

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION
ACEC MISC CASE NO E040 /2025

GLADYS NASIEKU TARAYIA.....

APPLICANT

VERSUS

ETHICS AND ANTI-CORRUPTION COMMISSION.....

RESPONDENT

RULING

- 1.** What is before me is the **Notice of Motion dated the 9th day of October, 2025**. The same is brought **under Article 19(2), 22, 23(3) (b) 25(c) 26, 28, 29, 40, 43(1) (a)(c) 43(2) 50, 159 (2) (d) 259(1) (b) Sections 1A, 3A and 63 (e) of the Civil Procedure Act, Order 12 Rule 7 and Order 51 Rule 1 of the Civil Procedure Rules** and all the other enabling provisions of the law.
- 2.** 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 the applicant, on the 9th October, 2025. Through the application, the applicant has sought the following Orders;

1) THAT this Hon. Court be pleased to vary the preservation orders, issued on the 4th September 2025, to permit the Applicant to access Ksh.1,000,000 from the coupons, arising from the assets held at the Central Bank of Kenya, (as specified below), for the sole purpose of meeting her urgent and critical medical expenses:-

- (a) GOK IFB BOND NUMBER KE4000001109**
- (b) GOK TREASURY BOND NUMBER KE1000001493**
- (c) GOK IFB BOND NUMBER KE6000009545**
- (d) GOK TREASURY BOND NUMBER KE7000009436**
- (e) GOK IFB BOND NUMBER KE8000006430**
- (f) GOK IFB BOND NUMBER KE8000005218**
- (g) GOK IFB BOND NUMBER KE8000005549**
- (h) GOK IFB BOND NUMBER KE8000002322**
- (i) GOK TREASURY BOND NUMBER KE2000002135**
- (j) GOK IFB BOND NUMBER KE7000007877**
- (k) GOK IFB BOND NUMBER KE5000008549**
- (l) GOK TREASURY BILL KE9500006656**

2) THAT this Hon. Court be pleased to vary the preservation orders, issued on 4th September 2025, to allow for the automatic re-investment of the said assets (“rolling over”). In order to maximize, and to avert stagnation or diminishing of their value.

3) THAT the costs of this application be in the cause.

3. The applicant avers that she suffers from multiple severe and life threatening medical conditions, including; chronic non-ulcer

dyspepsia, and complications of a blocked artery, which require daily medication, constant, immediate and specialized medical treatment and attention.

- 4.** It is also her contention that his right to life under Article 26, her right to human dignity under Article 43(1) (a) are currently under immediate threat, and that the current preservation orders are causing undue, disproportionate and life threatening hardship by preventing the applicant from addressing her fundamental right to life and good health.
- 5.** Further, that her cardiologist, Dr. Gikonyo, from Karen Hospital has persistently recommended adherence to a strict regime of treatment, check-ups and heart clinics considering that her underlying conditions were deemed serious after a series of MRI scans, X-Rays and blood works amongst other tests indicated that the complications related thereto had a tendency to crop up suddenly without any warning.
- 6.** That her current condition causes her severe excruciating angina/chest pain, fatigue and severe pain from non-ulcer dyspepsia and recurrent headaches, which if not addressed will progress rapidly, significantly reducing her chances of survival

and causing her immense suffering. That the estimated cost for the recommended urgent medical attention and treatment regime is approximately Ksh.1,000,000.

7. That she is currently retired with no other source of income to cater for her health needs which are quite expensive and she relies on coupons derived from the frozen assets to cater for her medication, and to acquire the requisite necessities to preserve and sustain her health and life such as food, water and sanitation facilities.

8. Further, that the impugned orders prohibiting further dealings with respect to the said assets have the effect of threatening to diminish, push down and stagnate their value. She seeks to be allowed to access limited amounts from the coupons, as onetime payment, to facilitate her cater for her health needs. She has also sought for an order that this court does order the Central Bank of Kenya to re-invest Treasury bill number **GOK TREASURY BILL KE 9500006656** worth Ksh. 1,500,000 which was to be bided on the 13th October, 2025.

