



**Registered Trustees of the Sisters of Mercy (Kenya) t/a Mater Hospital v Muriithi & 5 others
(Civil Appeal 20 of 2019) [2024] KECA 1688 (KLR) (22 November 2024) (Judgment)**

Neutral citation: [2024] KECA 1688 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL 20 OF 2019
F TUIYOTT, JW LESSIT & GWN MACHARIA, JJA
NOVEMBER 22, 2024**

BETWEEN

**THE REGISTERED TRUSTEES OF THE SISTERS OF MERCY (KENYA) T/A
MATER HOSPITAL APPELLANT**

AND

**DR JOHN MURIITHI 1ST RESPONDENT
JOICE ONYANGO 2ND RESPONDENT
JUDITH BO NYAKUNDI 3RD RESPONDENT
DURAN LIGAGA AMUNYUNZU 4TH RESPONDENT
SUSAN KAGENDO KARANJA 5TH RESPONDENT
SHEER LOGIC MANAGEMENT CONSULTANTS LTD 6TH RESPONDENT**

*(Being an appeal from the Ruling and Order of the High Court of Kenya at
Nairobi (J. N. Onyiego, J) dated 8th November 2018 in H.C. ACEC. 3 OF 2018)*

JUDGMENT

1. In his judgment of 8th November 2018, Onyiego, J. framed the question:

“...can a private citizen or body or organisation institute civil proceedings before the Anti-Corruption High Court Division (sic) for recovery of money stolen from him or them under Section 51 and 52 of Anti- Corruption and Economic Crimes Act?”
2. The question was key, as it is now, in HC ACEC No. 03 of 2018 before the Anti-Corruption and Economic Crimes Division Nairobi. There, the Registered Trustees of the Sisters of Mercy (Kenya) t/a Mater Misericordiae Hospital (Mater Hospital or the appellant herein) had brought a suit



against five of its employees namely Dr. John Muriithi, Joice Onyango, Judith B.O. Nyakundi, Duran Ligaga Amuyunza, Susan Kagendo Karanja (the 1st to 5th respondents in that order) and Sheer Logic Management Consultants Ltd (Sheer Logic or the 6th respondent), a human resource services firm which provided the hospital with such services.

3. In a nutshell, the case by the Hospital against the six was that they, acting on complicity or collusion, perpetrated corruption or fraud or misappropriation or abetted the corruption or fraudulent misappropriation of cash receipts or collection in the sum of Kshs.127,836,053.00. In those proceedings, Mater Hospital sought the said sum of money from the six as special damages and further, for general damages for corruption or fraud.
4. It was not smooth sailing for Mater Hospital because its claim faced a preliminary objection from the 1st, 2nd, 3rd and 5th respondents. The objection whose determination has triggered these proceedings is that the trial court did not have jurisdiction to hear the dispute. In answer to that objection, the learned judge held:

“Although the High Court generally under Article 165(5) of *The Constitution* has jurisdiction to hear this matter, the same should be placed before the right division. In this case the correct division is Civil Division and the issue of lack of jurisdiction should not arise.”

And with that, the learned judge transmitted the file to the presiding judge of the civil division of the High Court at Nairobi.

