



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC MISC APPLICATION NO. E028 OF 2026

**IN THE MATTER OF THE ETHICS AND ANTI-CORRUPTION
COMMISSION ACT (CAP 7) AND THE ANTI-CORRUPTION
AND ECONOMIC CRIME ACT (CAP 65)**

AND

**IN THE MATTER OF THE PRESERVATION OF PARCELS OF
LAND DESCRIBED AS L.R. No. 209/12670, L.R. No.
209/12671, L.R. No. 209/12672, L.R. No. 209/1267 AND L.R.
No. 209/21526**

BETWEEN

**ETHICS AND ANTI-CORRUPTION
COMMISSION.....APPLICANT**

=VERSUS=

**HANOSA DEVELOPERS LIMITED.....1ST
RESPONDENT**

**LEAH BOSIBORI.....2ND
RESPONDENT**

**ALOYS M. MAO.....3RD
RESPONDENT**

**MOHAMMED ADAN KHALIF.....4TH
RESPONDENT**

RULING

1. Before me for determination is the Notice of Motion dated 13th February 2026, brought under Articles 25(1)(c) and 50(1) of the Constitution 2010, Sections 1A, 1B, 3A and 6 of the Civil Procedure Act, Order 51 of the Civil Procedure Rules, and Section 56(4) of the Anti-Corruption and Economic Crimes Act Cap 65, in which the 4th Respondent/Applicant seeks the following orders:

a) Spent.

b) Spent.

c) THAT the Honourable Court be pleased to set aside, vary, strike out, and/or discharge the ex parte order issued in the matter on 2nd February 2026 against the 4th Respondent pending the hearing and determination of the suit.

d) The Honourable Court be pleased to issue an order striking out the name of the 4th Respondent from these proceedings.

e) In the alternative, the Honourable Court be pleased to issue an order staying, transferring and or consolidating the suit against the 4th Defendant with ELCLC E486 of 2025 Slyvanus Kasiti and 2 others versus Mohammed Adan Khalif & 8 others.

f) The Honourable Court be pleased to issue any other order as it may deem fit in the circumstances.

g) The costs of the application and the entire suit be provided for.

2. The application is based on the grounds appearing on its face together with the supporting affidavit of Mohammed Adan Khalif sworn on even date.

THE APPLICANT'S CASE

3. The Applicant averred that the ex parte preservation order issued on 2nd February 2026 is irregular and improper because it was neither pleaded nor sought, and it effectively altered the relief sought in the application dated 26th January 2026.
4. He stated that the proceedings regarding his property were published in the Daily Nation on 30th September 2025, thereby bringing the matter into the public domain.
5. He further averred that on 15th January 2026, Hon Lady Justice Christine Ochieng delivered a ruling dismissing the Applicant's application for injunctive orders against his property.
6. He contended that the dispute relating to the suit property is already the subject of ELCLC No. E486 of 2025, which is pending before a Court of concurrent jurisdiction, and therefore, the present proceedings are sub judice and may lead to conflicting determinations.
7. He argued that the application is an abuse of the Court process and amounts to forum shopping, having been filed shortly after the Applicant became aware of the dismissal of

- an application for injunctive orders against the 4th Respondent.
8. He deposed that he is the registered owner of the suit property, having purchased it for valuable consideration, and that it does not constitute proceeds of corruption or public land. He stated that the property, originally acquired by the government in 1995, was subsequently transferred to several proprietors before he ultimately acquired it for Kshs 140 million after conducting due diligence and confirming the absence of encumbrances.
 9. He explained that he was the fourth transferee of the suit property and that none of the previous owners had ever been sued or had their titles challenged for over three decades.
 10. He argued that the orders issued on 2nd February 2026 are punitive and that he would suffer substantial losses if the orders sought are not granted. He explained that he has undertaken substantial development on the suit property and has spent substantial sums on contractors, consultants, and other professionals, and that he stands to suffer a loss of Kshs 124,800,000/= over the six months during which the preservation orders remain in force. He denied any encroachment onto public land and maintained that the property had been lawfully surveyed and registered as a separate parcel.
 11. He asserted that before commencing development on the suit property, he had obtained the necessary statutory

approvals, licences, and compliance certificates from Nairobi County Government, the National Environment Management Authority, and the National Construction Authority.

