBLIC OF KENYA



**Mbogho v Ethics & Anti-Corruption Commission (Civil Appeal  
E025 of 2025) [2026] KEHC 587 (KLR) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 587 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CIVIL APPEAL E025 OF 2025  
AN ONGERI, J  
JANUARY 29, 2026**

**BETWEEN**

**GEOFFREY KIMONGE MBOGHO ..... APPELLANT**

**AND**

**ETHICS & ANTI-CORRUPTION COMMISSION ..... RESPONDENT**

*(Being an appeal from the Judgment of Hon. A. M. Obura (CM)  
in Voi CMCC No. E131 of 2022 delivered on 28th February 2025)*

**JUDGMENT**

1. The Respondent filed a plaint dated 21<sup>st</sup> June 2022 seeking judgment against the Appellant as follows:-
  - i. A declaration that the sum of Kshs. 13,977,987/= was illegally and fraudulently acquired by the Appellant from the County Government of Taita Taveta in breach of public trust.
  - ii. An order of payment of Kshs. 13,977,987/= by the Appellant to the Government.
  - iii. An order of payment of interest at commercial rates of Kshs. 13,977,987/= from the date of acquisition of each tranche as enumerated in paragraph 6 of the plaint.
  - iv. Interest at court rates from the date of filing suit.
  - v. Costs and incidentals to the suit.
2. The Respondent's case was that the Appellant received Kshs. 13,977,987/= in respect of imprest which he received in the names of various Members of the County Assembly and the County Government but the said members were never paid the imprest.
3. The Appellant filed a defence dated 1<sup>st</sup> August 2022 denying the Respondent's case.



4. The Appellant admitted that he was working with the County Government at the material time but he said the allegations were unfounded and meant to settle political scores.
5. The Appellant also said the allegations which were raised three years after he left the County Government were instigated by the former Governor Granton Samboja whom he said had a personal vendetta.
6. The Respondent called a total of 24 witnesses. The trial court found that the Appellant fraudulently received Kshs. 12,458,990/= and entered judgment in favour of the Respondent.
7. The Appellant has appealed against the said judgment on the following grounds:-
  - i. That the learned Magistrate erred in fact and in law in awarding the Respondent Kenya Shillings Twelve Million, Four Hundred and Fifty-Eight Thousand, Nine Hundred and Ninety (Kshs. 12,458,990/=).
  - ii. That the learned Magistrate erred in fact and in law in finding that the Appellant was liable for reimbursing the Government of Kenya, Respondent Kenya Shillings Twelve Million, Four Hundred and Fifty-Eight Thousand, Nine Hundred and Ninety (Kshs. 12,458,990/=).
  - iii. That the learned Magistrate erred in fact and in law in holding that the Appellant was the legal advisor to the office of the governor, Taita Taveta County without providing any proof of the same and/or qualifications for the Appellant to hold such an office.
  - iv. That the learned Magistrate erred in fact and in law in holding that the Appellant applied and received imprests on behalf of various Members of County Assemblies and County Government staff.
  - v. That the learned Magistrate erred in fact and in law in holding that the Appellant received monies on behalf of Members of County Assemblies and County Government staff for official activities yet the imprests were not addressed to him.
  - vi. That the learned Magistrate erred in fact and in law in holding that the Appellant was issued and received imprests on behalf of various Members of County Assemblies and County Government staff for official activities yet he was not concerned with the specific departments or offices issuing the said imprests.
  - vii. That the learned Magistrate erred in fact and in law in holding that the Appellant was issued and received imprests on behalf of various Members of County Assemblies and County Government staff for official activities yet he had no powers nor rights to issue nor receive any imprests on behalf of any Members of County Assemblies or County Government staff.
  - viii. That the learned Magistrate erred in fact and in law in holding that the Appellant was issued and received imprests on behalf of various Members of County Assemblies and County Government staff for official activities yet he had no powers nor rights to be issued nor receive any imprests on behalf of any Members of County Assemblies or County Government staff.
  - ix. That the learned Magistrate erred in fact and in law in holding that the Appellant received monies on behalf of Members of County Assemblies and County Government staff for official activities yet he had no powers nor rights to receive any monies on behalf of any Members of County Assemblies or County Government staff.
  - x. That the learned Magistrate erred in fact and in law in holding that the Appellant was issued and received imprests on behalf of various Members of County Assemblies and County



Governments staff for official activities yet he had no powers nor rights to approve the issuance of any imprests to himself or any other person on behalf of any Members of County Assemblies or County Government staff.