5. The 1st respondent too was aggrieved by the decision of the High Court and in a notice of cross-appeal, asks us to uphold the preliminary objection by the 5th respondent but order that the suit be struck out.
6. In its submissions, the appellant examines the question of whether a private citizen or body organisation can institute civil proceedings before the Anti-Corruption High Court Division for recovery of money stolen under sections 51 and 52 of the Anti- Corruption and Economic Crimes Act (ACECA or the Act). It submits that the learned judge took a short cut in answering this question and failed to read the ACECA as a whole and fell into error and misdirected himself in finding that in order to have a complete understanding of sections 51 and 52, section 54 should come to play first. Further, that a plain reading of Part VI, in which sections 51,52,53 and 54 fall, demonstrates that a person who does anything that constitutes corruption or economic crime under section 51 or who pursuant to section 52 receives a benefit, receipt of which would constitute an offence under sections 39,40 or 43, incurs concurrent civil liability and criminal liability. It cites the Canadian case of R v Wigglesworth [1987] 2 SCR 541, 1987 CanLII 41, where the Supreme Court of Canada upheld the holding of the Court of Appeal that a single act may have more than one aspect and may give rise to more than one legal consequence. The appellant notes that this principle of law has been adopted by this Court in Attorney General & another v Andrew Maina Githinji & another [2016] eKLR. That further, the incidence of concurrent civil liability and criminal liability under section 51 or 52 of the ACECA, becomes manifest upon their plain reading together with section 53(2) and that ‘any other liability’ alluded to is civil liability in addition to criminal liability.
7. Regarding Part VI, sections 51 to 56C, the appellant proposes that it creates two distinct measures to achieve the statutory objective of compensation or recovery of improper benefits. The first is founded on a conviction based on criminal proceedings where the criminal court proceeds to make orders of compensation or recovery of improper benefits upon conviction of the accused person for the offence of corruption or economic crime. The second is non-conviction based on civil proceedings for compensation or recovery of improper benefits. The appellant notes that there is however the obvious



and acknowledged difference in the standard of proof between civil and criminal proceedings. It cites the case of *James Ole Kiyapi Permanent Secretary, Ministry of Medical Services & Attorney General v DOL International Ltd & Kenya Anti-Corruption Commission* [2016] eKLR, where the Court held that criminal proceedings and recommendations by Parliament could not be used as a basis to determine the reasonableness or otherwise of suspension of contracts in civil proceedings.

8. The appellant submits that the intended mechanism by parliament for compensation or recovery of improper benefits under section 51 or 52 together with section 53 and sections 55 to 56C of the ACECA is vide civil proceedings. Section 74 of the ACECA, amended section 42 of the Limitations of Actions Act to exclude the application of the provisions of that Act to ‘a proceeding to recover an amount for which a person is liable under section 51 or 52 or section 55 or 56 of the ACECA 2003’. Therefore, criminal proceedings have always been exempted from the application of statutory limitation periods. Civil proceedings for compensation or recovery of improper benefits under section 51 or 52 are neither predicated upon nor triggered by conviction for the offence of corruption or economic crime. The appellant makes the argument that civil liability for full compensation or restitution accrues under section 51 and it is significant that the word ‘constitutes’ and not ‘convicted’ has been used with reference to corruption or economic crime. That further, civil liability for the value of the benefit accrues under section 52 and the words ‘would constitute an offence’ and not ‘convicted of an offence’ are used with reference to the offences under sections 39, and 40 or 43. Section 54 on the other hand provides for compensation or recovery of improper benefits and restitution to the rightful owner of the property or an amount equivalent to the value of that property upon conviction for the offence of corruption or economic crime under section 51 or 52. Conviction under those sections is the sine qua non or trigger for compensation or recovery of improper benefits. It is such an order made by the criminal court at the time of conviction or on subsequent application which may be enforced by the beneficiary as though it was an order made in a civil proceeding.
9. It is contended for the appellant that EACC is the public entity conferred with the constitutional and statutory mandate to enforce the ACECA and is independent and not subject to the control or direction of any other person or authority. That included in the arsenal of new and novel modes is a private civil action for compensation or recovery of improper benefits under section 51 or 52 together with section 53 of the ACECA. With the exception of section 51 or 52, EACC is the main public actor under Part VI. A plain interpretation of section 51 or 52 together with 53 demonstrates that a private person who suffers a loss can maintain or sustain a private civil action for compensation or recovery of improper benefits. An aggrieved public body or the EACC acting on behalf of such body institutes a civil suit for compensation or recovery of improper benefits; the EACC does not bring a civil suit for compensation or recovery or improper benefits on behalf of a private person.
10. Lastly, on the cross appeal, the appellant submits that in ACECA Petition No. 8 of 2018, the subject matter of the constitutional petition has no relationship or relevance to this appeal. The petition was neither heard nor determined on merit as the same was struck out for want of jurisdiction, and the ruling did not amount to any binding precedent. Further, the appeal is interlocutory as the court had been moved to interpret section 51 or 52 together with section 53 of the ACECA, to find that the same does not confer a right to a private civil action for compensation or recovery of improper benefits. The appellant finally submits that the interpretation of section 51 or 52 together with section 53 involves a matter of general public importance that transcends the interests of the parties to this appeal.
11. The 1st respondent in response submits and agrees with the learned judge in his understanding of sections 51 and 52 in that their overview reading brings out the element of liability for compensation by a person who does anything that is considered to be within the realm of corruption toward the person who directly suffers loss as a result. Similarly, the 1st respondent agrees with the learned judge’s



