



REPUBLIC OF KENYA



**Ethics & Anti-Corruption Commission v Maitai & 13 others (Anti-Corruption and Economic Crimes Civil Suit 8 of 2020) [2025] KEHC 11190 (KLR)  
(Anti-Corruption and Economic Crimes) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11190 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
ANTI-CORRUPTION AND ECONOMIC CRIMES  
ANTI-CORRUPTION AND ECONOMIC CRIMES CIVIL SUIT 8 OF 2020**

**LM NJUGUNA, J**

**JULY 30, 2025**

**BETWEEN**

**ETHICS & ANTI-CORRUPTION COMMISSION ..... PLAINTIFF**

**AND**

**CHARLES NDERITU MAITAI ..... 1<sup>ST</sup> DEFENDANT**  
**CHARLES TANUI ..... 2<sup>ND</sup> DEFENDANT**  
**CHARLES OUKO ..... 3<sup>RD</sup> DEFENDANT**  
**FREDRICK OGENGA ..... 4<sup>TH</sup> DEFENDANT**  
**EMILIO MWAI NDERITU ..... 5<sup>TH</sup> DEFENDANT**  
**SAMSON ODOYO MIKWA ..... 6<sup>TH</sup> DEFENDANT**  
**NICHOLAS GITOBU ..... 7<sup>TH</sup> DEFENDANT**  
**PHILIP KIMELU ..... 8<sup>TH</sup> DEFENDANT**  
**BRAMWEL WANYALIKA ..... 9<sup>TH</sup> DEFENDANT**  
**FRANCIS MUTHAIGA MURAYA ..... 10<sup>TH</sup> DEFENDANT**  
**PETER MACHUA ..... 11<sup>TH</sup> DEFENDANT**  
**JANE NAKODONY ..... 12<sup>TH</sup> DEFENDANT**  
**ALLIED INSPECTION & TESTING ..... 13<sup>TH</sup> DEFENDANT**  
**AERO DISPENSER VALVES LIMITED ..... 14<sup>TH</sup> DEFENDANT**



## RULING

1. This is a part-heard matter with nine (9) witnesses having testified. When it came up for further hearing on the 7<sup>th</sup> July, 2025, the investigating officer with the plaintiff, one Mr. Justus Wangia took to the witness stand and it was part of his evidence that his duties entails investigations into allegations of Economic Crimes, tracing corruptly acquired assets and preparations of the investigation diary.
2. He stated that his main role in this matter was to compile an asset tracking and recovery file that emanated from a criminal file Number EACC/FI/enquiry/ ING/21/2018, that was heard and determined by the subordinate court. He stated that he was involved in recording of the statements, obtaining documents and carrying out analysis of the transactions pertaining the tender for the supply of Hydrant pit valves and spares and after the investigations the plaintiff filed the plaint dated the 21<sup>st</sup> February, 2020.
3. The witness sought to produce as an exhibit, documents appearing from pages 1-60 of the plaintiff's list of documents dated the 20<sup>th</sup> February,2020 which is the approved annual budget for 2014- 2015 for Kenya Pipeline Company which he stated he obtained from the said company in the course of his investigations.
4. Counsel for the 2<sup>nd</sup> Defendant objected to the production of the said documents and contended that the witness is not the right person to produce them but the same should be produced by the accounting officer from Kenya Pipeline or from the Ministry of Energy or finance.
5. Counsel for the 12<sup>th</sup> defendant supported the objection and submitted that nine witnesses have already testified in the matter and none of them has made reference to the said documents. It was his submission that the investigating officer can only produce documents where the other witnesses have already laid a basis and have spoken to those documents and if not, he can only produce documents where he is the maker.
6. Counsel further submitted that the plaintiff has not been given a reason why the maker of those documents or people who interacted with them have not been brought to court to speak to the documents and produce them. According to him, the challenge will be that during cross-examination, the witness may not be able to answer questions as to specific entries in those document and that when a competent witness is brought to court to produce them, he shall have a number of questions to ask him in Cross-examination.
7. Counsel for the 4<sup>th</sup> and 6<sup>th</sup> defendants submitted that it was a statutory role of the Treasury to approve the budget, and that the role of the witness was to investigate and prepare investigation report and that he did not lay a foundation on how he came across the document as the investigating officer so that they can assess his capability to produce the documents.
8. Counsel for the 14<sup>th</sup> defendant in supporting the objection submitted that the investigating officer should not be the one to guide the court on who should produce the document.
9. In his response, counsel for the plaintiff submitted that the witness in his evidence indicated where he obtained the documents from, in his capacity as the investigating officer and that they are certified as true copies of the original. That Kenya Pipeline is a Public Entity and therefore, it's approved budget is a Public documents and that Section 81 of the *Evidence Act* allows production of Certified Public documents by the recipients of those documents.



