

REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
ANTI-CORRUPTION & ECONOMICS CRIME DIVISION  
ACEC SUIT NO. E012 OF 2025

ETHIC & ANTI-CORRUPTION COMMISSION.....PLAINTIFF

VERSUS

JEMISHLEY CONSTRUCTION COMPANY..... 1<sup>ST</sup> DEFENDANT  
DIASTO COMPANY LIMITED.....2<sup>ND</sup> DEFENDANT  
KENJE ENTERPRISES LIMITED.....3<sup>RD</sup> DEFENDANT  
JEMIMA MERCY ACHIENG.....4<sup>TH</sup> DEFENDANT  
MERCY JEMIMA ACHIENG T/A KEROLA AGENCIES.....5<sup>TH</sup> DEFENDANT  
OSCAR OKOTH ONDU T/A JEOSA ENTERPRISES.....6<sup>TH</sup> DEFENDANT  
MOHAMED ABDIRAHMAN.....7<sup>TH</sup> DEFENDANT  
MARTHA WAMBUGU.....8<sup>TH</sup> DEFENDANT  
JOSEPH GATHIAKA.....9<sup>TH</sup> DEFENDANT  
JOYCE MUNIU.....10<sup>TH</sup> DEFENDANT  
MICHAEL AUKA AJWANG.....11<sup>TH</sup> DEFENDANT

**RULING**

The plaintiff has brought this suit together with suit numbers E011 of 2025, E013 of 2025, E014 of 2025, E015 of 2025, E016 of 2025, E018 of 2025, E019 of 2025 and E020 of 2025 seeking to recover specified amounts of money from the respective defendants on behalf of the Nairobi City County Government (hereinafter referred to as ‘the government’). These funds are said to have been lost in different occasions in the financial years 2016/2017 and 2020/2021 on pretext that there were lawful tenders for supply of goods and services.

All the defendants entered appearances and filed defences in the respective suits after which the plaintiff filed a notice of motion dated 19<sup>th</sup> November 2025 in this suit seeking the following orders;

1. *Spent.*
2. *This Honorable Court be pleased to issue an order of consolidation of the instant suit with the following suits;*
  - a. *ACEC Suit No. E011/2025 EACC vs Mary Wanjiku T/A Keywharf Investments & 4 Others.*
  - b. *ACEC Suit No. E013/2025 EACC vs Annapolis Enterprises Limited & 3 Others.*
  - c. *ACEC Suit No. E014/2025 EACC vs Transgenic Solutions Limited.*
  - d. *ACEC Suit No. E015/2025 EACC vs Petrim Investments & 9 Others.*
  - e. *ACEC Suit No. E016/2025 EACC vs Fastlink Connections Ltd & 3 Others.*
  - f. *ACEC Suit No. E018/2025 EACC vs Ossiezeys Enterprises Limited & 7 Others.*
  - g. *ACEC Suit No. E019/2025 EACC vs Mary Wanjiku T/A Maymill Enterprises & 7 Others.*
  - h. *ACEC Suit No. E020/2025 EACC vs Janta Express Services Limited & 4 Others.*
3. *This Honorable Court be pleased to issue an order that the instant suit be designated as the lead file for purposes of taking evidence and writing judgment.*
4. *The costs of this application be provided for.*

The notice of motion is supported by affidavit of Everlyne Wachira sworn on 19<sup>th</sup> November 2025. Everlyne depones that, she is an investigator with the plaintiff and was part of the team which was tasked to investigate allegations of embezzlement of public funds of the government between financial years 2016/2017 and 2021 to 2022 through fictitious procurement contracts awarded to contractors who were not pre-qualified and payments effected whereas no goods were delivered to services rendered to the government.

She adds that the witnesses for the plaintiff are the same across all the suits and the evidence and sets of facts are the same. She also depones that the nine suits raise a common question of the law covering the procurement processes, delivery or non-delivery of goods and services and the defendants' entitlement or lack of it to the payments. She urges that the consolidation be allowed in order to save on costs, public funds, time and efforts in securing attendance of witnesses and duplication of processes.