examination of the question on who had the mandate to determine the compensation being alluded to in section 51 and 52. He highlighted that section 54 was important in answering the question because a compensation order is usually issued by the court that has already heard and determined that a person accused of corruption is guilty of the offence. The holder of the compensation order is then allowed to seek recovery of the funds in civil recovery proceedings. The 1st respondent however submits that it is not in dispute that the appellant levied accusations against the 1st respondent and by extension the other respondents and it is obvious that those accusations are considered criminal offences which must be thoroughly investigated, prosecuted and a conviction made. The criminal offences alluded to by the appellant fall within the ambit of the ACECA and hence the mandate of EACC and the 1st respondent had never been served with any notices to appear before the EACC to answer any claims of corruption or fraud. In addition, the learned judge failed to acknowledge the fact that the purview of the substantive law and legal practice on anti- corruption is to prosecute the beneficiaries and then recover the proceeds. Relied on is the Report of the Judicial Commission on Inquiry into the Goldenberg Affair and the *Anti-Corruption and Economic Crimes Act* No. 3 of 2003. The 1st respondent therefore submits that the learned judge erred when he ordered the matter to be referred to the High Court Civil Division in contravention of ACECA with specific reference to section 4, and urges this court to consider the averments made in *Director of Public Prosecutions v Tom Ojienda t/a Prof Tom Ojienda & Associates Advocates & 3 others* [2019] eKLR.

12. Secondly, the 1st respondent refers this Court to precedents that outline the fundamental rules of interpreting pieces of legislation especially in the case of *Rotich Samuel Kimutai v Ezekiel Lenyongopeta & 2 others* [2005] eKLR. From the said case, the 1st respondent argues that to understand a piece of legislation as was intended by the legislator, it is worthwhile to examine the general intention/purpose intended by the legislative makers in curating the general language and the purpose of which the legislation is being enacted to cure. Therefore, the enactment of ACECA was to aid in the prevention, investigation and punishment of corruption, economic crimes and other related offences and Part VI provides a procedure regarding compensation and/or recovery of improper benefits vide civil proceedings specifically section 54(1). That from the said section, a person or body organization can only bring a claim under sections 51 and 52 for recovery in civil proceedings only after the accused persons are tried and convicted and a compensation order issued on the conviction that then allows the holder thereof to seek recovery via civil procedure. That therefore, even though the learned judge appreciated the procedures outlined in the ACECA, he failed to acknowledge the fact that the ACECA is a special statute that provides the procedure of how matters relating to corruption offences are to be handled.
13. The 5th respondent also submits on the issues raised in the appeal. She submits that the appellant cannot purport to recover from the 5th respondent and by extension the other respondents' money which it has not proved to have lost or whose loss in any event cannot be linked to the respondents. She submits that her argument before the High Court was that for the Anti-Corruption Division to sit as a civil court and determine a matter under sections 51 and 52, the same must have been determined by a specialized court as provided for by section 4 of the ACECA and the High Court can only order compensation from a conviction of the specialized court. The 5th respondent submits that to transmit the suit to the civil division in light of this information would render the matter dead on arrival at the civil court as that court has no jurisdiction to adjudicate matters filed under the ACECA. Therefore, the learned judge's decision to transmit the suit to the civil division will not cure that defect.
14. The 5th respondent reiterates the argument of the 1st respondent on the proper procedure to be followed, being that the nature of accusations is criminal in nature and recovery can only come after proof of the alleged offences. She also reiterates the 1st respondent's submission on the interpretation



of the ACECA and the intention Parliament had when enacting the law specifically, section 51 which she submits that from a plain reading, proof of guilt determines liability which precedes the right to compensation.

