REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI COUNTY

COURT NAME: MILIMANI HIGH COURT

CASE NUMBER: HCACECS/E022/2025

ETHICS AND ANTI-CORRUPTION COMMISSION VS FELIX MECHA NYAKUNDI AND STELLAH NYABOKE OTWORI AND 2 OTHERS

JUDGMENT

BEFORE HON. JUSTICE BENJAMIN MWIKYA MUSYOKI

By originating motion dated 19th May 2025 brought under Section 55 of the Antic-Corruption and Economic Crimes Act and Order 37 Rule 14 of the Civil Procedure Rules, the plaintiff has sought inquiry and answer to the following;

1. Whether Kshs. 467,764,517.60 transacted through the bank and mobile money Mpesa accounts set out below constitute unexplained assets within the meaning of the provisions of Section 55 of the Anti-Corruption and Economic Crimes Act, No.3 of 2003;

Account no.	Account holder	Total deposits
01100017871500	Felix Mecha Nyakundi	50,398,428.00
1002195069	Felix Mecha Nyakundi	16,323,000.00
0722226389	Felix Mecha Nyakundi	27,760,908.00

0717999279	Felix Mecha Nyakundi	9,334,194.00
1440179887489	Stellah Nyaboke	2,062,665.30
1440180507475	Stellah Otwori	12,242,381.50
1440164969154	Stellah Otwori	88,088,547.86
147496-0004	Stellah Otwpri	13,150,000.00
0724584639	Stellah Otwori	14,221,858.00
1440272559689	The Bantu Hotel & Resort	33,090,148.39
1440278828192	The Bantu Hotel & Resort	17,543,228.08
Mpesa Till 763531	The Bantu Hotel & Resort	104,766,477.12
01148558833100	Festemagra Investment	78,782,681.65

2. Whether the properties listed herein below constitute unexplained assets within the meaning of the provisions of section 55 of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003.

Property details	Registered owner	Value
C.R 41556-9122/57	Felix Mecha Nyakundi	9,000,000.00
C.R 41557-9122/58	Felix Mecha Nyakundi	inclusive above
Mombasa/Block X/105	Felix Mecha Nyakundi &	

Stellah Nyaboke 19,000,0
00.00

Lamu Mainland/Block 1

(Bargoni)/795 Felix
Mecha Nyakundi 250,000.00

Gatuanyanga/Ngoliba

Block3/47 Felix
Mecha Nyakundi 450,000.00

LR 6845/1136- IR 203944

(Original no. 6845/12/273) Felix
Mecha Nyakundi 35,000,000.00

Kilifi/Chakama phase II

Scheme/1851 Stella
Nyaboke Otwori 500,000.00

Kilifi/Chakama phase II

Scheme/1072 Stella
Nyaboke Otwori 360,000.00

Kilifi/Chakama phase II

Scheme/1095 Stella
Nyaboke Otwori 360,000.00

Kilifi/Chakama phase II

Scheme/1259 Stella
Nyaboke Otwori 370,000.00

Kilifi/Chakama phase II

Scheme/30	Stella Nyaboke Otwori	370,000.00
Kilifi/Chakama phase II		
Scheme/491	Stella Nyaboke Otwori	400,000.00
Malindi/Chakama phase I/846	Stella Nyaboke Otwori	750,000.00
Mavueni B Settlement		
Scheme/1000	Stella Nyaboke Otwori	2,600,000.00
Mavueni B Settlement		
Scheme/2186	Stella Nyaboke Otwori	not provided
Nairobi/Block105/13772	The Bantu Hotel & Resort	107,700,000.00
Nairobi/Block 105/13773	The Bantu Hotel & Resort	
Nairobi/Block 105/13774	The Bantu Hotel & Resort	
Nairobi/Block 105/13775	The Bantu Hotel & Resort.	

3. Whether the motor vehicles listed herein below constitute unexplained assets within the meaning of the provisions of section 55 of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003;

Property Details	Registered owner	Value
KDG 086B	Stella	

Nyaboke	6,600,000.00	
KCW 500Y	Stellah Nyaboke	2,500,000.00
KCG 098Y	Stellah Nyaboke	2,799,999.88

4. Whether the sum of Kshs. 4,260,000.00 seized pursuant to a search conducted by the Commission in Miscellaneous Criminal Application Number No. E129 of 2024 constitute unexplained assets within the meaning of the provisions of section 55 of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003.

5. Whether the defendants should be ordered by this Honourable Court to pay to the Government of Kenya the sum of Kshs. 467,764,517.60 together with interest at court rates thereon from the date of filing this suit until payment in full being the cumulative amount received in their bank and mobile money Mpesa accounts in the period of interest as set out in paragraph 1 hereinabove.

6. Whether the defendants should be ordered by this Honourable Court to pay to the Government of the Republic of Kenya the sum of Kshs.176,380,000.00 being the cumulative value of all those landed properties set out in paragraph 2 hereinabove.

7. In the alternative to paragraph 6 above, whether the defendants should be ordered by this Honourable Court to forfeit and surrender to the Government of the Republic of Kenya ownership of all those landed properties set out in paragraph 2 hereinabove.

8. Whether the defendants should be ordered by this Honourable Court

to pay to the Government of the Republic of Kenya Kshs. 11,899,999.88 being the cumulative value of all those motor vehicles listed in paragraph 3 hereinabove.

9. In the alternative to paragraph 8 above, whether this Honourable Court should order that motor vehicles listed in paragraph 3 hereinabove be sold by public auction and the proceeds paid and/or forfeited to the Government of the Republic of Kenya.

10. Whether the sum of Kshs. 4,260,000.00 seized pursuant to a search conducted by the Commission in Miscellaneous Criminal Application Number No. El 29 of 2024 as set out in paragraph 4 should be forfeited to the Government of the Republic of Kenya.

11. Whether the defendants should be ordered by this Honourable to meet the costs of this suit.

The plaintiff’s case

Charity Muniu, the plaintiff’s investigator swore an affidavit on 19th May 2025 in support of the summons in which she confirmed that she was a member of the team that investigated matters raised in the suit against the defendants. She averred that the plaintiff investigated allegations of unexplained wealth, unethical conduct and bribery against the 1st defendant who was at the material time a Principal Land Registrar, State Department of Lands and Physical Planning. According to her, the investigations established that between January 2013 and March 2024 (hereinafter referred to as ‘the period of interest), the 1st defendant exploited his official position of trust in the public service during his time in the ministry by involving himself in transactions that were in conflict with public interest.

The deponent added that the 1st defendant is married to the 2nd defendant and father to one Corazon Mariam Mecha (hereinafter referred to as 'Çorazon') and that information obtained from Business Registration Services revealed that the 3rd defendant was registered as a private limited liability company on 23rd February 2017 with the 1st defendant and his daughter Corazon being the directors and shareholders with 400 shares each. She added that the 4th defendant was registered as a private limited liability company on 19th February 2015 with its directors and shareholders being the 2nd defendant and Corazon with 500 shares each.

It was further deponed that on 19th October 2006, the 1st defendant was appointed by Public Service Commission to the position of Land Registrar III in the Ministry of Lands following which he worked in Nairobi, Kiambu, Thika, Kilifi, Chief Registrar's office, National Titling, Baringo, Kirinyaga, Embu and Thika Registries with the latter being the current. In these tenures, he got promoted to Land Registrar II, Land Registrar I, Senior Land Registrar and Principal Land Registrar.

Charity stated further that, while stationed at Kilifi Land Registry, the 1st defendant used his office to allocate public land to the 2nd defendant, within Mavueni B Settlement and Chakama Phase I and II Schemes in Kilifi County while the 2nd defendant was not among the verified and approved beneficiaries listed by the Land Adjudication & Settlement department within the Ministry of Lands. She added that allocation of settlement schemes is normally meant for deserving beneficiaries, usually based on land need and historical displacement or resettlement eligibility. She points out that despite having a direct personal interest in the outcome of the said allocation, the 1st defendant did not recuse himself or make any disclosure to his superiors or the oversight body.

She added that the said allocation to the 2nd defendant was not supported by any application or vetting documentation and that the policy governing settlement schemes clearly stipulates a maximum of one parcel per eligible household yet the 2nd defendant was allocated nine plots viz; Kilifi/Chakama phase II Scheme/1851, Kilifi/Chakama phase II Scheme/1072, Kilifi/Chakama phase II Scheme/1095, Kilifi/Chakama phase II Scheme/1259, Kilifi/Chakama phase II Scheme/30, Kilifi/Chakama phase II Scheme/491, Malindi/Chakama phase I/846, Mavueni B Settlement Scheme/1000 and Mavueni B Settlement Scheme/2186. In addition to these allocations, the 2nd defendant is said to have acquired during the period of interetstes property known as LR 6845/2799 IR 200522 (Original no. 6845/146/8) valued at Kshs 35,000,000.00.