The notice of motion has been opposed by the following;

- a. The 4<sup>th</sup> defendant in suit number E011 of 2025 one Jeremy Kimathi M'riria who swears that the application is frivolous, vexatious, abuse of the court process and devoid of merits. He adds that the causes of action in the suits arise under different circumstances involving different parties. He adds for instance that, he was not an employee of the government at the time of the transactions and that he was discharged by the government at the time he was leaving. For these reasons, he pleads that the suit against him be tried separately.

- b. Luke Gatimu, the 6<sup>th</sup> defendant in suit number E019 of 2025 who depones that the suit in which he is a party does not arise from the same transactions and circumstances as in the other suits. He denies that the issues of law and facts are similar in all the matters. He alleges that the application is an afterthought and an abuse of the court process.
- c. The 9<sup>th</sup> and 10<sup>th</sup> defendant in this suit who in their grounds of opposition dated 14<sup>th</sup> December 2025 maintains like the other defendants above that the causes of action are not similar as they involve different and distinct transactions and add that hearing the matters together will prejudice them as it will be difficulty for them to piece together different facts and circumstances in the matters.

I have read the above parties' respective replying affidavits and submissions as well as the plaintiff's submissions. Consolidation of suits is meant to avoid conflict of decisions of the same court in similar cases and circumstances and duplication which may lead to unnecessary use of time and recourses. A court will order consolidation where there are the same issues between parties to the suits or where the causes of action emanate from the same transaction or a series of transactions or where it is manifestly convenient to try the suits together. Honourable Justice LL Naikuni held in ***Abdalla v Hassan & 15 others [2022] KEELC 13582 (KLR)***, that;

*'The situations in which consolidation can be ordered include where there are two or more suits or matters pending in the same court where: -*

*1. Some common question of law or fact arises in both or all of them;*

*or*

2. *The rights or relief claimed in them are in respect of, or arise out of the same transaction or series of transactions, or*
3. *For some other reason it is desirable to make an order for consolidating them.'*

The defendants who have opposed the application submit that the suits are not emanating from similar circumstances, facts and transactions and consolidation of the same will not save the judicial time but rather convolute and delay the trial. The 4<sup>th</sup> defendant submits that the suits are better heard together without consolidation or the court designates one of the suits as the test suit for purpose of the trial and determination of the dispute. He argues that the application is meant to circumvent an order made on 12<sup>th</sup> September 2025 in suit number E011 of 2025 to the effect that the plaintiff should respond to his notice to produce dated 30<sup>th</sup> September 2025. The court record shows that this order was made on 9<sup>th</sup> October 2025 and not 12<sup>th</sup> September 2025 as stated by the said defendant. According to the defendants, the plaintiff should have filed one suit against all the defendants if it thought that the trial should one instead of filing nine suits then seek to consolidate.

I have gone through the voluminous pleadings of the parties. Whereas there are some common questions to be answered across the suits, I find glaring different circumstances under which the causes of action arose. There are some witnesses who are common in all the suits but there are others which are not common.

For instance, suit number E012 of 2025 has eleven witnesses, suit number 019 of 2025 has five, suit number E015 of 2025 has seven, suit number E011 of 2025 has six, suit number E016 of 2025 has six, suit number E013 of 2025 has six, suit

number E019 of 2025 has five and suit number E014 of 2025 has seven. Where the witnesses are the same, their statements are specific and make references to specific defendants in each suit with specific allegations against each defendant. Consolidation would therefore result to having the witnesses' statements changed and the pleadings amended accordingly to reflect the correct cross references.

Another difference in the nature of the suit is that, they do not all relate to the same financial years. Suit number E011 of 2025 relates to 2020/2021, suit number E012 of 2025 relate to 2020/2021, suit number E014 of 2025 is for 2020/2021, suit number E015 of 2025 is for 2019/2020, suit number E018 of 2025 is for 2020/2021, suit number E019 of 2025 is for 2016/2017, suit number E020 of 2025 is for 2020/2021 and suits numbers E016 of 2025 and E013 of 2025 do not plead any specific years.

