



REPUBLIC OF KENYA



KENYA LAW
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**Ethics and Anti-Corruption Commission v Turkenya Tours and Safaris Limited
& 4 others (Miscellaneous Application E048 of 2025) [2026] KEHC 6222 (KLR)
(Anti-Corruption and Economic Crimes) (7 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 6222 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
MISCELLANEOUS APPLICATION E048 OF 2025**

REA OUGO, J

MAY 7, 2026

BETWEEN

ETHICS AND ANTI-CORRUPTION COMMISSION APPLICANT

AND

TURKENYA TOURS AND SAFARIS LIMITED 1ST RESPONDENT

SMART FLOW TRAVEL LIMITED 2ND RESPONDENT

AFROMERCH TRAVEL KENYA LIMITED 3RD RESPONDENT

DICKSON KIBUNYI MAHIA 4TH RESPONDENT

CAROLINE MUTHONI KARIUKI 5TH RESPONDENT

RULING

The Application

1. In their joint application dated 20th November 2025, the 1st to 4th respondents seek the following orders:
 1. ... Spent;
 2. ... Spent;
 3. This Honourable Court be pleased to issue an order to discharge the orders issued on 13th November 2025 and all consequential orders thereto in respect of the 1st, 2nd, 3rd and 4th respondents;



4. In the alternative, this Honourable Court be pleased to issue an order to vary the orders issued on 13th November 2025 in respect of the 1st, 2nd, 3rd and 4th respondents on such terms as are just and in the interest of justice;
 5. This Honourable Court do make any such further orders and issue any other relief it may deem just to grant in the interest of justice;
 6. That costs of this application be provided.
2. The application is brought under the provisions of Order 1, Rule 10(2) and Order 51, Rule 1 of the Civil Procedure Rules, sections 1A, 1B and 3A of the *Civil Procedure Act*, Section 56(4) and (5) of the *Anti-Corruption and Economic Crimes Act*, and Article 159(2) of *the Constitution*. It is supported by the grounds set out in the application, the supporting affidavit, and the further affidavit of the 4th respondent, sworn on 20th November 2025 and 10th December 2025, respectively.
 3. According to the respondents, on 13th November 2025, they were notified by the bank that the applicant had obtained preservation orders on the same day, prohibiting any dealing whatsoever with their respective bank accounts under section 56 of the *Anti-Corruption and Economic Crimes Act*. The orders were obtained without the adduction of a preliminary investigation report or an inquiry that would have afforded them an opportunity to respond to the allegations before coming to court; without furnishing evidence that they earned illegal income of over Kshs. 3.5 billion between 2021 and 2023 and gave kickbacks to public officers worth Kshs. 82 million; without disclosing all material facts; and without obtaining warrants to investigate.
 4. Regarding the failure to disclose material facts, it averred that the 1st respondent was owed Kshs. 700 million by the Sports, Arts and Social Development Fund (SASDF) and the State Department for Sports and Arts in the Ministry of Sports, Culture and Heritage. The respondents contend that the orders were injurious to them, as they were put to their defence without being heard, resulting in the disruption of their operations, including an inability to pay salaries, legal action for breach of contract to third parties, failure to meet their statutory obligations, and family commitments. They further contend that the orders were an affront to the principle of equal treatment before the law, as there was no admission of involvement in the illegal activities alleged by the respondents.
 5. They accuse the applicant of obtaining those orders without fully disclosing material facts. Alternatively, the orders were obtained irregularly on the basis of supposed investigations into alleged corruption. They maintained that the allegations were false, as they have been law-abiding citizens operating businesses in the travel and air ticketing industry in accordance with the law since 2008. Accordingly, the funds in those accounts were obtained from legal business activities.
 6. The respondents state that the funds outside the investigation period were also adversely affected by those orders, unjustifiably crippling their operations. It was further contended that there was a real risk that the funds in the accounts would be improperly forfeited by the Government without affording the respondents an opportunity to be heard. It was also contended that the freezing of their bank accounts would benefit their business rivals, either by removing them from the market or by sending a disparaging message to their clients. They disclosed that they were willing to cooperate with the applicant and to offer the necessary assistance in the discharge of the applicant's mandate.
 7. They urged the court to allow the respondents to carry out business operations by accessing those funds on such terms as the court would deem fit, since the suspected funds were meagre compared with the funds belonging to the businesses; they stood to suffer irreparable and substantial loss and damage; no prejudice would be occasioned to the applicant if the orders sought were granted; and the



orders, blanket in their nature, as they so subsisted, exposed them to significant loss, embarrassment, and unnecessary hardship.