It was also averred that, during a search operation carried out on 7th March 2024, a cumulative sum of Kshs 4,260,000.00 was seized from the 1st defendant's master bedroom, the 2nd defendant's motor vehicles registration numbers KCW 500Y and KCT 092M and the 3rd defendant's hotel. The plaintiff obtained copies of the 1st defendant's payslips for the period of interest whereupon analysis, he was found to have received a net total of Kshs. 5,398,438.75 in salaries and Kshs 2,292,860.00 in allowances.

It was alleged further that during the period of interest, the 1st defendant acquired motor vehicles registration numbers KBZ 178P valued at Kshs 660,000.00), KMFL 390F valued at Kshs 100,000.00 and KCK 671L valued at Kshs 690,000.00) and KBY 303Z valued at Kshs 3,600,000.00 while the 2nd defendant acquired motor vehicles registration numbers KDG 086B valued at Kshs 6,600,000.00, KCW 500Y valued at Kshs 2,500,000.00, KCG 098Y valued at Kshs 2,799,999.98, KCM 812S valued at Kshs 1,800,000.00 and KCL 014Q valued at Kshs 1,300,000.00.

The deponent added that they established that the 1st defendant owned properties numbers; C.R 41556 - LR 9122/57 and C.R 41557 - LR 9122/58 both valued at Kshs 9,000,000.00, Mombasa/Block X/105 valued at Kshs 19,000,000.00, Lamu Mainland/Block1(Bargoni)/795 valued at Kshs

250,000.00, Central Kitutu/Mwabosire 1335 valued at Kshs 3,500,000.00, Central Kitutu/Mwamanwa/3782 valued at Kshs 1,900,000.00, West Kitutu/Bomatara/4330 and 4331 both valued at Kshs 6,600,000.00, West Kitutu/Bomatara/8636 valued at Kshs 11,000,000.00, Donyo Sabuk/Komarock Block1/110389 valued at Kshs 3,800,000.00, Donyo Sabuk/Komarock Block1/82440 valued at Kshs 10,000,000.00, Donyo Sabuk/Komarock Block1/87933 valued at Kshs 5,800,000.00, Donyo Sabuk/Komarock Block1/30755 valued at Kshs 7,000,000.00, Gatuanyanga/Ngoliba Block3/47 valued at 450,000.00, LR 6845/1136-IR 203944 (Original no. 6845/12/273) valued at Kshs 35,000,000.00, Nairobi/Block 136/350 and Nairobi/ Block 136/351 both valued at Kshs 23,000,000.00 and Nairobi Block 136/457 valued at Kshs 3,500,000.00, the latter being registered to John Angelo Kibet.

It was also averred that the 3rd defendant acquired during the period of interest properties known as Nairobi/ Block 105/13772, Nairobi/Block 105/13773, Nairobi/ Block 105/13774 and Nairobi/Block 105/13775 all collectively valued at Kshs 107,700,000.00.

It is averred further that the plaintiff got access to the defendants' bank and Mpesa accounts and documents from which it confirmed the following credits transactions during the period of interest;

- The 1st defendant's account number 01100017871500 held at the Cooperative Bank - Kshs 50,398,428.00;
- The 1st defendant's account number 1002195069 held at NCBA Bank- Kshs 16,323,000.00;
- The 1st defendant's Mpesa account number 0722226389- Kshs 27,760,908.00;
- The 1st defendant's Mpesa account number 0717999279- Kshs 9,334,194.00;
- The 2nd defendant's account number 1440179887489 held at Equity

Bank- Kshs 2,062,665.30.

- The 2nd defendant's account number 1440180507475 held at Equity Bank- Kshs 12,242,381.50.

- The 2nd defendant's and Corazon's account number 1440164969154 held at Equity Bank - Kshs 88,088,547.86;

- The 2nd defendant's account number 147496-0004 held at Equity Bank Investment Bank- Kshs 13,150,000.00;

- The 2nd defendant's Mpesa number 0724584639- Kshs 14,221,858.00;

- The 3rd defendant's account number 1440272559689 held at Equity Bank -Kshs 33,090,148.39;

- The 3rd defendant's account number 1440278828192 held at Equity Bank- Kshs 17,543,228.08;

- The 3rd defendant's Safaricom till number 763531- Kshs 104,766,477.12; and

- The 4th defendant's account number 01148558833100 held at the Cooperative Bank - Kshs 78,782,681.65.

The plaintiff obtained a statement from Ardhi SACCO in which the 1st defendant is a member, indicating that as at March 2024, he held shares deposits of Kshs 922,000.00 and that between 2013 and 2024 he acquired loans of Kshs 5,084,000 which were all paid through check off.

It was averred further that, Public Service Commission furnished the plaintiff with the 1st defendants declaration of incomes, assets and liabilities which information revealed that within the period of interest, the 1st defendant declared income, assets and liabilities as follows;

- Year 31/10/2013 - income of Kshs 2,060,000.00, assets worth Kshs 2,712,000.00 and liabilities of Kshs 1,180,000.00;
- Year 31/10/2015 - income of Kshs 2,393,000.00, assets worth Kshs 8,194,898.00 and liabilities of Kshs 958,240.00;
- Year 31/10/2019 - income of Kshs 3,744,000.00, assets worth Kshs 6,310,000.00 and liabilities of Kshs 2,620,714.00;
- Year 31/10/2021- income of Kshs 980,780.00, assets worth Kshs 5,600,000.00 and liabilities of Kshs 536,654.00;
- Year 31/10/2023- income of Kshs 2,841,120.00, assets worth Kshs 8,880,850.00 and liabilities of Kshs 4,075,662.00; and
- Year 31/10/2023 for his wife- income of Kshs 480,000.00, assets worth Kshs 9,500,000 with no liabilities. of Kshs 1,180,000.00

The plaintiff's investigator stated that for the period of interest, the 1st defendant declared income from sale of crop produce in 2015 at Kshs 300,000.00, rental income in 2015 at Kshs 350,000.00, animal produce in 2023 at Kshs 140,000.00 and sale of mature trees in 2023 at Kshs zero. In addition, the 1st defendant declared wife's income only in 2023 where the declaration included salary, two parcels of land and shares in the 3rd defendant. Further, she noted that the 1st defendant only declared five parcels of land and three vehicles in the list of queried assets which are West Kitutu/Bomatara/4331, IR 200522, Nairobi/Block 136/350, Nairobi/Block 136/35, Gatuanyanga/Ngoliba Block 3/47, KBZ 178P, KBY 303Z and KMFL390F.

The deponent added that upon the plaintiff getting tax information from Kenya Revenue Authority, it was established that the defendants were registered for income tax and VAT and had filed returns safe that the 1st and 2nd defendants had not filed any business returns or VAT filings.

The defendants were served with notice to explain the disproportion between their assets and their known legitimate sources of income pursuant Section 26 and 55(2) of Anti-Corruption and Economic Crimes Act (hereinafter referred to as ACEA') as read with Section 13(2) (c) of the Ethics and Anti-Corruption Commission Act which had been determined at Kshs. 771,893,224.00 as follows;

- The 1st defendant- Kshs 248,306,530.00;
- The 2nd defendant- Kshs 185,605,452.00;
- The 3rd defendant - Kshs 266,889,858.00; and
- The 4th defendant- Kshs 78,782,681.00.

The deponent added that the defendants responded to the notices and upon analysis of the responses, the plaintiff made the following findings;

1st defendant

- There was a claim that properties known as CR 41557- LR 9122/58 and CR 41556 LR 9122/57 were bought using facilities from the 4th defendant which is owned by the 2nd defendant and exchange of KBY 303Z yet there was no explanation what kind of business the 4th defendant engaged in or the source of funds used to acquire the motor vehicle. There was also no sufficient explanation of some Kshs 1,000,000.00 which was paid in installments and the source of funds for payment of rent and rates amounting to Kshs 120,000.00.

- The financial statement supplied in support of acquisition of

Mombasa/Block X/105 in 2023 was not sufficient. This was because the 1st defendant's explanation of income of Kshs 7,392,917.00 from farming, Kshs 2,348,287.00 from sale of mature trees and employment income of Kshs 1,482,830.00 were unsupported and the employment income he disclosed was gross salary while the net for the year was Kshs 671,413.60. Further analysis of documents showed that on 06/10/2023 an RTGS of Kshs 6,000,000 was made from the 4th defendant's bank account number 01148558833100 held at the Cooperative Bank to the vendor of the property, Eurosom Group Ltd., in payment of the purchase price. Charity added that this account is wholly used to collect rental income from apartments owned by the 1st defendant and his associates and they did not explain how they acquired the properties. On the same day, the 1st defendant did another RTGS of Kshs 4,000,000.00 from his account no. 01100017871500 held at the Cooperative Bank and the balance of Kshs 9,000,000.00 was paid through cash deposits by both the 1st and 2nd defendants to the account of the vendor on diverse dates. Based on this, the plaintiff concluded that the sources of funds amounting to Kshs 19,000,000 used to purchase the property was not satisfactorily explained.