12. The Applicant also filed a Supporting Affidavit sworn by QS Muhidin Abdirahman, a Quantity Surveyor employed by EastMan Properties Limited, the construction project management firm overseeing the ongoing development on property known as L.R. No. 209/21526 (formerly L.R. No. 209/12673).
13. The deponent explained that he conducted a detailed financial assessment of the potential impacts of suspending ongoing construction for six and twelve months and determined that a six-month suspension could result in an estimated loss of Kshs. 124,800,000/-, while a twelve-month suspension might lead to a loss of Kshs. 249,600,000/-.
14. He argued that the projected losses did not fully account for adverse factors such as rising construction costs, ongoing debt servicing obligations, loss of expected revenue, opportunity costs, and ongoing operational and administrative expenses that would continue even after the works stopped.
15. He stated that the report highlights the significant financial prejudice and irreparable loss likely to result from any ongoing suspension of the project, and urged the Court to take this into account when determining the application.

THE RESPONDENT'S CASE

16. The Respondent filed a replying affidavit sworn by its investigator, Everlyne Odipo, in opposition to the application.
17. The deponent averred that she is a member of the team conducting investigations into the allegations which led to the application dated 26th January 2026.
18. She asserted that the ongoing investigations into the unlawful alienation of L.R. No. 209/12670, L.R. No. 209/12671, L.R. No. 209/12672, and L.R. No. 209/12673 indicate that a letter of allotment was issued in favour of North Highridge Primary School on 30th January 1987 for public land measuring approximately 1.82 acres, which is an extension of L.R. No. 209/8262 and is supported by PDP No. 42/29/86/1.
19. She stated that on 31st October 1996, Grant No. I.R 71062 over L.R. No. 209/8262 was issued in the name of Nairobi City Council for the establishment of a public school for a term of 99 years, while parcel No. 745207, which is adjacent to L.R. No. 8262 and on which North Highridge Primary School is located, was reserved for a social hall and not residential purposes. She maintained that all parcels under investigation were created from parcel No. 745207, which was originally reserved for a public utility.
20. She asserted that the allotment letters issued on 7th July 1995 to Hanosa Developers Ltd, Leah Bosibori, and Alloys Maore were based on a PDP No. 4/29/95/4, which is unapproved and unregistered, and are therefore null and void.

21. She averred that on 18/09/1995, the then Commissioner of Lands unlawfully and corruptly alienated public land by issuing Hellen Njeri Grant No I.R. 67050 for land reference number 209/12673 based on an invalid letter of allotment and a Part Development Plan, which is unapproved and unregistered, and therefore null and void.
22. She argued that Hellen Njeri knew or should have known that L.R. No. 209/12673 was not available for alienation without a valid, approved, and registered Part Development Plan under the provisions of the Government Land Act and Registration of Titles Act. She asserted that Hellen Njeri recklessly failed to comply with the relevant statutes and regulations governing the administration and alienation of L.R. No. 209/1273, and dishonestly dealt with alienated government land reserved for a public utility and not residential purposes.
23. The deponent argued that Mr Wilson Gachanja, the then Commissioner of Lands, facilitated the alienation of the subject parcels under investigation without lawful authority and issued grants in breach of the provisions of the Government Land Act and Registration of Titles Act, despite being aware that the public purposes had not been altered.
24. She further stated that on 24th February 2004, L.R. No 209/12673 was transferred to Richard Maoka Maore, and following a resurvey, a new Land Reference number was registered, after which the land was transferred to the 4th Respondent.