- xii. That the learned Magistrate erred in fact and in law by misapprehending the evidence and misapplying, misunderstanding and overlooking the parties' pleadings, testimony and submissions on how the imprests were issued.
  - xiii. That the learned Magistrate erred in fact and in law by misapprehending the evidence and misapplying, misunderstanding and overlooking the parties' pleadings, testimony and submissions on the individuals to whom the imprests were issues.
  - xiv. That the learned Magistrate erred in fact and in law by misapprehending the evidence and misapplying, misunderstanding and overlooking the parties' pleadings, testimony and submissions on the individuals to whom the monies were allocated.
  - xv. That the learned Magistrate erred in fact and in law by misapprehending the evidence and misapplying, misunderstanding and overlooking the parties' pleadings, testimony and submissions on the individuals to whom the monies were disbursed.
8. The parties filed written submissions as follows; The Appellant, Geoffrey Kimonge Mbogho, appeals against the judgment of the Chief Magistrate's Court at Voi, which ordered him to pay the Ethics & Anti-Corruption Commission (EACC) the sum of Kenya Shillings Twelve Million, Four Hundred and Fifty-Eight Thousand, Nine Hundred and Ninety (Kshs. 12,458,990/=).
  9. He contends that the trial magistrate erred in both fact and law in reaching this decision.
  10. The Appellant's main argument is that the Respondent failed to discharge its legal burden of proof. He asserts that no cogent evidence was presented to demonstrate that he personally received, retained, or failed to surrender the specific sum awarded.
  11. The claim was undermined by inconsistent figures in the demand letters and audit queries, which ranged from Kshs. 11,488,741 to Kshs. 13,977,987.
  12. The Appellant invokes the principle that special damages must be strictly proved, as established in *Hahn v Singh*, and argues that the shifting burdens under Sections 107, 109, and 112 of the [Evidence Act](#) were not satisfied by the Respondent's inconsistent and speculative evidence.
  13. Further, the Appellant challenges the trial court's finding that he was the legal advisor to the Governor of Taita Taveta County, a pivotal point for attributing liability.
  14. He states that no proof of such an appointment, such as a letter of appointment, gazette notice, or evidence of qualification, was ever tendered in court.
  15. Consequently, the finding that he occupied this role and was thereby responsible for the imprests lacks any legal or evidentiary foundation.
  16. The Appellant also disputes the finding that he applied for and received the imprests on behalf of Members of County Assembly and staff.



17. He notes that the imprest warrants produced in court were addressed to other officers and departments, not to him.
18. Testimony from the Respondent's own witnesses confirmed that imprests were processed through the Accounts Department by authorized officers, and the Appellant, who was not an AIE holder, cashier, or departmental head, had no legal authority to apply for, receive, or approve such funds under the [Public Finance Management Act](#) and Treasury Regulations.
19. Finally, the Appellant submits that the magistrate fundamentally misapprehended the entire body of evidence.
20. The court overlooked pleadings and testimony regarding the actual issuance, allocation, and disbursement of the funds, and relied on speculation despite witnesses confirming that surrender registers and original documents were held by the Accounts Office. This misapprehension, he argues, resulted in a miscarriage of justice.
21. In conclusion, the Appellant prays that the High Court allows the appeal, sets aside the lower court's judgment, declares that he is not liable for the Kshs. 12,458,990/=, and awards him the costs of both the appeal and the lower court proceedings
22. The Respondent, the Ethics and Anti-Corruption Commission (EACC), submits that the appeal filed by Geoffrey Kimonge Mbogho should be dismissed.
23. The appeal challenges a judgment from the Chief Magistrate's Court in Voi, which ordered the Appellant to repay Kshs. 12,458,990 obtained from the Taita Taveta County Government, along with interest and costs.
24. The Respondent contends that the trial court correctly evaluated the evidence and reached a sound conclusion.
25. Addressing the Appellant's grounds of appeal, the Respondent notes that any reference in the judgment to "Legal Advisor" instead of "Political Advisor" is a mere typographical error, which is not a proper subject for appeal but is instead remediable through the court's slip rule under the [Civil Procedure Act](#).
26. On the substantive issues, the Respondent argues it discharged its legal burden of proof as required by the [Evidence Act](#).
27. It presented a document examination report that conclusively matched the signatures and handwriting on the imprest vouchers to the Appellant.
28. Furthermore, the accountant who disbursed the funds testified to having given the money to the Appellant, who acknowledged receipt by signing.
29. Crucially, the purported beneficiaries of the imprests confirmed they never applied for, received, or were aware of the funds, and their signatures on the documents were forged.
30. The Respondent emphasizes that as a first appellate court, the court's duty is to re-evaluate the evidence while respecting the trial court's advantage in hearing witnesses.
31. The Respondent asserts that the trial magistrate meticulously analyzed all evidence, including the expert report and witness testimonies, and correctly found that the EACC had proved its case on a balance of probabilities.
32. The findings of fact were based on solid evidence and no misapprehension of the law.