- Lamu Mainland/BIock1 (Bargoni)/795 was explained to have been an allocation by the Government without any consideration but the plaintiff found the 1st defendant was not qualified for the allocation because, having been a land registrar at the material time, he was not qualified to become a beneficiary of the allocation.

- The 1st defendant explained that Central Kitutu/Mwabosire/11335 was acquired through inheritance from his father which was satisfactory.

- The 1st defendant explained that Central Kitutu/Mwamanwa/3782 was inherited from his father which was found satisfactory.

- For West Kitutu/ Bomatara/4330, the 1st defendant in his explanation stated that the property in question was acquired through inheritance from his father but its green card indicated that acquired it on 18.3.2011 and transferred it to his father on 23.03.2011 who re-transferred it back to him on 20.04. 2023. It was thus the plaintiff's finding that the property was acquired before the period of interest and it was found to have been satisfactorily explained.

- In respect of West Kitutu/Bomatara/4331, the 1st defendant explained that the property was acquired in 2011 and the plaintiff was satisfied.

- West Kitutu/Bomatara/8636 was explained to have been acquired through inheritance which the plaintiff accepted.

- The 1st defendant had explained that Donyo Sabuk/Komarock Block 1/82440, Donyo Sabuk/Komarock Block 1/87933 and Donyo Sabuk/Komarock Block 1/30755 had already been sold to third parties following which they were removed from the list of queried assets.

- The 1st defendant claimed that he bought Gatuanyanga/Ngoliba Block 3/47 before the investigation period and provided a sale agreement dated 21st October 2009 but according to the green card obtained from land registry, he acquired the property on 26th August 2014. The explanation tendered was therefore not satisfactory.

- The 1st defendant supplied a sale agreement for purchase of LR 6845/1136-IR 203944 (Original no. 6845/12/273) dated 17th February 2010 which was outside the period of interest but documents obtained from Land registry indicated that registration of the Certificate of Title was done on 30/01/2019. In addition, on this plot sits a five-storey commercial building made up of 24 units and the 1st defendant did not provide any supporting documentation and details with respect to the source of income for the developments. For this reason, the plaintiff was not satisfied with the explanation.

- Nairobi/Block 136/350 and Nairobi/Block 136/351 are the residential properties for the 1st defendant and were bought in 2008 which is outside the period of interest and were developed using a loan from Ardhi Sacco. The plaintiff accepted this explanation.

- For Nairobi Block 136/457, the 1st defendant explained that the said property does not belong to him which the plaintiff confirmed and accepted.

- The 1st defendant claimed that purchase of Donyo Sabuk/Komarock Block 1/110389 was financed by a loan of 2,700,000.00 from Ardhi Sacco which explanation was found to be satisfactory.

- The 1st defendant explained that he purchased motor vehicle registration number KBZ 178P which was registered on 21st July 2014 using employment allowances. Upon analyzing the bank statement, the allowances he referred to were received in months of November and December 2014, which was after the acquisition of the vehicle. It was however the plaintiff's finding that the 1st defendant was in a position to purchase it despite the few months discrepancy and the same was found to have been satisfactorily explained.

- For motor cycle registration number KMFL 390F, the 1st defendant in his explanation stated that he purchased it at a cost of Kshs 100,000.00 using savings and the explanation as tendered was found satisfactory.

- The 1st defendant did not recollect owning motor vehicle registration number KCK 671L but during a search in his house, one of the items seized was a sale agreement listing him as the purchaser at a price of Kshs 690,000.00. The plaintiff could not ascertain whether the agreement was executed as the current owner of the vehicle is Peter Mungai and therefore the vehicle was removed from the list of queried assets.

- The 1st defendant explained that he exchanged motor vehicle registration number KBY 303Z with land parcel number LR 9122/57 & 58 and although it was found to be unsatisfactorily explained it was removed from the list of queried assets because its value was taken up by acquisition of land parcel.

- Bank account number 01100017871500 was explained to be a primary account through which the 1st defendant receives his salaries and allowances. The plaintiff averred that at the time of issuing the notice for deposits amounting Kshs 50,398,428.00 any salaries and allowances were already factored in and excluded where allowances amounting to Kshs 2,292,860 were excluded contrary to the 1st defendant's claim. The 1st defendant had further explained that this account was also used for his trading activities in forest logging and farming and provided forest produce movement permit for transportation of forest produce on various dates between June and December 2015 and lease agreements. However, in relation to logging and farming business the plaintiff found that; the 1st defendant did not declare any income other than his employment income, he did not provide supporting documentation with respect to logging and farming business and the financial statements attached by the 1st defendant to support his claim were unsupported.

- The 1st defendant claimed that the deposits of Kshs 16,323,000.00 in his NCBA Bank account number 1002195069 were income from trading activities but no documentation to support the activities were submitted neither was the income generated declared with Kenya Revenue Authority. The plaintiff therefore found the explanation unsatisfactory.

- For Mpesa Account number 0722226389, the 1st defendant claimed that the deposits of Kshs 27,760,908.00 were income from trading activities and related parties but no documentation to support the activities was submitted neither was the income generated declared with Kenya Revenue Authority making the explanation unsatisfactory. The same applied for Mpesa Account 0717999279 which showed deposits of Kshs 9334,194.00.

- The plaintiff’s investigator averred further that no explanation was given with respect to the cash of Kshs 340,000.00 seized at the 1st defendant's home and the same was found to have been unsatisfactorily explained.

The 2nd defendant

- The 2nd defendant explained that she was allocated properties known as Kilifi/Chakama phase II Scheme/1851, Kilifi/Chakama phase II Scheme/11072, Kilifi/Chakama phase II Scheme/1095, Kilifi/Chakama phase Scheme/11259, Kilifi/Chakama phase II Scheme/30, Kilifi/Chakama phase II Scheme/491, Malindi/Chakama phase I/846 and Mavueni B settlement scheme/2186 by the government but the claim lacked substantiation as she did not provide any documentation to support applications and allocations processes. Further, having been a spouse to the 1st defendant who was a Land Registrar at the material time, she was not qualified to become a beneficiary of the allocation.

- For Mavueni B settlement scheme/1000, the 2nd defendant claimed that this parcel of land does not belong to her but its green card provided indicated that she acquired the property on 8.8.2013 and for this reason, the explanation was not satisfactory.

- The 2nd defendant had explained that LR 6845/2799-IR 200522 (Original no. 6845/146/8) was acquired on 2nd May 2012, which is outside the period of investigation by attaching a sale agreement and the plaintiff accepted the explanation.

- The 2nd defendant explained that she acquired motor vehicle registration number KDG 086B using revenues for 2023 which was over 15 million and attached her financial statements for the period. However, according to the records obtained during investigations by the plaintiff, the vehicle was purchased in 2022 and paid through four cash deposits by herself and the 1st defendant which made the explanation unsatisfactory.

- According to the 2nd defendant's explanation, motor vehicle registration number KCW 500Y was acquired in 2019 when her business was at the peak. She claimed that her revenue during this period was Kshs 15,345,350.00 but the plaintiff found that her financial statements for the year were unsupported. Details of the business she was referring to were also not provided. Further, the motor vehicle was purchased at a cost of Kshs 2,500,000.00 and according to the statement of the seller, the transaction for the vehicle was a trade in with motor vehicle registration number KCT 233U valued at Kshs 2,800,000 and she was paid the difference of Kshs 300,000. In view of this, the explanation was not satisfactory.

- The 2nd defendant had in her explanation indicated that she had bought motor vehicle registration number KCG 098Y in 2019 when her business was at the peak. However, the plaintiff's investigations established that the motor vehicle was purchased at a cost of Kshs 2,799,999.88 from Toyota Kenya in April 2016 and the 2nd defendant did not provide the source of the funds used to purchase the motor vehicle. The explanation was not satisfactory.

- Motor vehicles registration numbers KCM 812S and KCL 014Q were bought on 29/08/2017 and 29/05/2017 respectively and were later disposed during the period of investigations. They were thus removed from her list of queried assets.

