

REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATE'S COURT AT VOI

CIVIL SUIT NO. E 131 OF 2022

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

-VERSUS-

GEOFFREY KIMONGE MBOGHO..... DEFENDANT

JUDGMENT

1. The Plaintiff approached the seat of justice by Plaint dated 21st June 2022, seeking judgment against the Defendant in the following terms:

- a) *A declaration that the sum of Kshs. 13,977,987.00 was illegally and fraudulently acquired by the Defendant from the County Government of Taita Taveta in breach of public trust.*
- b) *An order for payment of Kshs. 13,977,987.00 by the Defendant to the Government of Kenya*
- c) *An order of payment of interest at commercial rates of Kshs. 13,977,987.00 from the date of acquisition of each tranche as enumerated in paragraph 6 above to the date of filing the suit.*
- d) *Interest at court rates from the date of filing suit till payment in full*
- e) *Costs of and incidental to this suit.*

2. The Plaintiff's Case.

3. The Plaintiff's case can be summarized as hereunder:



4. During the period March 2013 and August 2017 the Defendant was allegedly employed by the County Government of Taita Taveta County and appointed as the Legal Advisor to the Office of the Governor.
5. It is alleged that the Plaintiff received complaints sometime on 18th August 2020 that the Defendant was involved in fraudulent acquisition of public funds to the tune of Kshs. 13,977,987/= in the form of imprest allegedly taken as allowances for County Assembly Wards and staff of County Government of Taita Taveta.
6. The Plaintiff claims that upon investigations, they established that the Defendant fraudulently applied for and received imprests in the names of various Members of County Assemblies and County Government staff and for official engagements on diverse dates between 20th November 2015 and 17th May 2017. However, it was allegedly established that he never paid the funds to the officers purportedly entitled, and never surrendered the imprests as required.
7. The Plaintiff contends that the Defendant breached the public trust as a public officer by illegally and fraudulently acquiring the total sum of Kshs. 13,977,987.00 and unjustly enriched himself at public expense. The particulars of alleged illegality, fraud, breach of trust and unjust enrichment are outlined in the Plaint.
8. The Plaintiff further avers that despite demand that the Defendant refunds the said amount, he allegedly failed and or refused to do so thus necessitating this litigation.

9. Defendant's case

10. The suit is defended. The Defendant entered appearance in the suit and filed his Defence dated 1st August 2022 through Messrs. Mwzighe & Company Advocates. He later changed his Advocates to M/s Mwinzi & Associates Advocates.
11. He admits that he was at all material times working for the County Government of Taita Taveta County as the Governor's Political Advisor, as alleged.



12. He however denied claims that he fraudulently acquired the sum of Kshs. 13,977,987.00 as claimed. According to the Defendant, the allegations that such complaints were lodged against him are unfounded and intended to settle political scores.
13. The Defendant further states that every trip and activity for which funds were applied for was undertaken and surrender of imprests done with no complaints being raised.
14. He further questioned why the complaints only emerged 3 years after he had exited the Governor's office. In his view, the County Government as custodian of the documents may have tampered with them to falsely accused him of the present claims. He attributes his predicament to the former Governor Granton Samboja whom he claims had a personal vendetta against him.
15. The Defendant admits receipt of demand letters issued by the Plaintiff and contends that he responded to the speculations and lies contained therein. He further states that this suit has been instigated by other matters. He seeks dismissal of the suit with costs.
16. The Defendant also pleaded that the present claims against him are at variance with expert reports that absolved him of any blame.

17. Evidence adduced


18. The Plaintiff called a total of 24 witnesses who testified on diverse dates to support their case against the Defendant. In short, it is alleged that on 18th August 2020 , the Plaintiff received a complaint against the Defendant that while he was working at the Taita Taveta County Government , he failed to surrender outstanding imprests contrary to the law and also received monies for official activities which never took place or some officers never attended but were listed as among those paid allowances.