10. In rejoinder, counsel for the 2<sup>nd</sup> defendant submitted that though the court has been told that the documents are certified, the person who certified the document is not known and it is important that the documents in court are authentic. That the witness cannot speak to the contents of the document and the issue of an approved budget is contested.
11. The court directed the parties to file case digest and only the plaintiff and the 2<sup>nd</sup> defendant's counsel complied with the said directions.

### **Determination**

12. The court has considered the objection and the arguments in support of and in opposition to the same.
13. The document sought to be produced is the approved annual Budget for 2014-2015 for Kenya Pipeline Company. The objection by the counsel for the 2<sup>nd</sup> defendant is premised on the fact that the witness is not the maker of the said documents and that no other witness has laid a basis and spoken to the documents.
14. The approved Budget can be termed as public documents by dint of Section 79 of the *Evidence Act* which states;

Distinction between public and private documents

1. The following documents are public documents-
    - a. Documents forming the acts or records of the acts –
      - (i) Of the sovereign authority; or
      - (ii) Of official bodies and tribunals; or
      - (iii) Of public officers, legislative, judicial or executive, whether of Kenya or of any other country;
    - b. Public records kept in Kenya of private documents.
  2. All documents other than public documents are private documents.
15. Section 81 is on proof by certified copies and it provides that certified copies of a public documents may be produced in proof of the contents of the documents or parts of the documents which they purport to be copies.
  16. Under Section 83(1) the court shall presume to be genuine every document purporting to be a certificate, certified copy or other document which is:-
    - a. Declared by law to be admissible as evidence of any particular fact; and
    - b. Substantially in the form, and purporting to be executed in the manner, directed by law in that behalf; and
    - c. Purporting to be duly certified by a public officer.
  3. The court shall also presume that any officer by whom any such document purports to be signed or certified held; when he signed it, the official character which he claims is such a document.”



17. The court in the case of Hezekiah vs. Mbugua (2023) KEHC 1946 (KLR) Civil Appeal No. E187 of 2021 held that a document's reliability is presumed under Section 38 of the *Evidence Act* barring any information to the contrary as it is a public document even when it is not produced by the maker.
18. In allowing the production of such a document, the court under Section 35(5) can draw any reasonable inference from the form or contents of the document in which the statement is contained, or from any other circumstances. The court will consider the relevance of the document to the issues before the court.
19. The court further stated that an objection will be dismissed where the party did not indicate during pre-trial that it will object to the production of the document and that the other party will have to demonstrate the prejudice that it will suffer if the document were to be admitted. See the cases of Ogoti vs. Safaricom *Limited & another (Civil appeal No. 5 of 2021)* (2022) KEYHC 3208 (KLR) and that of Virginia Kathambimaingi vs. Nicholas Mwatika & 2 others (2021) KEELC 57 (KLR).
20. In the case herein, the defendants did not indicate during the pre-trial that they will object to the production of the said documents and no prejudice will be occasioned to them as they will have an opportunity to cross-examine the witness after he produces the documents.
21. In the end, I find that the objection has no merits and it is hereby dismissed
22. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 30<sup>TH</sup> DAY OF JULY 2025.**

.....

**L.M. NJUGUNA**

**JUDGE**

In the presence of:-

Mr. Waudu for the 2<sup>nd</sup> defendant

Mr. Hayo holding brief for Mr. Omamba for the 10<sup>th</sup> defendant

Hashamal holding brief for Mr. Odera for the 9<sup>th</sup> Defendant

Mr. Alosa for the 7<sup>th</sup> defendant

Mr. Alosa for the 7<sup>th</sup> defendant

Miss Nira holding brief for Mr. Ogutu for the 3<sup>rd</sup> and 5<sup>th</sup> defendant

Mr. Ondieki appearing with Prof. Migai for the 12<sup>th</sup> defendant

Miss Ojil holding brief miss Misiati for the 14<sup>th</sup> defendant. Appearing with Mr. Okubasu and Mr. Molly Julius

No appearance for the 1<sup>st</sup> defendant

No appearance for 6<sup>th</sup> defendant

No appearance for 8<sup>th</sup> defendant

No appearance for the 13<sup>th</sup> defendant

Court assistant – Wilson