- The 2nd defendant claimed that Kshs 2,062,665.30 found in her Equity Bank account number 1440179887489 was from trading activities by the 3rd and 4th defendants but she did not provide any details or documentation to support the claim making the explanation for the deposits unsatisfactory.

- For account number 1440180507475 held at Equity Bank, the 2nd defendant claimed that the queried amount of Kshs 12,242,381.50 was from trading activities by 3rd and 4th defendants, insurance policies and treasury bills and bonds. However, the monies attributed to these were not set out neither did she provide details of the sources of income for the policies, treasury bills and bonds. She further claimed that she had contractual agreement with an entity know as Four by Four Solutions but no documents were provided detailing the kind of engagements she had with them and the financial implications. The explanation for the deposits in this account was thus found to be unsatisfactory.

- In respect to account number 1440164969154 held at Equity Bank, the 2nd defendant claimed that the deposits of Kshs 88,088,547.86 were as a result of trading activities from the 3rd defendant, farming, logging, supply of stones and catering services. She attached a few forest produce movement permits and lease agreements. However, crucial supporting documentation were not provided and the explanation was found to be unsatisfactory.

- The 2nd defendant explained that treasury bills and bonds worth Kshs 13,150,000.00 in Equity Bank Investment Bank account number 147496-0004 were financed from trading activities from 3rd defendant and logging and farming. However, returns filed with

Kenya Revenue Authority indicate that the 3rd defendant was operating at a loss while the farming income was not supported and therefore the explanation was found to be unsatisfactory.

- Kshs 14,221,858.00 was deposited to the 2nd defendant's Mpesa account number 0724584639. The 2nd defendant claimed that Kshs 13,231,458.00 of the deposits were rental income but no details or documentation were provided in respect of the rent allegedly received. She also claimed that she deposited some of the cash collected from the 3rd defendant's hotel and also withdrew from her bank accounts and deposited to the said Mpesa account. There were no highlights or links with the bank statements and therefore the claim could not be substantiated. The explanation was found not satisfactory.

- For Kshs 130,000.00 seized from a car registration number KCW 500Y, the 2nd defendant asserted that it was an emergency fund which had been collected from the 3rd defendant's hotel. However, she did not give details of the period for which this money had been accumulated and the plaintiff found the explanation not satisfactory.

3rd defendant

- The 3rd defendant through the 2nd defendant explained that properties known as Nairobi/Block 105/13772, Nairobi/Block 105/13773, Nairobi/Block 105/13774 and Nairobi/Block 105/13775 which were valued at Kshs 107,700,000.00, were initially leased for its business and it gradually acquired them using trading income from hotel activities but there was no lease agreement provided to support the claim. Further, according to the returns for income tax in respect to the 3rd defendant, the business was making losses and therefore there was no income left to finance the developments. There was no documentation to support the developments on the properties. The explanation was thus found not satisfactory.

- The 3rd defendant sought to explain deposits in its Equity Bank accounts numbers 1440272559689 and 1440278828192 and Mpesa Till number 763531. It claimed that the total deposits of Kshs 155,399,858.59 in the accounts were revenue generated from the hotel business and that 50% of the revenue was used to acquire properties. However according to the returns for income tax in respect to the 3rd defendant, the business was making losses. The investigator averred that it was their finding that the business was able to generate revenue and the deposits including those in the Mpesa Till were found satisfactory.

- For cash of Kshs 3,790,000.00 seized during search operation on 07/03/2024, the 3rd defendant claimed it was sales revenues from the hotel for months between November 2023 to February 2024. An analysis of the cash books retrieved from the hotel indicated that cash monies received at the hotel for the four months amounted to Kshs 1,366,515.00 and the explanation was therefore not satisfactory.

4th defendant

- The 4th defendant explained deposits of Kshs 78,782,681.65 in its Cooperative Bank account number 01148558833100 as rental income. However, the specific properties that generated the said rent was no set out making the explanations unsatisfactory.

The plaintiff's investigator averred in conclusion that the in their analysis based on the above, the following wealth was found to be unexplained;

i. ***Registered to/owned by the 1st defendant***

a. CR 41556 -9122/57 and C.R 41557 - 9122/58 valued at Kshs 9,000,000.00;

b. Mombasa/Block X/105 valued at Kshs 19,000,000.00;

c. Lamu Mainland/Block 1 (Bargoni)/795 valued at Kshs 250,000.00;

d. Gatuanyanga/Ngoliba Block 3/47 valued at Kshs 450,000.00;

e. LR 6845/1136-IR 203944 (Original 6845/12/273) valued at Kshs 35,000,000.00;

f. Deposit of Kshs 50,398,428.00 in account number 01100017871500 held at Cooperative Bank;

g. Deposit of Kshs 16,323,000.00 in account number 1002195069 held at NCBA Bank;

h. Deposit of Kshs 27,760,908.00 in Mpesa account number 0722226389;

i. Deposit of Kshs 9,334,194.00.00 in Mpesa account number 0717999279; and

j. Cash of Kshs 340,000.00 seized during search.

ii. Registered to/owned by the 2nd defendant

a. Kilifi/Chakama Phase II Scheme/1851 valued at Kshs 500,000.00;

b. Kilifi/Chakama phase II Scheme/1072 valued at Kshs 360,000.00;

c. Kilifi/Chakama phase II Scheme/1095 valued at Kshs 360,000.00;

d. Kilifi/Chakama phase II Scheme/1259 valued at Kshs 370,000.00;

e. Kilifi /Chakama phase II Scheme/30 valued at Kshs 370,000.00;

f. Kilifi/Chakama phase II Scheme/491 valued at Kshs 400,000.00;

g. Malindi/Chakama phase I/846 valued at Kshs 750,000.00;

h. Mavueni Settlement Scheme/1000 valued at Kshs 2,600,000.00;

i. Mavueni Settlement Scheme/2186 whose value is not given;

j. Motor vehicle registration number KDG 086B valued at Kshs 6,600,000.00;

k. Motor vehicle registration number KCW 500Y valued at Kshs 2,500,000.00;

l. Motor vehicle registration number KCG 098Y valued at Kshs 2,799,999.88;

m. Deposits of Kshs 2,062,665.30 in account number 1440179887489 held at Equity Bank;

n. Deposits of Kshs 12,242,381.50 in account number 1440180507475 held at Equity Bank;

o. Deposits of Kshs 88,088,547.86 in account number 1440164969154 held at Equity Bank;

p. Bills and bonds worth Kshs 13,150,000.00 in account number 147496-0004 held at Equity Bank;

q. Deposit of Kshs 14,221,858.00 in Mpesa account number 0724584639; and

r. Cash of Kshs 130,000.00 seized during search.

iii. Registered to/owned by the 3rd defendant

a. Nairobi/ Block 13772, Nairobi/ Block 105/13773, Nairobi/Block 105/13774 and Nairobi/Block 105/13775 all valued at Kshs 107,700,000.00;

b. Deposits of Kshs 33,090,148.39 in account number 1440272559689 held at Equity Bank;

c. Deposits of Kshs 17,543,228.08 in account number 1440278828192 held at Equity Bank;

d. Deposits of Kshs 104,766,477.12 in Mpesa Till number 763531; and

e. Cash of Kshs 3,790,000.00 seized during the search.

iv. Registered to/owned by the 4th defendant

a. Deposits of Kshs 78,782,681.65 in account number 01148558833100 held at Cooperative Bank.

1st defendant's response

The 1st defendant opposed the originating summons through his replying affidavit sworn on 1st April 2026 and grounds of opposition dated 25th February 2026. The 1st defendant averred that he joined public service on 13th May 1998 as a children's officer II from which he was discharged under early retirement on 26-09-2000. Thereafter, he joined Research International where he worked until 31st December 2004 and on 10/01/2005 he joined Health and Water Foundation as a programme officer. On 13/11/2006, he re-joined public service at the Ministry of Lands, Public Works, Housing and Urban Development; State Department of Lands and Physical Planning as a Lands Registrar where he diligently rose through the ranks over time from Land Registrar III to his current position as a Principal Land Registrar.

The 1st defendant avers further that, in his employment at State Department of Lands and Physical Planning, he served in various stations including Nairobi Land Registry, Kiambu Land Registry, Thika Land Registry, Kilifi Land Registry, Chief Land Registrar's Office, National

Titling Centre, Baringo Land Registry, Kirinyaga Land Registry, Embu Land Registry and currently at Thika Land Registry and that over the period of his employment, he has never been involved in corruption or economic crime. He adds that he married the 2nd defendant, being a second marriage after his late first wife Sabera Kerubo Mecha who was a public officer working at the Ministry of Education as a graduate teacher whose estate he is the administrator in Nairobi High Court succession cause number 152 of 2004.