19. It is further alleged that despite demand that he refunds the said sums, the Defendant failed to respond to the various Demand letters thus prompting the report to the Plaintiff and investigations thereafter. The Plaintiff relied on documentary evidence contained in their List of Documents dated 7th July 2022 and produced as exhibits **PEXT1 to PEXT 58**.
20. On the other hand , the Defendant (**DW1**) testified and denied the allegations against him He adopted his witness statement dated 7th September 2022. He also produced documentary evidence to buttress his position as per the List dated 1st August 2022 (**DEXT1 to DEXT6**).
21. In short, his position is that he is an innocent man who is a victim of political machinations. He claims that he served diligently in his capacity as the Director of Political Affairs of the first Governor of Taita Taveta County from August 2013 to August 2017.
22. He contended that the genesis of this litigation is an article he posted on his online blog space Kwaela News Network and facebook page titled “ ***Tavevo’s worrying trends. Is is the new cash cow-an open letter to the World Bank*** “. According to him, the article caused discomfort particularly for Governor Grantone Samboja who thereafter filed a defamation case No. 58 of 2020 against him (**DEXT5**).
23. He further claimed that he was equally shocked to see that the signatures of Members of County Assembly and his own signature were forged and some imprest warrants ripped off in order to falsely accuse him. He said he had long left the County Government hence had no access to the records as at the time the allegations were made against him to the Plaintiff.
24. The Defendant told the Court that the claims against him are a outlandish and unfounded and aimed at settling political scores. He also told the Court that the Auditor General's reports for the financial years 2016 to 2017 and 2017 to 2018 (**DEXT 3 and**

DEXT4) did not implicate him in any way. He wondered why the issues were raised and investigations commenced long after he had left the County Government. He reads bad faith in this matter and urged the Court to dismiss the case with costs.

25. Court's analysis and Determination

26. I have given due consideration to the evidence adduced by both parties. I have also read and considered the written submissions filed by Ms. Songole Advocate representing the Plaintiff and Mr. Mwinzi Advocate on record for the Defendant.
27. The main issue for determination is whether the claim is merited and whether the Plaintiff is entitled to the reliefs sought.
28. It is trite law that he who alleges a fact must prove it.
29. **PW1 Driscillar Hope** informed the Court that at all material times she was an Accountant at the Taita Taveta County Government where her duties included posting cash book, cash management and scoring and forwarding quotations through IFMIS.
30. It was her evidence that she was also in Charge of recording imprest issued and surrendered the cash book. In relation to this case, she claimed that several Imprest Warrants were issued in the Defendant's name on diverse dates and that he failed to surrender some.
31. For instance , in relation to **Imprest warrant no. 2338954 dated 6th April 2016 for Kshs 599,400/= and attached Internal Memo ref GOV/TT/CORR2/VOL 2 dated 5th April 2016 (PEXT6)** from the Defendant, it was alleged that the Defendant applied for the said sum to facilitate an official engagement in Mombasa. **PW2 Michael Karisa Ngala** testified that the Defendant personally brought this warrant to him for payment. He also stated that he paid the Defendant this sum after verifying that it had been duly authorized and processed. **PW2** then forwarded the documents to **PW1** for posting and safe keeping.
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32. There was also evidence from **PW5 Liverson Mwazala Maganga** , that whereas his name appeared on the list of attendees, he was not aware of the said meeting , never attended it and did not receive the sum of Kshs. 46,000/= allegedly paid to him.
33. Similar evidence was adduced by **Mande Mohamed Jumane (PW21)** who testified that he never attended such a meeting and never received the sum of Kshs. 49,200/= as claimed
34. There was further evidence from **PW2** and **PW1** that the Defendant was issued with **Imprest Warrant No. 2338955 dated 28th April 2016** for Kshs. 1,884,750/= to facilitate an official engagement in Arusha (**PEXT7**). On this imprest warrant, **PW5** claimed that he was unaware of the alleged trip, never attended it and was not paid the allowance of Kshs. 174,300/= by the Defendant.
35. The Plaintiff also relied on evidence from witnesses **PW1** and **PW2** that the Defendant obtained **Imprest No. 2480215 dated 29th May 2016** allegedly for a Budget preparation meeting in Arusha Tanzania. It is alleged that he never surrendered the imprest warrant for Kshs. 1,643,440/= (**PEXT 8**). The fact that such a meeting took place and that County Assembly officers or staff attended the meeting was disputed by **PW4 Gadiel Munyambo Maganga** , who was the Principal Finance Officer at the material time. It was also disputed by **PW21 Mande Mohamed Jumanne**. They denied attending such a meeting and that they were paid any allowances as claimed.
36. The Plaintiff further produced documentary evidence by way of **Imprest Warrant 2338818 dated 20th November 2015 for Kshs. 1,000,000/=** for an alleged Governor's meeting in Mombasa (**PEXT2**) which was paid to the Defendant in cash by **PW2**. It is alleged that whereas this Imprest was surrendered vide Payment Voucher No. 397, the various Members of County Assembly who purportedly attended the meeting denied ever doing so and receiving allowances. Among them were **Geoffrey Fundi (PW8)**, **Arresmus Kajeni (PW9)**, **Reuben Kimpampi Tiges (PW10)**, **Abraham**