9. The respondent filed a replying affidavit sworn by Getrude Siele, on the 15th October, 2025. She avers that the orders that

the applicant seeks to vary were issued after the court was satisfied that the respondent had made a case for preservation of assets forming the subject matter of the application, on the ground that they are reasonably suspected to have been acquired through corrupt conduct.

10. The respondent further avers that the applicant has not demonstrated or even attempted to demonstrate that the preserved assets were not acquired as a result of corrupt conduct as required of her under **Section 56 (5)** of the **Anti-Corruption and Economic Crimes Act No. 3 of 2003** and that, the grounds advanced by the applicant are not grounds for varying or setting aside preservation orders.

11. That the respondent does not oppose prayer (2) of the application as it will not lead to dissipation of the preserved assets, but will preserve and enhance the value of the preserved funds during the pendency of the investigations, hence, not prejudicial to the applicant/respondent.

12. The applicant filed a supplementary affidavit annexing a medical report from Karen Hospital dated the 10th October, 2025.

13. The application was disposed of by way of written submissions.

Applicant's Submissions

- 14.** The applicant identified two issues for determination;
- a) Whether rolling-over/re-investment of the assets should be allowed.
 - b) Whether the instant application is merited.
- 15.** On the first issue, it was submitted that it is in the best interest of both parties for the assets to be rolled-over as their value would stagnate/decline under market forces in the event that they are not rolled-over/re-invested into the available market which fact has been admitted by the respondent.
- 16.** On whether the application is merited, the applicant has submitted that the respondent in seeking to preserve the assets failed to demonstrate that there exists a good and arguable case against the applicant, and that the assets were at a real risk of dissipation.
- 17.** That the respondent's case is based solely on incomplete investigations, mere suspicion and conjecture and the

applicant did not specifically particularize the corrupt conduct alleged on the part of the applicant save for stating that her alleged companies irregularly/fraudulently acquired tenders from Kajiado County Government.

- 18.** That despite alleging illegality/impropriety regarding conflict of interest, and breach of procurement rules on the part of the applicant, the respondent failed to particularize the alleged illegalities, impropriety, breach or conflict. Further, that the respondent failed to substantiate the allegations that the applicant received **Ksh. 54, 670,000** through ***Faircon General Equipment limited***. Reliance was placed on the case of ***HMRC vs Xing (2005) EWHC 2057 (Admin) (High Court, England & Wales, Administrative court)***.
- 19.** That there is no pre-existing suit against her to justify a mareva injunction and that, no substantive suit has been preferred against her for wrongful conduct contrary to the principles of Mareva as espoused in the case of ***Beta Healthcare International Limited vs Grace Mumbi Githaiga & 2 others (2016) KEHC 7881 (KLR)***.

20. The applicant submitted that the respondent failed to prove that the assets were at risk of dissipation and that their case is based on suspicion which is misplaced, for the reason that, the applicant has never attempted to dispose the assets in order to defeat justice, despite her person and property having been searched in the month of October and she could foresee the event of the current freezing orders, but she nevertheless, took no action to dispose the assets as she believes in her innocence. Further, that the respondent failed to make all material disclosures regarding the assets and in particular, that, some assets were acquired long before the period under investigations i.e. before 2018-2019. Reliance was placed on the case of ***Airtouch Connections Limited vs Essar Telecom (2014) KEHC 808 (KLR)*** and that of ***Ethics and Anti-Corruption Commission vs Kanani & 5 others (Anti- corruption case No. E022 of 2023 (2024) KEHC 16638 (KLR).***

21. That the applicant has filed further medical advice comprising of price schedule and treatment bills thereby demonstrating cash payment for medical services and she is currently

retired, unemployed and has no medical cover owing to difficulties in finding a suitable cover given her advanced age and existing medical condition.

22. The applicant invited the court to consider the respondent's delay in finalizing investigations into this matter, which investigations were commenced as early as 2023 but the same have not seen the light of the day. That the delay has visited immense and unnecessary hardship, psychological strain and prejudice upon the applicant whose right to property under Article 40 of the Constitution is threatened with violation.