The 1st defendant has explained the queried assets as follows;

a. Gatuanyaga/Ngoliba Block 3/47- he explains that, he purchased this property which is still undeveloped through a sale agreement dated 21-10-2009 but it was not until 26-08-2014 that the title was issued being a first registration. He exhibited a handwritten sale agreement between himself and one Joseph Kamau Kamami which appears to me to be incomplete.

b. LR 6845/1136-IR 203944 (Original no. 6845/12/273)- the 1st defendant avers that with his spouse, they registered a business name known as Festemagra Screen Printers Stationery and Computer Supplies on 29th January, 2008 which they used to operate a stationery and printing business where they made supplies to schools and various learning institutions. He added that on 17-02-2010, they acquired the property from Onesmus Ngure Kariuki for a sum of Kshs 388,000.00 using the income generated from the business and his salary. He sought to clarify that at the time of acquisition, the property was referred to as Land No. 338 Mathera Traders Union, Mihango. He stated further that, upon acquisition of the property in 2010, they developed thereon residential apartments for rent which apartments were completed by the end of 2012. He exhibited a handwritten agreement dated 17th February 2010.

c. Lamu Mainland/Block1(Bargoni)/795- the 1st defendant explains that he was allocated this parcel of land by the Government on or about January 2019 at no financial consideration and after following due process. He however does not give details of the due process.

d. C.R 41556 - LR 9122/57 and C.R 41557 - LR 9122/58- He has averred that the property was acquired in 2017 at purchase price of Kshs. 7,000,000.00 using funds from the 4th defendant's account number 01148558833100 domiciled at the Cooperative Bank. He claimed that this account was utilized by the defendants to collect rent from apartments in land parcel LR 6845/1136 IR 203944 (Original no. 6845/12/273) and land parcel number LR 6845/2799 IR 200522 (Original no. 6845/146/8) which properties were acquired before the period of interest. The 1st defendant added that in addition to the funds transferred from the 4th defendant, he surrendered to the vendor his motor vehicle registration number KBY 303Z valued at Kshs. 2,800,000.00 towards settling the purchase price which motor vehicle he acquired before the period of investigations. He added that the balance of Kshs. 1,200,000.00 was settled through a loan of Kshs 1,493,000.00 from Ardhi Sacco Ltd which was granted on 26/6/2017.

e. Mombasa/Block X/105- according to the 1st defendant, this property which is jointly registered to him and the 2nd defendant was acquired in 2023 at a consideration of Kshs. 19,000,000.00. He explains that the same was acquired using funds from the 4th defendant's account number 01148558833100 domiciled at the Cooperative Bank. The account number was utilized by the defendants to collect rent from apartments in land parcel LR 6845/1136 IR 203944 (original no. 6845/12/273) and land parcel number LR 6845/2799 IR 200522 (Original no. 6845/146/8) which were acquired before the period of interest. The amount used from this account for the purchase was Kshs 6,000,000.00 and on 3-10-2023, the defendant made a transfer of Kshs 4,000,000.00 from his account no. 01100017871500 held at the Cooperative Bank. He added that on 3/10/2023, he received a loan from Ardhi Sacco which enabled him to make this payment. Thereafter a balance of

Kshs 9,000,000.00 was paid through cash deposits by him and the 2nd defendants from the income they received from the 3rd defendant which was by then a solvent and successful business.

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f. Account number 01100017871500 domiciled at the Cooperative Bank- the 1st defendant states that this is his primary account which receives his employment income and allowances. He added that when his first wife passed on, he received payment deposited in this account amounting to Kshs. 310,000.00 being life insurance payment from Madison Insurance and a further Kshs. 359,280.00 being the terminal dues from her employer, the Teacher Service Commission. He added that this account has additionally been used to transact his trading activities in forest logging and farming. He explained that his failure to declare the income in his tax returns is not synonymous with having not made the income. He claimed that the credits in this account reflect that fund were received from the logging business and due to the trading nature, the same was withdrawn to facilitate further purchases with the cycle repeating itself over time and by concentrating on the credits and ignoring the debits, the plaintiff had failed to give the true picture of this account. He acknowledged that queried credits in this account amount to Kshs. 50,398,428.00 with an actual balance of Kshs. 1,398,157.21 which is a reflection of its transactional nature.

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g. Account number 1002195069 held at NCBA Bank- the 1st defendant avers that this account was equally used for his timber logging business. He added that the queried deposits in this account amount to Kshs. 16,323,000.00 with a nil actual balance and there is nothing to forfeit.

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h. Mpesa account number 0722226389- he explained that this account had queried credits of KShs. 27,760,908.00 and an actual balance of Kshs. 164,778.04.60 but the plaintiff has concentrated on the credits ignoring the corresponding debits. According to him, the credits in this account are consistent with the interactions between all the defendants as he would receive credits through cash and related bank accounts and expend them for his family needs and his daily subsistence as he was mostly out of his home. He concludes that the actual balance of Kshs. 164,778.04 is consistent with the normal use of the account and is not unexplained asset.

i. Mpesa account number 0717999279- For this this account which had queried credits of Kshs. 9,334,194.00 and an actual balance of 57,485.52, the 1st defendant insists that, it is the same case as with the aforesaid Mpesa account number 0722226389.

j. On Kshs 340,000.00.00 in cash seized from his home during a search undertaken by the plaintiff, the 1st defendant explains that, the said cash were proceeds of his logging business and the 3rd defendant's sales and was set to be deposited in their respective bank accounts.

The 1st defendant concluded by swearing that he and his family have over the years worked hard to sustain themselves and to build business and none of their assets is tainted with corruption. He added that what is being mistaken as unexplained assets is a reflection of long-term diligent investment acquired through labour and denial of self-pleasures as he and his family have lived humble and simple lives avoiding opulence.

2nd defendant's response

The 2nd defendant defended herself through a replying affidavit dated 19th March 2026 in which she confirms her status and relationship with the 1st defendant and adds that the 1st defendant does not have immense wealth derived from his public service and that they supplement his income from leasing land to plant trees for timber for sale. She goes on to repeat the history of the 4th defendant as narrated by the 1st defendant.

She repeats that they acquired LR 6845/1136 - IR 203944 (Original no. 6845/12/273) on 17-02-2010 on which they developed residential apartments which were completed by the end of 2012 and using the rent derived therefrom and the 4th defendant's business, they acquired LR 6845/2799- IR 200522 (Original No. 6845/146/8). They went on to progressively put up apartments in the latter property which they completed by the end of 2013.

The 2nd defendant proceeded to explain the queried properties as follows: -

- Kilifi/Chakama phase II Scheme/1851, 1072, 1095, 1259, 30, 491 and Mavueni B Settlement Scheme/2186 were government allocations without considerations;

- Mavueni B Settlement Scheme/1000 was a government allocation registered to Fredrick C. Katite & Renick Charo Katite;

- Malindi/Chakama phase I/846 was a government allocation before the period of investigations, that is 24th September 2012;

- Deposits in account number 1440179887489 held at Equity Bank- she averred that the account statement reflected transactions in treasury bills and bonds in which she traded her profits from the business of the 3rd and 4th defendants. She explained that the entries in the statement produced by the plaintiff as annexure 'CM9A' are a repetition of what she invested in the bills and bonds and would re-invest once it matured. To be specific she flags out entries totaling to Kshs 62,148,897.00 leaving a balance of Kshs 25,939,650.00 out of the queried sum of Kshs 88,088,547.86. She claims that the balance was reflects withdrawals and re-deposits done for purpose of catering for business and family needs.

- Deposits in account number 147496-0004 held at Equity Investment Bank- she explains that she shifted the funds in the treasury bills after they matured on 22-01-2021 to infrastructure bond issued by the Central Bank.

- Deposits in account number 1440180507475 held at Equity Bank- just as she explained earlier in respect of account number 1440179887489, the money in this account was for purposes of the infrastructure bond. She used the account as an attendant/transactional account for purpose of the infrastructure bond. She stated that Kshs 4,567,381.50 was profits earned and paid from the bonds. The balance of the queried sum being Kshs 7,675,000.00 was financed from conference businesses from the 3rd defendant which are made up as follows; Kshs 1,700,000.00 paid by Health and Water Foundation, Kshs 3,600,000.00 paid by Four by Four Solutions and the balance of Kshs 2,375,000.00 being her own cash deposits.

- Deposits in account number 1440179887489- she explains that she used the account to support operations of the 3rd defendant and her family expences including school fees. The deposits in this account were income from the 3rd defendant's business and the 1st defendant's timber business.

- Mpesa line number 0724584639- the transactions consisted of rent paid by their tenants, cash collected from the 3rd and 4th defendants' businesses and credits from her bank accounts.