Mwamburu Juma (PW11), Jason Tiya (PW14), Frank Kichoi Mwakanyanga (PW15).

37. Similar evidence was tendered by the same witnesses with respect to **Imprest Warrant no. 2338951 for Kshs. 1,070,000/= (PEXT3)** in relation to the surrender documents and Payment Voucher No. 398 for an alleged Governor's meeting.
38. In my respectful view, looking at the totality of evidence adduced, there was uncontroverted evidence to show that the Defendant applied for and received imprest warrants Nos. 22241143, 2338801, 2338818, 2338951, 2296451, 2371614, 2371693, 2371631, 2338954, 2338955, 2338956, 2480215, 2481431, 2691201, 2481470 and 2691148 (**PEXT2,3,4,5,6,7,8,9,10,11,12,13,14,15,16, and 17**) on a balance of probabilities.
39. There was also uncontroverted evidence to show that he failed to surrender imprests Nos. 2338954 for Kshs. 599400/=; Imprest 2338955 for Kshs. 1,884,750/=; Imprest No. 2480215 for Kshs. 1,643,440/=; Imprest No. 2371631 for Kshs. 1,300,000/=; Imprest No. 2296451 for Kshs. 1,250,000/=; Imprest No. 2338801 for Kshs. 500,000/=; Imprest No. 2691148 for Kshs. 560,000/=; Imprest No. 2481470 for Kshs. 2,000,000/=; Imprest No. 2371693 for Kshs. 292,800/=; Imprest No. 22389956 for Kshs. 200,000/=; Imprest No. 2371614 for Kshs. 176,400/=; Imprest No. 2224143 for Kshs. 45,200/=; Imprest No. 2481431 for Kshs. 207,000/= and Imprest No. 2338952 for Kshs. 1,800,000/=. Those total Kshs. 12,458,990/=.
40. **Regulation 93 (5) and (6) of the Public Finance Management (County Governments) Regulations , 2015** provides that :

(5) A holder of a temporary imprest shall account or surrender the imprest within Seven (7) working days after returning to duty station.

(6) In the event of the imprest holder failing to account for or surrender the imprest on the due date, the Accounting Officer shall take immediate

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action to recover the full amount from the salary of the defaulting officer with an interest at the prevailing Central Bank Rate."

41. In this case, there is no satisfactory explanation from the Defendant for failing to surrender the imprests. It is also clear that no action was taken against him while he was a public officer contrary to the law. There was also no credible rebuttal to claims that he attached false documents to support surrender of imprests where no activities actually took place.
42. These were public funds which ought to have been accounted for having regard to **Regulation 93** as well as the Constitutional obligations of public and political officers and principles enshrined under **Articles 10**, and **Chapter 6 of the Constitution**. On particular, the need to conduct oneself with integrity and ensure prudent and responsible use of public resources.
43. The Defendant claims that he is a victim of political witch-hunt. However, the witnesses who testified did so in their capacities as County Government employees and Members of County Assembly. The Defendant and his Advocates failed to attend Court when most of the witnesses testified despite being aware of the hearing dates. Hence the witness accounts were never challenged. I found them credible and not politically motivated.
44. Further, the Defendant does not expressly deny receiving the said amounts. **PW2** and **PW13** gave direct evidence against him as the person who applied for the Imprest Warrants and the same person who was paid in cash. Where did he take the monies if he failed to account for them? It can only imply that it was for personal and unjust enrichment on a balance of probabilities.
45. If indeed as he claims that his own signature was forged, I found that **PW23 Ivy Scott** presented an independent forensic report indicating that he was the one who applied for and signed the imprest warrants. Her expert evidence was uncontroverted.