25. She contended that there is no evidence indicating that the parcels under investigation were lawfully allocated or alienated for private purposes, including residential use. She asserted that, based on the ongoing investigation, it is clear that the allocation and alienation of these parcels were carried out corruptly and unlawfully.
26. She maintained that the Commission has the exclusive mandate to initiate civil proceedings for recovering proceeds derived from corruption.
27. She contended that the application lacks merit, as the preservation orders were lawfully issued pending the completion of investigations.
28. The application was canvassed by way of written submissions.

THE 4TH RESPONDENT'S SUBMISSIONS.

29. The 4th Respondent filed his submissions dated 10th March 2026.
30. On behalf of the 4th Respondent, Counsel outlined the following issues for the Court's determination:
 - a) *Whether the suit filed by the Applicant (EACC) is an abuse of the Court process;*
 - b) *Whether the suit against the 4th Respondent is sub judice; and*
 - c) *Whether the orders issued on 2nd February ought to be discharged by the Honourable Court.*
31. Regarding the first issue, Counsel submitted that sometime in September 2025, the Board of Directors and Management

of North Highridge Primary School instituted ELCLC No. E486 of 2025 seeking injunctive orders against the 4th Respondent's property L.R. No. 209/21526 (formerly L.R. No. 209/12673), the details of which were published in the Daily Nation newspaper.

32. Counsel submitted that the application for interim injunctive orders was heard inter partes and was ultimately dismissed. A ruling was delivered on 15th January 2026, and the decision was published in the Daily Nation Newspaper on 20th January 2026. Counsel submitted that on 26th January 2026, the Applicant filed an ex parte Originating Motion at the behest of North High Ridge Primary School and invoked Section 56 of the Anti-Corruption and Economic Crimes Act to obtain injunctive relief, which had been declined by the Court under the guise of investigations alleging that the suit property was acquired through corrupt conduct.
33. Based on the foregoing, Counsel argued that this matter constitutes an abuse of the Court process because the Applicant does not deny knowledge of the pending case. To support this point, Counsel relied on **Satya Bhama Gandhi v Director of Public Prosecution & 3 others (2018) KEHC 6100 (KLR)**, **Muchanga Investment Ltd v Safaris Unlimited (Africa) and 2 others (2009) KECA 453 (KLR)**.
34. Counsel argued that investigations and prosecutions relating to the same property cannot proceed simultaneously in separate proceedings without causing confusion, which

would violate the 4th Respondent's rights guaranteed by Articles 47, 48, and 50 of the Constitution.

35. Counsel urged the Court to exercise its inherent jurisdiction and invoke Section 3A of the Civil Procedure Act to strike out the name of the 4th Respondent from these proceedings.
36. Regarding the second issue, Counsel invoked Section 6 of the Civil Procedure Act to argue that the issue concerning the legality of the 4th Respondent's property L.R. No. 209/12673 (currently L.R. No 209/21526) is sub judice, as there is a pending suit in ELCLC No. E486 of 2025 before a Court of concurrent jurisdiction involving the same subject matter and parties litigating under the same title.
- 37.** In light of the foregoing, Counsel submitted that the Court lacks jurisdiction to hear this suit pending the determination of ELCLC No. 486 of 2025. To support this point, Counsel relied on **Kenya National Commission on Human Rights v Attorney General & 17 others (2020) eKLR, Speaker of the National Assembly & another v Senate & 12 others (Civil Appeal E084 of 2021) (2021) KECA 282 (KLR), and Kiki Investments Ltd & 2 others v Insurance Regulatory Authority (Civil Appeal 381 of 2017) (2024) KECA 1316 (KLR).**
38. Regarding the second issue, Counsel argued that the preservation orders violate the 4th Respondent's right to a fair trial enshrined in Articles 25(c) and 50(1) of the Constitution, as well as the right to fair administrative action under Article 47 of the Constitution. Counsel relied on the

decision on **Supreme Court Petition No. 15 of 2016, Francis Muruatetu & another vs Republic & others**, to support the claim on the right to a fair trial.