- Cash of Kshs 130,000.00 seized during search- the 2nd defendant avers that it was part of collections from the 3rd defendant and part of emergency money maintained for its operations.

- Motor vehicles registration numbers KDG 086B, KCW 500Y and KCG 098Y- the 2nd defendant avers that they were acquired using income generated from the 3rd and 4th defendants' businesses which according to her was sufficient.

The 3rd defendant's response

The 3rd defendant's reply to the claim was through an affidavit sworn by the 2nd defendant who describes herself as its shareholder and director. She reiterates that the 3rd defendant who trades in offering hotel, bar and restaurant services, outside catering and conference services, swimming pool and children play services and accommodation services was incorporated on 23rd February 2017.

She proceeded to explain the 3rd defendant's queried properties and assets as follows;

- Mpesa till number 762976 – it was registered on 4-05-2017 and has since been used to receive payments by patrons. She invites the court to examine the till transactions statement which in her opinion does not show any extra-ordinary transactions. The transactions include withdrawals to the settlement account number 1440272559689, cash withdrawals at mpesa agents, payments to other mobile numbers, payments to a pay bill and payments to another till.

- Transactions in accounts numbers 1440272559689 and 1440278828192 held at Equity Bank- the accounts were opened to facilitate the 3rd defendant's operations with 1440272559689 being settlement account for till number 762976. She points out that any payments from the till to the bank account should be treated as the same transaction and not a new credit. She added that the accounts would also receive money through electronic payments and cheques.

- Cash of Kshs 3,790,000.00 seized during search- these are accumulation of collections from the 3rd defendant's sales that were kept in a safe/cash deposit box within the 3rd defendant's premises. The safe would hold accumulated sales which are later deposited in its bank account numbers 1140272559689 and 1440278828192, the 2nd defendant's account numbers 1440179887489 and 1440180507475 and the 1st defendant's account number 01100017871500. She averred that the seized amount was kept there awaiting banking.

- Land parcel numbers Nairobi/Block 105/13772, Nairobi/Block 105/13773, Nairobi/Block 105/13774 and Nairobi/Block 105/13775- these properties were acquired on 12-03-2020, 1-04-2019 and 24-11-2020 respectively. The 2nd defendant explains that the 3rd defendant began operations on the said properties while under a lease and slowly acquired and developed them. She claims that over the period of investigations, the 3rd defendant made sales in excess of Kshs 155,399,853.59 and estimated that the 3rd defendant made a conservative profit of Kshs 46,619,956.00 which was ploughed back towards acquisition and development of the stated properties. She adds that the additional funding amounting to Kshs 69,782,681.00 were acquired from the 4th defendant which was also ploughed to acquisition and development of the said properties. The total profit as narrated would amount to Kshs 116,402,637.77 whereas the plaintiff puts the value of the said properties at Kshs 107,700,000.00 which she claims to be excessive.

The 4th defendant's response

Similarly, the replying affidavit for the 4th defendant was sworn by the 2nd defendant on 19th March 2026 in which she reiterates the history of registration of Fetemagra Screen Printers Stationery and Computer Supplies which was later transformed to the 4th defendant on 19-02-2015 and adds that parcel numbers 6845/1136 -IR 203944 (Original no. 6845/12/273) was acquired using income from the 4th defendant's predecessor and the 1st defendant's salary. She repeats the history of development of this parcel and that of LR 6845/2799 IR 200522 (Original no. 6845/146/8) as narrated in her affidavit on behalf of the 3rd defendant. She states further that rental income from the two properties would be deposited in account number 01109017041800 which belonged to the 4th defendant's predecessor.

It is stated further that on 25-03-2015, the 4th defendant opened account number 01148558833100 and in further explanation of part of the queried Kshs 78,782,681.65, the deponent stated that;

- Kshs 7,100,000.00 was transfer of accumulated rent by the 4th defendant's predecessor;
- Kshs 5,530,000.00 was payment for supply of stationeries to Nyambaria High School;
- Kshs 8,150,000.00 was an inter-account transfers from related accounts belonging to the defendants; and
- Kshs 6,126,000.00 was proceeds from the 1st defendant's timber sale/logging business.

The 4th defendant explained further that the queried sum of

78,782.681.65 was utilized in acquisition and/or construction of the following properties;

- Kshs 3,000,000.00 for CR 41556-LR 9122/57 and CR 41556-LR 9122/58 registered to the 1st defendant;
- Kshs 6,000,000.00 for Mombasa/Block X/105 registered to the 1st and 2nd defendant; and
- Kshs 69,782,681.00 for Nairobi/Block 105/13772, 13773, 13774 and 13775 registered to the 3rd defendant.

Analysis and determination

The matter was argued by way of written submissions. The plaintiff filed its submissions dated 6th May 2026 while the defendants filed their joint submissions dated 10th June 2026. I have considered the originating summons, the affidavits in support of and in opposition to the summons, the submissions and authorities cited by the parties. Having done so it is my considered opinion that the issues for determination are;

a. Whether the plaintiff has established a *prima fascie* case that the defendants have unexplained wealth.

b. Whether the defendants have satisfactorily explained the questioned wealth?

c. What are the appropriate orders in the circumstances?

I will be determining the 1st and 2nd issues concurrently in respect of each of the properties in question. For the plaintiff to establish a *prima fascie* case against the defendants, it must be demonstrated that there was reasonable cause to believe that the defendants had engaged in acts of corruption leading to acquisition of the queried properties and that there is unexplained disproportion between the defendants' assets and their known and explained legitimate sources of income.

It is notable that the 2nd, 3rd and 4th defendants were not public officers but that does not shield them from scrutiny under Section 55 of Anti-Corruption and Economic Crimes Act (hereinafter referred to as 'ACECA'). It would not matter whether or not the properties or some of them are not registered or owned by the person who is suspected to have committed an act of corruption. The court would allow the plaintiff to go for property which is out of the visible hands of a person under investigations if it is demonstrated that the property is directly linked to the actions of the person and the holder thereof was an accomplice to or is reasonably believed to have been aware that the property was acquired through corruption.

In this matter, there is no contestation that the 2nd, 3rd and 4th defendants have direct link with the 1st defendant who is a public officer and were active in acquiring the properties. In that case, it is my view that the 2nd, 3rd and 4th defendants are open to scrutiny of the court and the plaintiff in regard to the properties suspected to have been acquired through corrupt conduct. This position is key to fight against corruption and money laundering which is anathema to good governance, economic development and stability and maintenance of law and order. That is why forfeiture proceedings have their eyes on the tainted property rather than the person holding it or perpetrator of the corrupt conduct. In ***Ethics and Anti-Corruption Commission v Thomas Gitau Njogu & 4 others [2019] KEHC 1161 (KLR)***, it was held that;

> *'The key objective of forfeiture proceedings principally is to cripple or inhibit criminal activity and therefore has an effective remedial effect. It is also intended to counter the rapid growth of crime both nationally and internationally, organised crime, money laundering, criminal gang activities and racketeering which present a danger to public order and safety and therefore, threaten economic stability and the rights of all. In this case the law is not strictly looking at direct punishment of the property owner but rather, it is looking at the guilty property and not the property owner's guilt or innocence in the strict criminal sense.'*

At paragraph 6 of the supporting affidavit, the plaintiff's investigator was clear that the period of interest to them was January 2013 and March 2024. That is the same period reflected in its notice to the defendants dated 24th February 2025 issued under Sections 26 and 55(2) of ACECA. In this regard, the wealth, assets or properties which should be of concern are those which were acquired within the said period. A person cannot be called upon to explain acquisition of wealth during period outside that the plaintiff is interested in as the purport of the said Section is to give a person suspected to be having unexplained wealth sufficient notice and opportunity to explain specific and targeted properties. Anything outside the period indicated in the notice is of no relevance to the subsequent suit unless there is need to explain or set the context of the investigations or an issue arising in the suit. Similarly, any questioned property which the plaintiff finds satisfactorily explained after issuing the notice should not be part of post-investigations litigation.

In taking the above position, I am guided by the holding of the Court of Appeal in ***Stanley Mombo Amuti v Kenya Anti-Corruption Commission [2019] KECA 783 (KLR)*** thus;

> *'In our considered view, a reading of* **Section 2** *and* **55 (2)** *of the Act establishes the threshold for existence of unexplained assets to be:*
>
> i. There must be set time period for the investigation of a person;
> ii. The person must be reasonably suspected of corruption or economic crime;
> iii. The person must have assets whose value is disproportionate to his known sources of income at or around the period of investigation and
> iv. There is no satisfactory explanation for the disproportionate asset.'