46. **PW 24 Lameck Okum** was also an independent witness, being the EACC Forensic Investigator. He must have sieved through the evidence before Court before zeroing in on the Defendant. I do not think the witnesses were malicious. In any event, the Defendant's claim was against the former Governor. It was not demonstrated that the said Governor who did not participate in this matter influenced all the 24 witnesses.
47. I have also considered the bundle of Defendant's responses (**DEXT2**) to the Demand letters (**PEXT58**). My view is that he has no plausible defence. On one hand he claims that he duly surrendered imprests taken while on the other he alleged that he alleged that he is being victimized and his own signatures were forged. His own colleagues did not support his claims that some activities were actually undertaken. Where then did the funds released to him go ?
48. I am inclined to agree with the Plaintiff that he unjustly enriched himself with public funds contrary to the law. I also find that the Auditors reports he relied on (**DEXT 3 and DEXT4**) support the claim (at Pages 3 and 12 respectively) that there were outstanding un-surrendered imprests and that in some instances, officers were issued with imprests before surrendering previous ones contrary to **Regulation 93 of the Public Finance Management (County Governments) Regulations, 2015**.
49. Under **Section 46 and 53 of the Anti – Corruption and Economic Crimes Act 2003** the Plaintiff is duty bound to recover fraudulently acquired public funds as is the case here. I find that he may well have been one of the officers referred to in the Auditors report. I also find that he may have colluded with other officers within the County Government for such a situation to have obtained for a long duration unearthed until **PW18** discovered it took steps in the year 2019.
50. I however noted that whereas the Plaintiff pleaded for the sum of Kshs. 13, 977, ,987/= as illegally acquired sums, there were disparities in the evidence adduced and the submissions to support this sum. In paragraph 8 of the Plaint, reference is made to Kshs. 13,878,587/= while in the final submissions the sum allegedly claimed is Kshs.

15,096,030/= as tabulated and Kshs. 1,649,751/= as fraudulently obtained. This evidence was not very clear.

51. It does not however vitiate the cogent evidence that the Defendant fraudulently obtained public funds from the County Government of Taita Taveta. I find that the sum proved is Kshs. 12, 458,990/=.

52. There is therefore merit in the claim to that extent. I reject the Defendant's defence.

53. Costs.

Cost follow the event. As the successful party, the Plaintiff is entitled to the costs of this suit.

Reasons Wherefore, I hereby enter judgment for the Plaintiff as against the Defendant in the following terms:

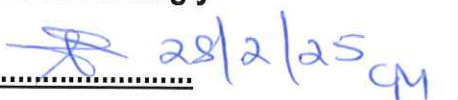
a) A declaration is hereby made that the sum of Kshs. 12,458,990/= was illegally and fraudulently acquired by the Defendant from the County Government of Taita Taveta in breach of public trust.

b) The Defendant is hereby ordered to pay the sum of Kshs. 12,458,990/= to the Government of Kenya.

c) The Defendant shall pay interest at commercial rates of Kshs. 12,458,990/= from the date of acquisition of each tranche as enumerated in paragraph 6 of the Plaint to the date of filing the suit.

d) The Defendant shall also pay Interest at court rates from the date of filing suit till payment in full plus costs of and incidental to this suit.

Orders accordingly


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Hon. A.M. Obura (Mrs), CM

Before Hon. A.M.Obura (Mrs), CM

Court Assistant..... Munaa

Parties: Ms - Songole for the Plaintiff

..... N/A for Dep's Advocate for the Defendant
Defendant present physically in court

Court:

Judgment delivered virtually in Court at Voi this ...**28th** day of.....**February**.....**2025**.

 CM

Hon. A.M. Obura (Mrs), CM