The Response

8. The applicant responded to the application by filing a reply affidavit, sworn by Margaret Ngai, an investigator in the applicant's employ, on 8th December 2025. She deposes that she is a member of the task force conducting an inquiry under file no. EACC/AT/INQ/58/2025. The investigation is to look into allegations of embezzlement of public funds, abuse of office, bribery and kickbacks against senior public officials at the Sports, Arts and Social Development Fund (SASDF) and the state department for sports and arts in the Ministry of Sports, Culture and Heritage.
9. The deponent averred that their ex parte application under section 56 of the [Anti-Corruption and Economic Crimes Act](#) met the legal threshold and was accordingly properly granted by the Honourable Court. The intention was to secure properties and assets under investigation, prevent dissipation, and augment potential recovery proceedings that would otherwise be rendered nugatory. She maintained that the orders granted were not synonymous with a finding of guilt against the 4 respondents. The orders further did not amount to placing the applicants on their defence or shifting any criminal burden. In any event, they had every right to challenge those orders under section 56 (4) and (5) of the Act.
10. The applicant maintained that it made full disclosure of all information within its knowledge at the time of filing the application. It further stated that, during the investigations, the respondents would be interviewed and their statements recorded at the appropriate time. It refuted the respondents' claims that the funds in the accounts would be forfeited without an opportunity to be heard, adding that the respondents' accounts are currently under investigation for allegations of embezzlement of public funds, bribery and payment of kickbacks to public officials. If the application is allowed, the applicant was apprehensive that the recovery proceedings would be rendered ineffective and would compromise the applicant's mandate.
11. It was further averred that the applicant received bank statements for several bank accounts pursuant to warrants issued in Misc. Appl. No. E1540 of 2025. The applicant justified the impugned orders on the basis that, on a preliminary review of the transactions, funds had been transferred from the respondents to public officers within the Ministry of Sports, Culture and Heritage. In its view, this constituted reasonable suspicion of a corruption scheme. It further stated that the orders were made in the public interest, outweighing the respondents' private contractual obligations, so that recovery or forfeiture proceedings were not rendered nugatory.
12. The applicant further stated that the investigations were governed by statute to investigate allegations of corrupt conduct and to institute recovery or forfeiture proceedings. They were therefore not tainted by ulterior motives. Finally, the applicant stated that the respondents failed to meet the threshold for setting aside or reviewing the orders of preservation. For those reasons, the applicant prayed that the application be dismissed with costs.

Written Submissions

13. The application was canvassed by way of written submissions. The 1st to 4th respondents filed written submissions dated 29th December 2025. They cited section 56 of the [Anti-Corruption and Economic Crimes Act](#), submitting that this court was vested with jurisdiction to discharge preservation orders. They argued that the applicant advanced no evidence to show that the respondents obtained funds by corruption, and that, in fact, the funds were obtained lawfully. They cited several decisions, reiterating the contents of their application to urge this court to grant the reliefs sought.



14. The applicant filed written submissions dated 30 January 2026. It submitted that the respondents failed to satisfy the test set out in section 56(5) of the Act. It further submitted that, based on the averments in the respondents' response, the application had no merit. It argued that the authorities relied on by the respondents were not applicable to the circumstances of the case. It prayed that the application be dismissed with costs.

Analysis and Determination

15. I have considered the rival affidavits in the application, the submissions, and the law. The present application seeks to set aside the ex parte preservation orders dated 12th November 2025. The respondents have invoked section 56(4) and (5) of the [Anti-Corruption and Economic Crimes Act](#), which provides as follows:

- “(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.”