15. Finally, the 6th respondent reiterates the arguments made by the 1st respondent. Of note, it submits that the appellant's claims have not disclosed a cause of action against the 6th respondent, let alone an economic crime within the provisions of the ACECA. Further, the appellant is still a private organization and not a beneficiary, custodian nor in control of public funds and further by instituting these proceedings against the respondents, the appellant presumed the 6th respondent to be guilty of the crimes stated in section 2 and section 45 of the ACECA while the 6th respondent had not been prosecuted by a criminal court and found guilty. The 6th respondent finally submits that it remains guided by Article 50 of *the Constitution* as well as section 4 of the ACECA, that jurisdiction conferred by *the Constitution* or Statute, hence where there is a procedure and specific courts provided with the mandate to hear the specific cases, then they should hear those cases as was held in Civil Appeal No. 25 of 2000 Narok County Council v Trans Mara County Council & another [2000] eKLR.
16. This first appeal involves issues of law only, the substantial one, as alluded to at the beginning of this decision, being whether a private person can institute civil proceedings under the provisions of sections 51 and 52 of the Act before a conviction has been entered against the defendant for corruption or economic crime or receipt of an improper benefit. If so, then the subsidiary issue is whether the forum for instituting such suit is the Anti-Corruption and Economic Crimes Division of the High Court.
17. We begin by stating what seems obvious. A private person has a right to institute legal proceedings for damage suffered as a result of corruption. Other than the Act, which we shall explore shortly, the notion of private redress is found in Article 35 of The United Nations Convention Against Corruption (UNCAC), a Convention signed and ratified by Kenya on 9th December 2003. Article 35 reads;

“ Article 35. Compensation for damage Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.”
18. That notion finds statutory expression in sections 51 and 52 of the Act which reads:
 - “ 51. Liability for compensation.

A person who does anything that constitutes corruption or economic crime is liable to anyone who suffers a loss as a result for an amount that would be full compensation for the loss suffered.
 52. Liability for improper benefits

A person who receives a benefit the receipt of which would constitute an offence under section 39, 40 or 43 is liable, for the value of the benefit, to the following persons—

 - a. if the receipt constitutes an offence under section 39, to the agent's principal;
 - b. if the receipt constitutes an offence under section 40, to the person advised; or



- c. if the receipt constitutes an offence under section 43, to the persons beneficially entitled to the property.”

19. Those two provisions fall under Part VI of the Act which has a gamut of other provisions relating to compensation and recovery of improper benefit. Section 53 comprises miscellaneous provisions relating to compensation and recovery in civil proceedings arising under sections 51 and 52. A compensation order can be made in criminal proceedings under section 54. Under section 55, the Commission is empowered to commence proceedings in the High Court for forfeiture of unexplained assets.

Section 56 grants power to the Commission to apply for preservative orders in regard to property, if it is satisfied that there are reasonable grounds to suspect that the property was acquired as a result of corrupt conduct. Section 56A grants power to the Commission to appoint, with leave of the court, a receiver for property suspected by the Commission to have been acquired through corrupt conduct. Section 56B permits the commission to regulate and enter settlement with any person against whom the Commission intends to bring, or has actually brought, a civil claim or application in court.