39. Counsel submitted that, although Section 56 of ACECA permits the Court to issue ex parte preservation orders, such discretion must be exercised in accordance with the principles of natural justice. Counsel argued that the orders were granted for a maximum of six months, without giving the 4th Respondent an opportunity to be heard. To support this argument, reliance was placed on **Kenya Anti-Corruption Commission v Lands Limited & 7 others (2008) KEHC 3902 (KLR) and Delight Turbo Agency Ltd & another v Republic through the OCS Nakuru Police Station & 2 others (Criminal Revision E045 of 2025) (2025) KEHC 4340 (KLR)**.
40. Counsel further submitted that the 4th Respondent demonstrated the root of his title in his supporting affidavit sworn on 13th February 2026. Counsel submitted that the 4th Respondent is the fourth transferee of the suit property, which he acquired in 2021, and had attached an approved PDP. Counsel cited Section 107 of the Evidence Act to argue that the Applicant has discharged the burden of proving lawful ownership on a balance of probabilities.
41. Counsel contended that proceedings under Section 56 of the ACECA are purely investigatory and cannot determine proprietary rights that are subject to adjudication in ELCLC No. E486 of 2025. Accordingly, Counsel maintained that

lifting the preservation orders would not prejudice the Respondent, as they have the opportunity to participate in the proceedings in ELCLC No. E486 of 2025.

42. Counsel further submitted that the 4th Respondent would suffer irreparable harm if the orders are not vacated, as he was undertaking construction development based on approvals from the National Construction Authority, the Nairobi City County, and NEMA. Counsel explained that the 4th Respondent had entered into contractual obligations related to the development, which had been halted due to the preservation orders. Counsel estimated the loss at Kshs 124,800,000/= exclusive of additional legal costs arising from the breach of the contractual obligations.
43. In conclusion, Counsel urged the Court to allow the application as prayed.

THE EACC'S SUBMISSIONS

44. The EACC filed its submissions dated 12th March 2026.
45. On its behalf, Counsel submitted that the sole issue for determination is whether the 4th Respondent has met the threshold for discharging the preservation order issued on 2nd February 2026.
46. Counsel submitted that the 4th Respondent's application is based on a misinterpretation of Sections 56(1),(2),(3) and (4) of the ACECA, as read together with Sections 3(1) and 11(1) (j) of the Ethics and Anti-Corruption Commission Act, as the preservation orders were issued under Section 56(1) of the ACECA in accordance with Articles 79 and 252(1)(a) (d) of

the Constitution. To support this point, Counsel relied on **Ethics and Anti-Corruption Commission v Danstar Holdings Limited, 7 Another Misc Civil Application E012 of 2022 (2023) KEELC 16524 (KLR).**

47. Counsel argued that the EACC is an independent constitutional commission established with a clear mandate under Articles 79 and 252(1)(a)(d) of the Constitution and is not part of the Board of Management of North Highridge Primary School. Counsel contended that the ongoing investigations have not shown that the Board of Management of North Highridge Primary School owns any of the parcels of land under investigation. Based on the foregoing, Counsel argued that ELCLC No. 486 of 2025 has no bearing on the preservation orders issued on 2nd February 2026.
48. Counsel submitted that the principles of natural justice and the right to fair hearing envisaged under Articles 25(c) and 50(1) of the Constitution are firmly anchored under Section 56(4) of the ACECA. Counsel maintained that the Court upheld the principles of natural justice by granting the 4th and the 5th Respondents the right to a fair trial.
49. Counsel argued that the 4th Respondent's claim that the preservation orders violate Articles 25(c) and 50(1) of the Constitution is untenable, since the application does not dispute the constitutionality of Section 56(1) of ACECA.
50. Counsel also argued that under Article 40(6) of the Constitution, the 4th Respondent and the other Respondents

are required to explain how they acquired the properties under investigation by the EACC. It was submitted that the EACC has not presented any application under Section 56(1) (2) (3) of ACECA before any other ELC Court.