16. The relevant parts of the impugned ruling of the court is reproduced as follows:

“This court has read through the application, the grounds on which the application is premised and the supporting affidavit. The applicant avers that it has commenced investigations relating to public officials belonging to the sports, Arts and Social Development Fund and the Stat Department for Sports and Arts within the Ministry of Sports, Culture and Heritage.

Further that the applicant has received allegations implicating certain senior public officials of SASDF and the State Department aforesaid.

The court has noted that the applicant has already obtained warrants to investigate the accounts of the respondents.

In the premises, I am satisfied that the applicant has established reasonable grounds on the basis of which the orders sought can issue.

Order: I do hereby grant prayers (1), (2) and (3) of the Originating Motion dated 11/11/2025.”

17. Have the respondents met the threshold for the discharge of those preservation orders? A reading of section 56(4) indicates that a party must demonstrate, on the balance of probabilities, that the property sought to be discharged or varied was not acquired as a result of corrupt conduct. To discharge this burden, the aggrieved party must show that, in issuing the ex parte orders under section 56(1) of the Act, the court failed, in some manner, to scrutinise the evidence before it, thereby giving rise to a reasonable suspicion that the property was obtained corruptly. That evidence must be foundational and not based on mere conjecture.



18. In this case, the respondents contend that the orders were obtained before an inquiry was tabled, with their participation. In the case of Kenya Anti-Corruption Commission vs. Lands Limited and 7 Others [2008] eKLR, Nyamu, J., as he then was, expressed himself as follows, and this court wholly adopts the holding:

“It follows therefore that if a party were to be given notice, they are likely to obstruct or frustrate the ex-parte application and therefore subvert the public interest by either conveying or moving the asset in issue or convert it into untraceable form. In this regard, I find that any notice would subvert the objective of the ACECA and the greater public interest of recovering property which has been corruptly acquired and also subvert the role of investigations as set out in *the Constitution*.

I adopt as good law a similar finding on this point in the case of Director Of Serious Fraud Office v A [2007] EWCA Crim 1927 - para 5.....Our Constitution does assume the existence of the fundamental laws including the *Evidence Act* provided that there are some evidential facts at the ex-parte stage for the court to exercise its discretion, there are no other valid preconditions to the grant of the ex-parte order. At the ex-parte stage the evidential facts need not answer the description of any specific offences of corrupt conduct provided they point to that possibility.”

19. Looking at the impugned decision, I find that it was proper for the court to grant the orders sought without prior notice to the respondents, as there was a risk that, if the respondents were alerted to the pending investigations, they would have compromised the investigation process, which is still being carried out. Be that as it may, the applicant has contended that the respondents will be interrogated and will participate in the said investigations.
20. Regarding the allegation that no evidence of illegal activity was adduced, the court was satisfied that, based on the arrest warrants, reports of alleged corruption received by the applicant’s office, and the existence of ongoing investigations, there were reasonable grounds to grant the orders sought. There is nothing to fault, as the reasons for issuing the orders were set out in the ruling.
21. The respondents raised further grounds as follows: that the applicant failed to disclose that the SASDF and the state department for sports and arts in the Ministry of Sports, Culture and Heritage owed them millions of shillings; that the respondents were condemned unheard and were innocent; that the funds were proceeds of lawful activities; that they were placed in condemnation of unfair market advantage and were lawful business persons with good will; that the respondents feared forfeiture of their funds; and that the orders sought would have ripple effects on their businesses and personal lives. In my view, these grounds mount a defence, and the evidence should be called for cross-examination. At this stage, I am not saying that the grounds will succeed. Those issues ought to be placed before the court for a full hearing and cannot be deemed verifiable at this interlocutory stage. In fact, it is in the interests of both parties that the issues at hand be expedited to a full hearing.
22. In view of the foregoing, I find that the Notice of Motion dated 20th November 2025 is lacking in merit. It is dismissed with costs to abide the outcome of the dispute. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 7TH DAY OF MAY 2026.

R.E. OUGO

JUDGE

In the presence of:



Miss Naliaka h/b for Mr. Omullo For the Respondents/Applicants

Miss Kibogy -Applicant/ Respondent

Adan/ Minah C/A