20. Back to the core issue; whether a person who suffers a loss because of a conduct that constitutes corruption or economic crime or receipt of improper benefit can commence civil proceedings for compensation under sections 51 and 52 before the proposed defendant has been convicted of such conduct. Although it may well be that the provisions are simply an acknowledgment of the general principal of law that a criminal conduct of an accused person can also give rise to civil liability, these provisions are specific in their reference to liability arising from corrupt activities within the meaning assigned to the words

“corruption”, “economic crime” under section 2 of the Act and receipt of improper benefits as provided under the Act:

“corruption” means—

- a. an offence under any of the provisions of sections 39, 44, 46 and 47;
- b. bribery;
- c. fraud;
- d. embezzlement or misappropriation of public funds;
- e. abuse of office;
- f. breach of trust; or
- g. an offence involving dishonesty—
 - i. in connection with any tax, rate or impost levied under any Act; or
 - ii. under any written law relating to the elections of persons to public office;

“economic crime” means—

- a. an offence under section 45; or
- b. an offence involving dishonesty under any written law providing for the maintenance or protection of the public revenue;



c. an offence involving the laundering of the proceeds of corruption.”

21. We think that the language of sections 51 and 52 of the Act provides an answer to the vexed question we are asked to resolve.

A person is liable to civil liability if a person does anything that constitutes corruption or an economic crime (section 51) or receives a benefit, the receipt of which would constitute an offence, under sections 39, 40 or 43. As we are unable to find a legal definition to the word “constitutes” and none was suggested to us, we turn to its ordinary meaning. In general parlance, the word is defined by the Oxford English Dictionary (Second Edition) as follows: -

“Constitute, v.

To make up, form, compose; to be the elements or material of which the thing spoken of consists. (Correlative to consist, v. 7.) Constitute, adj. & n. Constituted, appointed, established, etc.; see the verb.”

22. It seems to us that the civil liability created by sections 51 and 52 arises if the defendant creates a loss as consequence of a conduct which if tried in a criminal process would end up in a conviction of corruption or economic crime. In this, we agree with learned counsel Mr. Chiuri that civil proceedings for compensation or recovery of improper benefit under section 51 or 52 are neither predicated upon nor triggered by conviction for the offence of corruption or economic crime. But if the express language of the provisions is doubted, still a resolution can be found elsewhere.

23. Support for that interpretation, first, is found when one contrasts the language in sections 51 and 52 with that in section 54 which refers to compensation orders made in criminal proceedings. In the latter, compensation can only be ordered against a person who has been convicted of corruption or an economic crime and the language employed in that section is all clear to see. The liability arises upon conviction. Section 54 reads;

“54. Compensation orders on conviction

1. A court that convicts a person of any corruption or economic crime shall, at the time of conviction or on subsequent application, order the person—
 - a. to pay any amount the person may be liable for under section 51 or 52; and
 - b. to give to the rightful owner any property acquired in the course of or as a result of the conduct that constituted the corruption or economic crime or an amount equivalent to the value of that property.
2. If the rightful owner referred to in subsection – (1)(b) cannot be determined or if there is no rightful owner, the court shall order that the property or equivalent amount be forfeited to the Government.
3. In making an order under this section, a court may quantify any amount or may determine how such amount is to be quantified.



4. An order under this section may be enforced by the person in whose favour it is made as though it were an order made in a civil proceeding.”

24. Additional justification for this interpretation, and this is the second, is in the examination of a provision of the Act falling in the same part of the Act as sections 51 and 52 and where the same words “constitutes corruption or economic crime” is used. Section 55 on forfeiture of unexplained assets reads;