33. Therefore, the Respondent concludes that the appeal is without merit, frivolous, and an abuse of the court process, and prays for it to be dismissed with costs awarded to the EACC.
34. This appeal arises from the judgment of Chief Magistrate, delivered on 28th February 2025 in Voi CMCC No. E131 of 2022.
35. The Respondent, the Ethics and Anti-Corruption Commission (EACC), had successfully sued the Appellant, Geoffrey Kimonge Mbogho, for the recovery of public funds fraudulently acquired from the County Government of Taita Taveta.
36. The trial court found that the Appellant had fraudulently received Kshs. 12,458,990/= in imprest funds on behalf of various Members of the County Assembly and staff who never received the same, and accordingly entered judgment for the Respondent.
37. The Appellant, being aggrieved, has lodged this appeal challenging both the findings of fact and the application of the law.
38. This court has carefully considered the record of appeal, the grounds advanced, and the written submissions filed by both parties.
39. The issues for determination in this appeal are as follows;
  - i. Whether the Respondent discharged its legal burden of proof to the required standard;
  - ii. Whether the trial court erred in its factual findings regarding the Appellant's role and his receipt of the imprest funds; and
  - iii. Whether the trial court misapprehended the evidence and the law in arriving at its decision.
40. On the first issue of the burden of proof, the Appellant contends that the Respondent failed to strictly prove its claim, citing inconsistencies in the figures demanded and the sum finally awarded.
41. He invokes the principle in *Hahn v Singh* [1985] KLR 716, that special damages must be strictly proved.
42. However, this appeal concerns a claim for restitution of unlawfully acquired public funds, which is a distinct cause of action founded in equity and public law.
43. The standard of proof in such civil proceedings is on a balance of probabilities, as provided under Section 107 of the *Evidence Act*, Cap 80.
44. The role of this court as a first appellate court is well settled, as articulated in *Selle & Another v Associated Motor Boat Company Ltd & Others* [1968] EA 123, which requires this court to re-evaluate the evidence afresh and draw its own conclusions while bearing in mind that it neither saw nor heard the witnesses and should make allowance for that.
45. Upon such re-evaluation, I find that the Respondent adduced overwhelming and cogent evidence to discharge its burden.
46. The Respondent called twenty-four (24) witnesses, including the purported beneficiaries of the imprests, such as County Assembly Members and staff who testified uniformly that they never applied for, received, or utilized the said funds, and that their signatures on the vouchers were forgeries.
47. The Respondent produced a Document Examiner's Report which conclusively matched the handwriting and signatures on the disputed imprest application and surrender vouchers to the Appellant.



48. This expert evidence, corroborated by the testimony of the accountant who physically disbursed the cash and identified the Appellant as the recipient, forms a solid evidentiary foundation.
49. The minor variance between the initial claim of Kshs. 13,977,987/= and the court's award of Kshs. 12,458,990/= is not a fatal inconsistency but a reflection of the court's meticulous scrutiny of the evidence pertaining to each specific transaction.
50. The trial magistrate was therefore correct in finding that the Respondent had proved, on a balance of probabilities, that the Appellant fraudulently obtained the sum of Kshs. 12,458,990/=.
51. Concerning the second issue, the Appellant takes issue with the trial court's reference to him as the "legal advisor" to the Governor, arguing that no proof of such appointment was tendered.
52. The Respondent correctly submits that this is at best a misdescription or typographical error, which does not vitiate the substance of the finding.
53. The evidence on record, including witness testimony, clearly placed the Appellant within the Governor's office in a senior advisory capacity.
54. His specific official title is not material to the determination of liability. What is material, and overwhelmingly proved, is his conduct in personally applying for and receiving the imprests.
55. The Appellant's argument that the imprest warrants were not addressed to him and that he lacked the formal authority under the *Public Finance Management Act* to receive funds is an attempt to hide behind procedural technicalities.
56. The evidence demonstrates a clear scheme where the Appellant utilized forged documents to initiate the process and presented himself to the cashier to receive money meant for others.
57. The trial court correctly looked at the substance of the evidence, which proved that the Appellant was the architect and beneficiary of the fraudulent scheme, regardless of the named payees on the warrants.
58. On the third issue, I find no merit in the Appellant's contention that the trial court misapprehended the evidence.
59. A holistic reading of the judgment shows that the learned magistrate carefully analyzed the testimonies of all witnesses, the documentary evidence, and the expert report.
60. The finding that the Appellant received the money was based on direct evidence from the disbursing officer and the documentary expert.
61. An appellate court will not ordinarily interfere with a trial judge's findings of fact unless they are based on no evidence, or on a misapprehension of the evidence, or the judge is shown demonstrably to have acted on wrong principles.
62. None of these exceptions are present here. The trial court's evaluation of the evidence was sound and its conclusions were squarely within the ambit of the evidence presented.
63. In conclusion, this appeal is devoid of merit. The Respondent proved its case against the Appellant on the requisite standard of proof.
64. The learned magistrate committed no error of law or fact in entering judgment for the sum of Kshs. 12,458,990/=.
65. Accordingly, the appeal is hereby dismissed. The judgment of the trial court in Voi CMCC No. E131 of 2022 delivered on 28th February 2025 is upheld in its entirety.



66. The Appellant shall bear the costs of this appeal.

**DATED, SIGNED AND DELIVERED THIS 29<sup>TH</sup> JANUARY 2026 VIRTUALLY VIA MICROSOFT TEAMS AT VOI.**

**ASENATH ONGERI**

**JUDGE**

In the presence of:-

Court Assistant: Millicent/Mabishi

..... for the Appellant

..... for the Respondent