Having said the above, I agree with argument advanced by the defendants that the plaintiff erred in including some property that was acquired before the period of interest in its originating summons. In view of this, Malindi/Chakama phase I/846 which the plaintiff has acknowledged as having been acquired before the period of interest, that is 24-09-2012, shall not form part of this court's analysis.

Also, as a preliminary issue, there are common areas which need not be a subject of my analysis. The first one is that the 1st defendant is the common factor across the acquisition of all the assets in litigation in this matter. There is no evidence that the 2nd defendant who is the 1st defendant's spouse was ever in a gainful employment or engagement before she met and married the 1st defendant and registered the business name which was later transformed to the 4th defendant. It is also not contested that the 1st defendant's gross income as an employee of the Ministry during the period of interest amounted to Kshs 12,380,008.55 with net pay of Kshs 5,398,438.75 and allowances of Kshs 2,292,860.00. There is also no dispute that the 3rd defendant was incorporated on 23rd February 2017 with the 1st defendant having financial and beneficial interest in it.

The properties in question have the same root in the 1st defendant and their acquisition, save for the alleged allocation from the government are intertwined with transfers of money and transactions between the defendants. The 1st defendant was a senior officer in an office responsible for a docket as sensitive as settlement of landless people from which the 2nd defendant who is his spouse was allocated several plots. I have also noted the plaintiff's claim that the 2nd defendant was not qualified and was not in the list of beneficiaries of the settlement scheme.

Based on the above and having gone through the affidavit of the plaintiff's investigator and in comparison with the 1st defendant's known sources of income coupled with the fact that the amount 1st defendant was earning had a big apparent disparity with the value of the queried properties, I conclude that the plaintiff has established a *prima fascie* case justifying requirement for the defendants to explain their wealth or assets. I proceed to analyse explanations given in respect of each of the queried assets as hereinbelow.

A. In respect of the 1st defendant

i. Bank and Mpesa accounts.

The plaintiff has claimed that a sum totaling to Kshs 467,764,517.60 as tabulated in prayer 1 of the originating summons is unexplained wealth. The amount attributed to the 1st defendant relates to monies transacted through account numbers 01100017871500, 1002195069, 0722226389 and 0717999279 and cash recovered from him all totaling to Kshs 104,156,530,00 comprising of bank and mpesa deposit of Kshs 103,816,530.00 and cash of Kshs 340,000.00.

In reply to the notice, the 1st defendant tendered a letter dated 20th March 2025 in which he explained that the entries in account number 01100017871500 amounting to Kshs 50,398,428.00 were his salaries and allowances and income from his trading in forest produce, logging, farming and his late wife's savings which the plaintiff was not satisfied with. In this court, the 1st defendant has explained that he received Kshs 310,000.00 as his late wife's life insurance dues. However, the documents annexed in support of this payout are dated way back in 2010 and could not possibly be part of the deposits during the period of interest. As at the time investigations started, the account had a balance of Kshs 385,761.75 and the 1st defendant has not pointed to this court the entry showing the said Kshs 310,000.00 from the insurance company. Further, his salaries and allowances had been taken into account and excluded when the figure of Kshs 50,398,428.00 was arrived at.

The 1st defendant has also told the court that the account was used for transactions for his trading in forest logging and farming. He has also referred this court to the plaintiff's acknowledgment that he supplied permits for this business. I have looked at these permits together with agreements purported to be for leases of parcels of land for purposes of timber farming which were exhibited by the plaintiff as annexure 'CM14' and in my view, they have nothing to show or prove the extent, level and authenticity of the business. Trading permits, licences and lease agreements are not proof of payments or income from the relevant business. In addition to the above, I do not believe that a business involving the amounts of money involved in this matter would be done in such a casual manner and without proper documentation in form of vouchers, invoices, orders or financial transaction documents.

The plaintiff has averred that there was no such business because the 1st defendant did not declare this income in his tax returns. In my opinion, failure to declare income for purposes of taxation does not mean that the business did not exist or operate neither does it *per se* make the business illegitimate. That is a matter of tax evasion and tax procedures which I do not think falls within the mandate of the plaintiff or jurisdiction of this court in respect of forfeiture proceedings as much as it may fit in the description of corruption.

The 1st defendant has argued that the plaintiff has concentrated on the credits in the account in deliberate ignorance of the withdrawals or debits. That may be so but it does not mean that the credits are legitimatized by the debits. If money hitting the bank account is tainted by corruption or any other crime, it does not become clean once it is withdrawn or transferred to other accounts. The debits would be relevant in establishing the destination of the money which in any case would be the responsibility of the 1st defendant, he being the person with special knowledge of the transactions. In view of the above, I come to a conclusion that the 1st defendant has not satisfactorily explained the transactions in the said account and the balance therein is unexplained wealth.

For account number 1002195069 held at NBCA bank and the two Mpesa lines, the 1st defendant in response to the plaintiff's notices provided an appendix which showed tabulation of the deposits. In the affidavit before the court, the 1st defendant stated that the accounts were also used for transaction in his timber business and just as explained about the previous account, he claimed that the plaintiff had acknowledged existence of permits and licences for trading in forest produce. The 1st defendant added that the accounts had transactions which included deposits and withdrawals which were consistent with trading and daily subsistence and family use. He also explained that some transactions in the mpesa lines were made across the defendants. My conclusion after considering these averments is that there is no sufficient explanation of these transactions amounting to Kshs 16,323,000.00 in the bank account and Kshs 27,760,908.00 and Kshs 9,334,194.00 in the two mpesa lines.

ii. Cash

The plaintiff averred that the 1st defendant did not give an explanation for Kshs 340,000.00 retrieved from his house. In the reply filed in court, the 1st defendant stated that the money was seized from his family home and the same was from proceeds of logging business and sales from the 3rd defendant's business which was meant to be banked. I find this explanation wanting. I have already held that the 1st defendant did not convince me of active existence of the logging business. While explaining transactions in his Cooperative Bank account, the 1st defendant told the court that the sales from the logging business would be paid to the account and the mpesa line. He did not talk of payments in cash. There is no proof that he was in charge of banking money from the 3rd defendant's business neither have these sales been demonstrated. I have also not lost sight of the pleaded fact that Kshs 3,790,000.00 in cash was seized from the 3rd defendant's hotel whose explanation was that it was cash sales awaiting banking. In that case, one should wonder why the 1st defendant would also be holding cash belonging to the 3rd defendant in his home. It is my finding that the cash has not been sufficiently explained.

iii. C.R 41556 - LR 9122/57 and C.R 41557 - LR 91275/58

The 1st defendant explained that he had bought these properties at a price of Kshs 7,000,000.00 with following funds; Kshs 3,000,000.00 from the 4th defendant's account number 1148558833100 held at the Cooperative Bank; surrender of his motor vehicle registration number KBY 303Z valued at Kshs 2,800,000.00 and Kshs 1,200,000.00 sourced through a loan from Ardhi Sacco. In the affidavit before the court, the 1st defendant pleaded that he got a loan of Kshs 1,493,000.00 while in his response to the plaintiff's notice he claimed that the balance was paid from his wife's business account. In his response to the plaintiff's notice, which explanation the plaintiff accepted, the loan of Kshs 1,493,000.00 was utilized in developing parcel numbers Nairobi/Block 136/350 and Nairobi/Block 136/351 which is not a subject of this matter. The statement the plaintiff obtained from Ardhi Sacco shows that the 1st defendant got the loan from the said Sacco on 12-08-2017. These are glaring inconsistencies which leave doubts in my mind.

The plaintiff has argued that the exchange of motor vehicle registration number KBY 300Z though acceptable does not remove the property from interest as an unexplained asset because there was no explanation on the source of the funds used to acquire the vehicle. I accept this as a plausible argument because, although there is no indication of when the vehicle was acquired, it is apparent that the same was within the period of interest. Additionally, the onus of showing that the said vehicle was not acquired within the period of interest or was acquired through legitimate means lay with the 1st defendant which I find he has failed to discharge. About the Kshs 3,000,000.00 transferred from the 4th defendant's account, I will handle and consider its legitimacy when considering the legitimacy of the 4th defendant's wealth.

iv. Mombasa/Block X/105

The 1st defendant told this court just as he did when responding to the plaintiff's notice that, this property which is jointly registered to him and the 2nd defendant was acquired in 2023 at a consideration of Kshs 19,000,000.00. According to the 1st defendant, part of the purchase price being Kshs 6,000,000.00 was sourced from the 4th defendant's account number 0114855883310 domiciled at the Cooperative Bank which account is said to have been used in collecting rent from properties known as LR 6845/1136-IR 203944 (original no. 6845/12/273) and LR 6845/2799-IR 200522 (original number 6845/146/8). Another sum of Kshs 4,000,000.00 was sourced from his account number 01100017871500 while a sum of Kshs 9,000,000.00 was paid through direct cash deposits made by him and the 2nd defendant.