“55. Forfeiture of unexplained assets

1. In this section, “corrupt conduct” means—
 - a. conduct that constitutes corruption or economic crime; or
 - b. conduct that took place before this Act came into operation and which—
 - i. at the time, constituted an offence; and
 - ii. if it had taken place after this Act came into operation, would have constituted corruption or economic crime.
2. The Commission may commence proceedings under this section against a person if—
 - a. after an investigation, the Commission is satisfied that the person has unexplained assets; and
 - b. the person has, in the course of the exercise by the Commission of its powers of investigation or otherwise, been afforded a reasonable opportunity to explain the disproportion between the assets concerned and his known legitimate sources of income and the Commission is not satisfied that an adequate explanation of that disproportion has been given.
3. Proceedings under this section shall be commenced in the High Court by way of originating summons.
4. In proceedings under this section—
 - a. the Commission shall adduce evidence that the person has unexplained assets; and
 - b. the person whose assets are in question shall be afforded the opportunity to cross-examine any witness called and to challenge any evidence adduced by the Commission and, subject to this



section 23 shall have and may exercise the rights usually afforded to a defendant in civil proceedings.

5. If after the Commission has adduced evidence that the person has unexplained assets the court is satisfied, on the balance of probabilities, and in light of the evidence so far adduced, that the person concerned does have unexplained assets, it may require the person, by such testimony and other evidence as the court deems sufficient, to satisfy the court that the assets were acquired otherwise than as the result of corrupt conduct.
6. If, after such explanation, the court is not satisfied that all of the assets concerned were acquired otherwise than as the result of corrupt conduct, it may order the person to pay to the Government an amount equal to the value of the unexplained assets that the Court is not satisfied were acquired otherwise than as the result of corrupt conduct.
7. For the purposes of proceedings under this section, the assets of the person whose assets are in question shall be deemed to include any assets of another person that the court finds—
 - a. are held in trust for the person whose assets are in question or otherwise on his behalf; or
 - b. were acquired from the person whose assets are in question as a gift or loan without adequate consideration.
8. The record of proceedings under this section shall be admissible in evidence in any other proceedings, including any prosecution for corruption or economic crime.
9. This section shall apply retroactively.”

25. In *Stanley Mombo Amuti v Kenya Anti-Corruption Commission* [2019] eKLR, this Court (Waki, Gatembu, Otieno- Odek, JJ.A.) explained the concept of “unexplained assets” as follows;

“The concept of “unexplained assets” and its forfeiture under Sections 26 and 55 (2) of ACECA is neither founded on criminal proceedings nor conviction for a criminal offence or economic crime. Sections 26 and 55 of ACECA are non-conviction based civil forfeiture provisions. The Sections are activated as an action in rem against the property itself. The Sections require the Anti- Corruption Commission to prove on balance of probability that an individual has assets disproportionate to his/her legitimately known sources of income. Section 55 (2) of the Act make provision for evidentiary burden which is cast upon the person under investigation to provide satisfactory explanation to establish the legitimate origin of his/her assets. This evidentiary burden is a dynamic burden of proof requiring one who is better able to prove a fact to be the one to prove it. Section 55 (2) of ACECA is in sync with Section 112 of the *Evidence Act*, Cap 80 of the Laws of Kenya.”