Respondent's Submissions

23. The respondent submitted that ***under Section 56 (1) of ACECA***, before the court can grant an ex parte order, it has to be satisfied that there exists reasonable grounds to suspect that the property/properties sought to be preserved were acquired as a result of corrupt conduct.

24. That in the circumstances giving rise to the filing of the instant application, the respondent did provide the court with

evidence showing that the applicant by herself/or through companies associated with her was trading with her previous employer, the County Government of Kajiado which action is prohibited by the law and in particular **Section 59** of the **Public Procurement and Asset Disposal Act, 2015**.

25. That this court having granted the preservation order for preservation of the assets, the burden shifts to the person seeking to vary or set aside the order to prove that the assets in respect of which the order is sought were not acquired as a result of corrupt conduct. That the applicant has not discharged that burden. That she has not addressed the weighty issue of the alleged unlawful trading with her previous employer, the County Government of Kajiado, and using her relatives working with the said County Government to irregularly do business with her previous employer.

26. The respondent further submitted that in the absence of any evidence offered by the applicant capable of proving on a balance of probabilities, that the preserved assets were not acquired as a result of corrupt conduct, this court should not discharge or vary the orders.

Analysis and Determination

27. This court has considered the application together with all the materials in support of, and in opposition to the same, including the submissions by both parties. The only issue for determination is;

Whether this court should vary the preservation orders issued on the 4th September, 2025.

28. The orders sought to be varied were issued on the 4th September, 2025 by Wakiaga J. The Judge issued a preservation order for assets that are listed in paragraph 1 of the application.

29. The said orders were issued pursuant to the application dated the 3rd day of September, 2025, which was brought under ***Section 56 of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003.***

30. The applicant herein has now moved this Honourable court under various Articles of the Constitution and Sections of the Civil Procedure Act for variation of the said orders. Her application is mainly grounded on the fact that she is

suffering from multiple severe and life-threatening medical condition, including chronic non-ulcer dyspepsia and other complications which require specialized medical treatment and attention. She has sought for the release of Ksh1,000,000 for medical treatment.

31. The applicant has also sought for variation of the orders to allow for automatic re-investment of the assets the subject matter of this application in order to maximize and to avert stagnation or diminishing of their value. This prayer is not opposed by the respondent because it is in the interest of both the applicant and the respondent that the assets are rolled over/re-invested.

32. In that case, the only prayer remaining for determination by this court is prayer (1).

33. Section 56(5) of the **ACECA** which is on discharge/or variation of preservation orders provide as follows;

“The court may discharge or vary an order under subsection (4) only if the court is satisfied, on a balance of probabilities, that the property in respect of which the order is discharged or varied was not acquired as a result of corrupt conduct.”

- 34.** The said Section imposes a burden on the party seeking to have a variation of the orders, to proof, on a balance of probabilities that the subject property was not acquired as a result of corrupt conduct.
- 35.** This court has considered the application and the supporting affidavit and also the submissions by the applicant. Nowhere has the applicant made any attempt to explain how the subject assets were acquired.
- 36.** As submitted by the respondent, the reasons given by the applicant are unknown in law and that, in the absence of evidence showing that the preserved assets were not acquired as a result of corrupt conduct, the orders sought herein cannot issue in her favour.
- 37.** In view of the foregoing, and for the reasons that this court has given, I find that the application has no merits to the extent that it is seeking variation to allow the applicant access Ksh. 1,000,000. However, to the extent that it seeks variation to allow automatic re-investment of the said assets,

the court finds merit in that limb of the application and the same is hereby allowed.

38. In the end, and for avoidance of doubt, prayer (1) of the application is hereby dismissed but prayer (2) is allowed.

39. Since the application has partially succeeded, each party shall bear its own costs of the application.

40. It is so ordered.

Dated and signed at Nairobi this.....day of2026

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L.M. NJUGUNA
JUDGE

Delivered and countersigned this 27th day of February 2026

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B.M. MUSYOKI
JUDGE