Again, the prayers in the suits are different in that, in some, the plaintiff seeks lumpsum figures from the defendants jointly and severally while in others, there are specific figures for each of the defendants. The plaintiff claims that the payments were made without there having been tender processes. Actually, none of the suit has tender documents as exhibits except that in some, there are letters which sought approval for direct procurement. This means that there were no paper trails of the transactions other than the said letters and the details of the payments. In that case, in my view, the payments cannot be treated as products of the same transactions or series of transactions. It is also not clear to me whether the circumstances under which the payments were made are the same. The payments were not paid on the same date, by the same persons to the same recipients. For payments to be said to have arisen from the same transactions, there ought to be demonstration of the trail of how they were initiated, approved and finally made.

I have also noted that the suits are not exactly at the same stage of trial. For instance, in civil suit E011 of 2025, the 4<sup>th</sup> defendant issued a notice to produce dated 30<sup>th</sup> September 2025 which is yet to be responded to. Consolidation will result to the said suit will dragging back some of the others which are ready for trial. This will result to the opposite of what orders of consolidation are meant to achieve.

While dealing with an application of the similar nature in ***Gitau v Jennings & 5 others; Acoverde (K) Limited & another (Interested Parties) [2023] KEHC 18631 (KLR)***, the court held as follows;

*‘It is trite law that the purpose of consolidation of suit is to enable efficient and expeditious disposal of suits. It is also trite that consolidation of suits should be undertaken in a manner that is fair and not to occasion any injustice to either party.’*

In view of the above, I hold the opinion that consolidation of the suits will not serve the purpose of facilitating efficient and expeditious disposal of the disputes. As rightly submitted by the defendants, the fact that the investigator and the plaintiff’s witnesses are the same does not alone justify consolidation. Other factors as the efficiency and convenience of the trial must be considered. Going by the number of the defendants and advocates representing them, consolidation is highly likely to convolute the trial instead of easing the process.

Consequent to what I have stated above, the application dated 19<sup>th</sup> November 2025 is dismissed. I make no orders as to costs.

Dated, signed and delivered at Nairobi this **13<sup>th</sup>** day of **March** 2026.

**B.M. MUSYOKI**  
**JUDGE OF THE HIGH COURT.**

Ruling delivered in presence of;

Miss Wambugu and Miss Biwott for the plaintiff;

Mr. Muriuki for the 4<sup>th</sup> defendant in suit number E011 of 2025;

Miss Ochieng holding brief for Mr. Ataka for the 8<sup>th</sup> defendant in suit number E012 of 2025;

Miss Wamatu holding brief for Mr. Mola for the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> defendants in suit number E011 of 2025; the 9<sup>th</sup> and 10<sup>th</sup> defendants in suit number E012 of 2025; the 4<sup>th</sup> defendant in suit number E014 of 2026; the 6<sup>th</sup> and 10<sup>th</sup> defendants in suit number E015 of 2025; the 4<sup>th</sup> defendant in suit number E016 of 2025; the 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> defendants in suit number E018 of 2025 and the 4<sup>th</sup> and 5<sup>th</sup> defendants in suit number E020 of 2025;

Miss Wambui holding brief for Mr. Onsare for the 1<sup>st</sup> and 2<sup>nd</sup> defendants in suit number E018 of 2025 and the 1<sup>st</sup> and 2<sup>nd</sup> defendants in suit number E014 of 2024;

Miss Wakaba holding brief for Mr. Wanyaga for the 1<sup>st</sup> and 2<sup>nd</sup> defendants in suit number E013 of 2025;

Miss Musembi holding brief for Mr. Kaimenyi for the 1<sup>st</sup> defendant in suit number E011 of 2025; the 1<sup>st</sup> to 4<sup>th</sup> defendants in suit number E015 of 2025 and 1<sup>st</sup> to 5<sup>th</sup> defendants in suit number E019 of 2015;

Miss Mwangi holding brief for Mr. Kinaro for the 7<sup>th</sup> defendant in suit number E012 of 2025, the 5<sup>th</sup> defendant in suit number E015 of 2025, the 3<sup>rd</sup> defendant in suit number E018 of 2015 and the 3<sup>rd</sup> defendant in suit number E014 of 2025;

Mr. Karisa for the 6<sup>th</sup> defendant in suit number E019 of 2025.

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