26. A lesson from this passage is that forfeiture proceedings under section 55 are non-conviction based. But as regards the matter at hand, subsections 5 and 6 are illuminating. The scheme of these two provisions is that once the Commission has adduced sufficient evidence that a person has unexplained assets, the person is given an opportunity to satisfy the court that the assets were acquired otherwise than as a result of corrupt conduct. If the explanation does not pass muster, then the court may order the person to pay to the Government an amount equal to the value of the unexplained assets. To successfully resist forfeiture, the defendant needs to satisfy the court that the assets targeted were acquired otherwise than as a result of corrupt conduct remembering that the definition of corrupt conduct in subsection 1 includes “conduct that constitutes corruption or economic crime.” If the words “constitutes corruption or economic crime” were to be construed as a conviction for corruption or economic crime, then any defendant who has not been convicted will successfully resist forfeiture of unexplained assets. In essence, defeating the very intention of statute that the concept of unexplained assets and its forfeiture is neither founded on criminal proceedings nor conviction for a criminal offence or economic crime or receipt of improper benefit.
27. And we have no doubt that it is sensible that an action through civil proceedings for compensation for wrong suffered from a conduct that constitutes corruption or an economic crime or liability for improper benefit should not necessarily be preceded by a conviction. It does seem patently unfair to a victim of a conduct that constitutes corruption or economic crime to first be burdened with seeking the cooperation of other bodies like the Director of Public Prosecutions for purposes of mounting a criminal prosecution. Then to obtain a conviction which requires the exerting standard of proof of beyond reasonable doubt when he/she can make out a case for compensation by marshalling sufficient evidence to establish proof to the standard called for such a cause of action in civil proceedings, namely, proof beyond a balance of probabilities yet not as high as beyond reasonable doubt. This position is particularly stark when the affected person is a public body. Why should the public body have to journey a more rigorous process in seeking compensation from a person who has caused loss through conduct that constitutes corruption or an economic crime, than say a private company which seeks compensation from an employee who has caused loss to the company through fraud?
28. To the next issue, which is the forum in which civil proceedings for the trial and determination of liability arising from conduct which constitutes corruption or economic crime or improper benefit under section 51 or 52 to be instituted? Through Gazette Notice No. 10263 dated 9th December 2016, the Chief Justice published Practice Directions for the Anti-Corruption and Economic Crimes Division of the High Court. The avowed purpose for which the Directions were made was for the effective case management and expeditious disposal of cases in that Division. Under paragraph 5, the Direction defines the scope of mandate of the Division. Under 5(d)(i) it sets out that the Division shall have power to entertain cases relating to corruption and economic crimes filed under The *Anti-Corruption and Economic Crimes Act*. Paragraphs 5(e) specifically gives mandate to the Division in the following terms:
- “5. The following matters shall be heard by the Anti- Corruption and Economic Crimes Division of the High Court –
-
- e. Disputes touching on or related to –
- i. offences or the recovery, or protection of public property, or
- ii. the tracing of, freezing of, or confiscation of proceeds of corruption or related to corruption and money laundering, and



iii. the payment of compensation of proceeds of corruption and economic crimes.”

29. Sub paragraphs (i) and (ii) certainly do not relate to liability arising under section 51 or 52, so we reflect on e (iii). We think that by use of the words ‘the payment of compensation’, this direction refers to disputes touching on or related to enforcement of compensation orders under section 54(4) of the Act. We do not think that it was the intention of the Chief Justice to inundate the Anti-Corruption and Economic Crimes Division with civil proceedings arising under sections 51 or 52 of the Act which could include suits brought by private persons. Those can be instituted in the Civil Division of the High Court or in stations where the division does not exist, in the High Court of such station and where the pecuniary amount is within the jurisdiction of the subordinate court, of the relevant subordinate court. Where it involves land and environment then the forum would be the Environment and Land Court.
30. In the end, were are unable to uphold the trial Court’s finding that “for section 51 and 52 to stand, Section 54 should come to play first”. On the other hand, we agree with the finding that the suit from which this appeal arises ought to have been filed, heard and determined before the Civil Division of the High Court. This then takes us to the cross- appeal.
31. Having found that the suit was filed in the wrong Division of the High Court, the trial court cannot be faulted for ordering that it be transferred to the right Division. It was not open to the Court to strike out the suit as suggested by the 1st respondent. The suit was in the improper forum not because of jurisdictional considerations but on account of the administrative arrangement of the High Court and it could never be amenable for striking out.
32. Ultimately, the appeal partially succeeds to the extent that the appellant can pursue a private action for compensation pursuant to Sections 51 and 53 of the *Anti-corruption and Economic Crimes Act* without first obtaining a conviction against the respondents but at the Civil Division of the High Court at Nairobi. The cross appeal fails in its entirety. Each party to bear its own costs on both the appeal and the cross-appeal.

DATED AND DELIVERED AT NAIROBI THIS 22ND DAY OF NOVEMBER 2024.

F. TUIYOTT

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JUDGE OF APPEAL

J. LESIIT

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JUDGE OF APPEAL

F. W. NGENYE-MACHARIA

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR.