51. It was further submitted that the doctrine of sub judice does not apply in this matter because the application dated 26th February 2026 is not a suit. It was argued that a suit can be filed only after the conclusion of the investigation, in accordance with Sections 51, 52, and 53 of ACECA. Counsel argued that the elements of the doctrine of res judicata do not exist between the application dated 26th January 2026 and ELCLC No. E486 of 2025.
52. It was submitted that the EACC is not a party and cannot be compelled to join the suit while its investigation into the subject parcels of land is still ongoing and has yet to be concluded. It was argued that it is untenable for the 4th Respondent to invite the Court to order its joinder to ELCLC No. E486 of 2025, noting that the 4th Respondent has not provided a basis for its joinder. To support this point, Counsel relied on **Ethics and Anti-Corruption Commission v Omar Sherif Mohammed (2021) KEELC 1564 (KLR)**.
53. Counsel further submitted that EACC had presented evidence from the ongoing investigation indicating that the subject parcels of land are public properties originally reserved for public use and therefore, they were not available for allocation to private individuals, including the

Respondents. Counsel argued that none of the Respondents provided any material suggesting that the letters of allocation for the properties were lawfully issued. Counsel also contended that the 4th Respondent did not dispute that EACC has the legal mandate to investigate how the properties were acquired, particularly through the issuance of letters of allotment without a valid Part Development Plan.

54. It was submitted that preservation orders are issued to safeguard the subject matter of ongoing investigations and prevent its disposal until the conclusion of the investigation. It was further submitted that none of the Respondents has presented any evidence to show that EACC has abused the Court process in seeking the preservation orders or that the 4th, 5th, and 6th Respondents' predecessors lawfully acquired and preserved the properties under investigation.
55. Counsel argued that it is in the public interest to maintain the preservation orders until the conclusion of the ongoing investigation. To support this argument, Counsel cited the Supreme Court decision in **Ethics and Anti-Corruption Commission v Tom Ojienda & Associates, & 2 others (2020) KESC 56 (KLR)**, which emphasizes that the fight against corruption and economic crimes is a matter of significant public importance.
56. Counsel submitted that unless the application is dismissed, the Respondents are likely to deal adversely with the parcels of land under investigation, thereby jeopardising the

integrity of ongoing investigations and undermining the purpose of substantive justice.

57. In conclusion, Counsel urged the Court to dismiss the application with costs.

ANALYSIS AND DETERMINATION

58. Having considered the application, the respective affidavits and the rival submissions, the following issues arise for determination:

- a) *Whether this suit is sub judice on account of ELCLC No. E486 of 2025;*
- b) *Whether the 4th Respondent should be struck out from these proceedings; and*
- c) *Whether the preservation orders issued on 2nd February 2026 should be discharged or varied.*

59. Regarding the first issue, the doctrine of sub judice is codified under Section 6 of the Civil Procedure Act, which states that:

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having

jurisdiction in Kenya to grant the relief claimed”

60. In **Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 Others (Interested Parties) [2020] eKLR**, the Supreme Court explained the rationale and elements of the doctrine of sub judice as follows:

“The term sub judice is defined in Black’s Law Dictionary, 9th Edition as: ‘Before the Court or Judge for determination.’ The purpose of the sub judice rule is to stop the filing of multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of sub judice must therefore establish that there is more than one suit over the same subject matter, that one suit was instituted before the other; that both suits are

pending before courts of competent jurisdiction and lastly, that the suits are between the same parties or their representatives.”

61. The 4th Respondent contends that this matter is sub judice on account of ELCLC No. E486 of 2025, which relates to the same subject matter. He produced copies of the pleadings in ELCLC No. E486 of 2025 filed by the Board of Management of North Highridge Primary School, mainly relating to alleged encroachment on school land and the safeguarding of public educational facilities. Although L.R. No. 209/12673 is involved in that dispute, the reliefs sought are declaratory and injunctive, aimed at safeguarding the school's proprietary and constitutional rights.
62. Conversely, the ongoing proceedings are investigative and preservative in nature, initiated under Section 56 of the Anti-Corruption and Economic Crimes Act, with the aim of safeguarding property suspected of being acquired through corrupt practices pending further action.
63. Although the two proceedings relate to the same parcel of land, they are based on different causes of action, involve separate parties, and seek fundamentally different remedies.
64. Accordingly, this Court finds that the threshold for sub judice has not been met.
65. Regarding the second issue, the 4th Respondent has sought to be struck out from this matter. The applicable test is outlined in Order 1 Rule 10(2) of the Civil Procedure Rules, which states that:

