



**Ethics and Anti-Corruption Commission v Nyakundi & another
(Miscellaneous Application E010 of 2024) [2025] KEHC 1224 (KLR)
(Anti-Corruption and Economic Crimes) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1224 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
MISCELLANEOUS APPLICATION E010 OF 2024**

**BM MUSYOKI, J
FEBRUARY 28, 2025**

BETWEEN

ETHICS AND ANTI-CORRUPTION COMMISSION APPLICANT

AND

FELIX MACHA NYAKUNDI 1ST RESPONDENT

STELLA NYABOKE OTWORI 2ND RESPONDENT

RULING

1. The Applicant's notice of motion dated the 16th of October 2024 which is supported by the affidavit of Charity Muniu sworn on the same date is expressed to be brought under Section 56 of the Anticorruption and Economic Crimes [Act, NO. 3 of 2003](#) sought the following orders:
 - a. (Spent).
 - b. (Spent).
 - c. The preservation orders issued on 19th April 2024 prohibiting the respondents, their agents and/or servants or any other persons from redeeming, selling, transferring, granting as security, offering as collateral, disposing, wasting and/or in any other way (howsoever described) dealing with the following treasury bonds held at Equity Investment Bank Ltd Account No: 147496-0004 in the name of Stella Nyaboke Otworri be extended for a further period of 6 months.



ISIN	Instrument	Available Face Value (kshs)
Kes8000006430	8.5 Year Fixed Coupon Gok Ifb Bond	2,000,000.00
Kes8000006547	10 Year Fixed Coupon Gok Treasury Bond	8,150,000.00
Kes8000002322	18 Year Fixed Coupon Gok Ifb Bond	3,000,000.00
Total		13,150,000.00

- d. That there be no order as to costs.
- The motion was based on the grounds stated on its face, principally that the investigations on the assets of the respondents have not been completed. The rest of the grounds are similar to those expressed in the earlier notice of motion from which the orders of 19th April 2024 emanated.
 - The supporting affidavit does not say much about the stage the investigations have reached. The deponent only states that the applicant has made significant progress towards completion of investigations. She adds that the applicant established that the respondents had accumulated wealth that is not commensurate with their legitimate sources of income and there exists significant disproportion between their assets/wealth and their known legitimate sources of income.
 - The respondents filed their replying affidavit dated 5th December 2024 which is sworn by the 2nd respondent. She depones that the applicant has not stated what prevented it from completing the investigations neither has it cited the reason for seeking the extension. She adds that she does not work in the public service and the applicant has not indicated that there was diversion of public funds to her account. She avers that extension of the orders will prejudice her since she has not been able to conduct her business since the initial orders were granted although she admits that the 1st respondent is her husband.
 - The applicant filed submissions dated 16th December 2024 while the respondents indicated that they would not be filing submissions but relied on the replying affidavit sworn by the 2nd respondent. I have read the application, the replying affidavit and the applicant's submissions.
 - The preservation orders which are sought to be extended were issued on 19th April 2024 by Hon. Justice E.N. Maina. The said orders were to subsist for six months to enable the Commission complete its investigations before instituting forfeiture proceedings. The applicant has not explained why the six months were not enough for it to carry out the investigations. Although this court does not have the details of the investigations, the nature of the assets being investigated do not appear to me to have potential of posing big challenge to the investigations. The applicant has not made any attempt to explain any challenge it may have had in its investigations.
 - The discretion granted to this court by Section 56(3) of the *Anti-Corruption and Economic Crimes Act* though wide should be exercised judiciously and with care not to hurt holders of the assets being investigated. The fact that the 2nd respondent is a spouse to the 1st respondent does not mean that she cannot acquire legitimate assets on her own. I am alive to the fact that the law considers close and family associates of suspects of economic and corruption cases as persons of interest wherever such



investigations are being carried out. However, the law enforcers should not use their powers, mandate and discretion of the court to move against anyone and everyone without prima facie evidence.

8. The court takes note of the 2nd respondent's response especially her complaint that extension of the orders will hurt her and violate her rights. This complaint is not without merits. It is a legitimate worry and a likely possibility. There is need for proportionate balance between the constitutional rights of the respondent, on the one hand, and public interest in the recovery or forfeiture of illicit wealth as a way of combating crime on the other hand.
9. The purpose of preservation orders is to preserve suspicious assets and allow time for investigations into the source of the funds and evaluation of any explanation that may be offered by the respondents. That is why they should always be for specific period as specified in the law. The orders are of a temporary character and meant to merely preserve the assets and not to permanently or indefinitely deprive the respondent of their legitimately acquired wealth.
10. On the above background, this court observes that the applicant has been slow in performing its duties but due to interest of the public, I am minded to extend the orders but for a shorter period than requested. I note that the applicant has enjoyed extension of the orders for about four months. I will extend the orders for a further sixty (60) days from the date of this ruling.
11. The application is hereby allowed to that extend with no orders as to costs.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF FEBRUARY 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Judgment delivered in presence of Mr. Nyoike for the applicant and in absence of the respondent.

