

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION
ACEC SUIT NO. E022 OF 2025 (OS)

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

-VERSUS-

FELIX MECHA NYAKUNDI.....1ST
DEFENDANT
STELLAH NYABOKE OTWORI.....2ND DEFENDANT
BANTU HOTEL AND RESORT COMPANY LIMITED.....3RD
DEFENDANT
FESTEMAGRA INVESTMENT LIMITED.....4TH
DEFENDANT

RULING

By notice of motion dated 13th November 2025, the defendants have sought the following;

1. *The documents seized pursuant to search warrants issued in miscellaneous criminal application number E129 of 2024 be returned to the applicants.*

2. *That the depositors to the various bank accounts and mobile mpesa account/till queried in this suit be identified and at the appropriate time witness summons be issued.*

In support of the application is an affidavit sworn by the 1st defendant on 13th November 2025 in which he states that during a search operation carried out on 7-03-2024 pursuant to

warrants issued in miscellaneous criminal application number E129 of 2024, the plaintiff seized various documents from the defendants. It is further averred that the defendants intend to use the documents towards drawing their defence. He also avers that before this suit was filed, various assets being questioned were cleared by the plaintiff and there is no justification to continue holding the documents. The 1st defendant adds that disclosure of the depositors in the identified accounts is critical in establishing whether the said deposits were tainted with illegality. He states further that the deposits were made in the course of the business at the 3rd defendant's hotels and it will be difficult of the depositors to cooperate and give evidence unless summons are issued.

The plaintiff has opposed the application through grounds of opposition dated 17-11-2025. It states that the search warrants and seizure of the documents were done pursuant to mandate given to it vide Articles 79 and 252(a) and (d) of the Constitution and Section 55 of Anti-Corruption and Economic Crimes Act (ACECA) and Section 11 of the Ethics and Anti-Corruption Commission Act. The plaintiff states further that it filed and served the defendants with documents ranging from pages 1 to 11023 which are adequate for purposes of filing their respective defences and that the application lacks legal or factual basis and is bad in law, pre-mature, misconceived and incompetent.

I have read the submissions of the defendants dated 3-12-2025 and those of the plaintiff dated 9-12-2025. It is not denied that the plaintiff searched and seized documents from the defendants pursuant to valid and lawful court orders and warrants. The defendants have not faulted the process of the search and seizure of the documents. All that they claim is that the documents are necessary for their defences.

I have looked at the voluminous documents filed by the plaintiff in this matter which the defendants have confirmed were served on them. Some of the documents were seized

from the defendants while others were obtained from the banks and mobile money transfer service providers. Others were correspondences between the plaintiff and the defendants. The documents are obviously meant to be evidential exhibits in this matter. The legality of the process of obtaining them having not been faulted, it is my view that the application is premature and unmerited.

The plaintiff is seeking to have the various assets registered to or belonging to the defendants forfeited to the government and returning the documents at this point would be putting the cart before the horse. The rights of the defendants to keep whatever documents they are complaining about can only crystalize after this court is done with hearing and determination of the suit and in favour of the defendants. In any event, the defendants have not identified which specific documents they are seeking to be released to them. This court cannot make a blanket order for the return of documents as doing so will be tantamount to convoluting the proceedings and opening a long inquiry which this court is not ready to do.

On the disclosure of the depositors, the court is at a loss as to what goal the defendants want or intend to achieve through this prayer. The 1st defendant has deponed at paragraph 11 of the supporting affidavit that the deposits were mainly made by the 3rd defendant's customers. I also believe that the deposits in the bank accounts were made by people known to the defendants and where such depositors are not known to the defendants, they can be identified through information from their bankers. The defendants are able to get the details they seek from their banks and mobile money transfer service providers. Parties cannot use the court to help them gather evidence in the manner the defendants are intending to do. The defendants will be at liberty to seek witness summons from the court once they identify the witnesses themselves.

In view of the above, I do not see any merits in this application. It is hereby dismissed with costs to the plaintiff.

In order to progress this matter, the defendants are ordered to file their defence and documents within the next fourteen days from the date of this ruling.

Dated, signed and delivered at Nairobi this 27th day of February 2026.

B.M. MUSYOKI
JUDGE OF THE HIGH COURT.

Ruling delivered in presence of Miss Kisabei for the plaintiff and Mr. Kinyua for the defendants.