“ The court may at any stage, upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

- 66.** The test for determining whether a party is necessary was articulated in **Zephir Holdings Ltd v Mimosa Plantations Ltd, Jeremiah Maztagaro & Ezekiel Misango Mutisya [2014] eKLR**, where the Court held that:

“A proper party is one who is impleaded in the suit and qualifies the thresholds of a plaintiff or defendant under Order 1 rule 1 and 2 respectively, or as a third party or as an interested party and whose presence is necessary or relevant for the determination of the real matter in dispute or to enable the court effectually and completely adjudicate upon and settle all questions involved in the

suit. And the court has a wide discretion to even order suo moto for a party to be impleaded whose presence may be necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. Accordingly, a suit cannot be defeated for mis-joinder or non-joinder of parties."

67. Similarly, in Werrot and Company Ltd & Others v Andrew Douglas Gregory & Others [1998] eKLR, the Court set out two guiding principles to determine the question of who is a necessary party as follows:

"For determining the question of who is a necessary party, there are two tests: (i) there must be a right to some relief against such a party in respect of the matter involved in the proceeding in question and (ii) it should not be possible to pass an effective decree in the absence of such a party."

68. In the matter at hand, the preservation orders sought and granted directly affect the 4th Respondent's proprietary rights in L.R. No. 209/21526. The Applicant's case explicitly challenges the legality of the 4th Respondent's title and the circumstances under which the property was acquired.
69. Given the circumstances, it cannot be argued that the 4th Respondent is improperly joined. His presence is therefore

necessary for the effective and complete adjudication of the issues in dispute.

70. The prayer to strike out the 4th Respondent is without merit and is declined.
71. Regarding the third issue, the 4th Respondent has challenged the orders issued on 2nd February 2026, claiming that they are substantive and were made ex parte, thereby violating his right to a fair hearing.
72. Section 56 of the Anti-Corruption and Economic Crimes Act states that:

(1) On an ex parte application by the Commission, the High Court may make an order prohibiting the transfer or disposal of or other dealing with property if it is satisfied that there are reasonable grounds to suspect that the property was acquired as a result of corrupt conduct.

(2) An order under this section may be made against a person who was involved in the corrupt conduct or against a person who subsequently acquired the property.

(3) An order under this section shall have effect for six months and may be extended by the court on the application of the Commission.

(4) A person served with an order under this section may, within fifteen days after being served, apply to the court to discharge or vary

the order and the court may, after hearing the parties, discharge or vary the order or dismiss the application.

(5) The court may discharge or vary an order under subsection (4) only if the court is satisfied, on the 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.

73. It is clear that Section 56(1) of ACECA empowers the Court to issue ex parte preservation orders where there are reasonable grounds to suspect that property has been acquired through corrupt conduct.
74. The jurisdiction conferred under **Section 56** is sui generis. It establishes a unique statutory procedure that differs from the usual interlocutory regime outlined in the Civil Procedure Rules. In **Kenya Anti-Corruption Commission v. Lands Limited (HC Misc. Appl. No. 587/06)** and reiterated in **Kenya Anti-Corruption Commission v Wilson Gachanja & 4 others [2007] eKLR**, it was held that:

“Section 56 (1) empowers this Court to prohibit the transfer or disposal or any dealing with property which “on evidence” was acquired as a result of corrupt conduct. The “application” may be made ex parte, and the Order of prohibition “shall” have effect for six months.

This Section clearly envisages that an application will, in the first instance, be “ex parte”, and where the Court is satisfied that there is “evidence” to support the grant of the Orders sought, may make the Orders preserving the property for six months (subject to further extensions).

75. Ordinarily, under the Civil Procedure Rules, the Court would issue an ex parte restraining order initially for only 14 days and then direct that the matter be heard inter partes. Section 56 of the Act does not envisage an inter-partes hearing but shifts the burden to the aggrieved party to apply to the Court to discharge or vary the Order.
76. The Applicant argued that the preservation orders violate his right to a fair hearing under Articles 25(c) and 50 of the Constitution. In **Kenya Anti -Corruption Commission v Lands Ltd and 7 others (2008) eKLR**, the Court held that:
“Section 56 of ACECA does not undermine the principles of natural justice and equity. It has an inbuilt right of hearing. On the contrary, it provides other constitutional objectives and public interest concerns that are at the heart of this nation.”
77. Similarly, in **Ethics and Anti-Corruption Commission v Julius Matasyo & 2 others [2014] eKLR**, the Court emphasized that Section 56 establishes a new procedure, and a suit need not be filed earlier for such an application to

succeed. In view of Section 56(4) (5) and (6) the ex parte preservation orders cannot amount to violation of the right to a fair hearing.

78. The limitation imposed by Section 56 is procedural and temporary, and it is justified by the public interest in preserving property pending investigations. This position is supported by the decision of the Constitutional Court of South Africa in **National Director of Public Prosecutions v Mohamed NO and Others (2003) ZACC 4**, where similar preservation provisions were upheld on the basis that they serve a legitimate and compelling public purpose, to reduce the risk of the dissipation of the proceeds and instrumentalities of organized crime. The 4th Respondent's argument that the ex parte preservation orders violate his right to a fair hearing is therefore untenable.
79. Section 56(4) empowers the Court to vary or discharge preservation orders. Section 56(5) specifies that the threshold for discharge or variation requires the Court to be satisfied, on a balance of probabilities, that the property was not acquired through corrupt conduct.
80. Although Section 56(3) of ACECA provides for a period of six months, that duration is not cast in stone. That period is not mandatory, and the Court has discretion under Section 56(5) to grant a shorter period where the circumstances warrant such a reduction.
81. Courts have in practice varied the duration of the preservation orders. In **Ethics and Anti-Corruption**

Commission v Equity Bank Limited & another, the Court emphasised that the preservation orders should not be maintained longer than necessary. Similarly, in **Ethics and Anti-Corruption Commission v Lydia Lentinina (2018) KEHC 3631**, the court underscored that preservation orders can be varied underscoring the principle of proportionality.

82. The Court has considered the evidence before it including the affidavit sworn by the Commission's investigator detailing the investigations carried out. No sufficient basis has been laid to demonstrate that the complexity of the matter necessitates the full statutory period of six months. The investigator provided a detailed account of the history of the suit property and the investigation conducted, including the grounds for suspecting that the property was unlawfully acquired. This thorough level of investigation shows that the investigations are already advanced and not merely speculative.
83. The Court has taken judicial notice that the suit property is the subject of ELCLC No. E486 of 2025. While this Court is not called upon to determine issues of ownership in the present proceedings, that development is nonetheless relevant insofar as it bears upon the necessity and proportionality of maintaining preservation orders over the property for the statutory period. It underscores the need to balance public interest and the 4th Respondent's rights.
84. In balancing the competing interests, namely, the need to preserve the subject matter of investigation on the one hand

and the need to safeguard the Applicant from prolonged interference with property rights this Court is satisfied that this is a proper case for the exercise of its discretion to vary the duration of the preservation orders to ensure that such a period is reasonably necessary to facilitate investigations.

85. Accordingly, the application dated 13th February 2026 partially succeeds in the following terms:

a) The preservation orders issued on 2nd February 2026 are hereby varied and shall remain in force for a period of sixty (60) days from the date hereof.

b) The Originating Summons shall be placed before the Judge seized of ELCLC No. E486 of 2025 for further directions.

c) Each party to bear its own costs.

RULING DELIVERED DATED AND SIGNED THIS 17TH DAY OF APRIL 2026.

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**T. MURIGI
JUDGE**

IN THE PRESENCE OF: -

Sagana for the 4th Respondent

Ahmed – Court assistant