He also claimed that on 6-10-2023, he received a loan from Ardhi Sacco without specifying the amount or attributing it to this particular payment. It is notable that I have already held that the transactions in the 1st defendant's said account number 01100017871500 have not been explained which means that any property bought using the funds therefrom automatically becomes unexplained. Further, the source of the cash deposits made by him and the 2nd defendant has not been declared. Based on this, it is my finding that the acquisition of this property has not been sufficiently explained.

v. *Lamu Mainland/Block 1(Bargoni)/795*

The 1st defendant claimed in his response to the plaintiff's notice that the land was allocated to him by the government without consideration. In his replying affidavit, he claims that he was allocated the same in January 2019 and says nothing more except that he followed due process. Where a person is required to explain their wealth under Section 55(2) of ACECA, they do not only have the duty to demonstrate the source of funds showing how they acquired the same but also the process used in the acquisition. The 1st defendant has not made any attempt to show the process he followed. Not a single document or a shilling has been produced. I take judicial notice that allocation or registration of land whether with or without consideration involves processing of documents and correspondence.

In his submissions, the 1st defendant has stated that the land adjudication process is an elaborate process which is safeguarded by clear legal provisions at every step through the Land Adjudication Act. I understand him to mean that the legal process makes the registration tamper-proof such that any title coming out of the process is not impeachable. He makes reference to Section 26 of the Act which gives the procedure for objections on adjudication and with that, he submits that the duty to prove that the land adjudicated to the defendants was irregular lies with the plaintiff. I do not buy or accept this line of argument. Objection procedures in land adjudication are meant for the parties who lay claim on the land or portion of the same at the time of adjudication but absence of objection does not insulate the resultant title document from legal challenges.

It is true that the certificate of search and the green card for the land that the plaintiff has produced show that it was a first registration but the process preceding the registration has not been explained. A claim under ACECA is different from objection proceedings in that, the focus is on the land owner to show that the process was clean and default of any corrupt conduct. In this matter, the plaintiff has demonstrated and I do agree that the 1st defendant used his position as a Land Registrar to have land allocated to himself and his spouse in circumstances that are reasonably suspected to be abuse of office which is a corrupt conduct. The onus was therefore on the defendants to rebut that assumption and failure to do so would lead to verdict that the asset is unexplained and therefore liable to forfeiture to the government. Honourable Lady Justice Njoki Mwangi held in ***Ethics & Anti-Corruption Commission v Mulei [2022] KEHC 17068 (KLR)*** that;

> *'An individual once served with a notice by EACC has the evidential burden to offer a satisfactory explanation on the legitimate acquisition of the assets in issue or forfeit such assets.'*

In view of the above, I find and hold that land parcel number Lamu Mainland/Block 1(Bargoni)/795 registered to the 1st defendant is unexplained asset and is liable to forfeiture. This finding will apply to all the other properties which are claimed to have been allocated by the government for no consideration and where no other explanation has been given. These are Kilifi/Chakama phase II Scheme/1851, Kilifi/Chakama phase II Scheme/1072, Kilifi/Chakama phase II Scheme/1095, Kilifi/Chakama phase II Scheme/1259, Kilifi/Chakama phase II Scheme/30, Kilifi/Chakama phase II Scheme/491 and Mavueni B Settlement Scheme/2186 registered to the 2nd defendant.

vi. Gatuanyanga/Ngoliba Block 3/47

The 1st defendant claims that he bought the property before the period under investigations specifically on 21-10-2009 but it was not until 26-08-2014 that the title deed was issued being a first registration. The plaintiff counters this by stating that its investigations showed that the 1st defendant acquired the property on 26th August 2014. There is nothing wrong with a person purchasing unregistered land provided that they are able to demonstrate the specific and identifiable parcel and connect it to the new registration. I do believe that in such a scenario, the purchaser would still be required to establish their rights over the parcel at the time of adjudication and registration, a process the 1st defendant has not demonstrated.

The 1st defendant exhibited what he calls an agreement between him and one Joseph Kamau Kamami as his annexure 'FM2'. This agreement appears to me to be incomplete as what has been attached is the ordinary recital part of the agreement without identity of the parcel which was being bought. However, at page 7599 of the originating summons (though there seems to be a mix up with pagenation) which is part of the plaintiff's annexure 'CM14B', there appears a complete agreement with similar recital which talks of plot number 516, certificate number 563 whose owner is described as Ogopa Team Jua Kali Association. The 1st defendant has not established nexus between the land described in the agreement and the queried one.

Again, even where land being sold is within unregistered or unadjudicated area, the owner must be able to show the process he followed after the adjudication process took off to the point of registration. A search certificate exhibited by the plaintiff shows that the parcel was registered to the 1st defendant on 26-08-2014. The green card for the same shows that the property was registered to Soil Merchants on 8-07-2014 when it was opened meaning that the claim by the 1st defendant that registration to him was a first registration is not true. One would not fail to notice that the said Soil Merchants is different from the owner described in the alleged agreement. It is therefore my finding that the explanation in respect of this land is unsatisfactory.

vii. LR 6845/1136 IR 203944 (Original no. 6845/12/273)

The explanation given by the 1st defendant in his relying affidavit is that he purchased this land from one Onesmus Ngure Kariuki at Kshs 380,000.00 which money was generated from business enterprise known as Festemagra Screen Printers and Computer Supplies which he jointly registered with the 2nd defendant on 29th January 2008 and savings from his salary. He explains that the income for this enterprise was payments for supply of stationery to learning institutions. He has annexed a handwritten agreement in proof of this allegation and added that the title to the land was finally issued on 30-01-2019. He asserts further that, the rental flats constructed on the land were completed in 2012 and in that regard, the property falls outside the period of interest.

I have looked at the agreement attached as the 1st defendant's annexure 'FM7'. The agreement is in respect of property described as plot number 33 Mathera Traders Union at Mihango. There is nothing in the agreement or the 1st defendant's affidavit to connect that plot to the questioned parcel of land. As rightly observed by the plaintiff, there is no documentation to prove that the development on the land was completed by the end of 2012 as claimed by the defendant. Part of plaintiff's annexure 'CM8C' is the certificate of title for this land which shows that it was issued on 30-01-2019.

There is nothing to show that the parcel was once plot 33 Mathera Traders Union as indicated in the alleged sale agreement. The 1st defendant did not produce any documentation including certificate of ownership issued to him by the previous owner before the certificate of title was issued. The 1st defendant chose to keep away these details which would have proved that the property was acquired before the period of interest. A certificate of title must have a history and sequence of events or actions leading to its registration and once a title holder is confronted with challenge to its legitimacy, they have a duty to lay before the court all information and documentation leading to not only the acquisition but registration.

B. 2nd defendant's properties

i. Kilifi/Chakama phase II Scheme/1851, Kilifi/Chakama phase II Scheme/1072, Kilifi/Chakama phase II Scheme/1095, Kilifi/Chakama phase II Scheme/1259, Kilifi/Chakama phase II Scheme/30, Kilifi/Chakama phase II Scheme/491 and Mavueni B settlement Scheme/2186

It has not been disputed that the 1st defendant who is the 2nd defendant's husband was a Land Registrar at the time these parcels were allocated to the 2nd defendant. The plaintiff has stated that the land was available for people identified to be in need of land for settlement and the 2nd defendant was not one of the qualified beneficiaries and in any event the policy was that each eligible household was entitled to one plot yet the 1st defendant was allocated nine plots.

The 2nd defendant's explanation on acquisition of these properties was that she was allocated by the government without consideration. In her replying affidavit, the 2nd defendant said nothing about the process of the allocations. She did not exhibit any letter, payments for or approval of the allocations. As I have stated earlier in this judgment while analyzing the allocation of Lamu Mainland/Block 1(Bargoni)/795 to the 1st defendant, all the properties which are claimed to have been allocated by the government without consideration and where no further explanation is given are found not to be unexplained. It is so ordered for these proprieties.

ii. Mavueni B settlement scheme/1000

The 2nd defendant has averred and claimed that this property is registered to a third parties known as Fredrick C. Katite and Renick Charo Katite and to that effect, she exhibited a green card marked as annexure ‘SO1’ which shows that the title deed for it was issued to the said persons in 2013. The plaintiff rebuts this by stating that the 2nd defendant acquired this property on 21-02-2018 and its green card shows that the property belongs to her. In her submissions, the 2nd defendant changed tact and told the court that the property was among those which were acquired through direct allocation from the government without consideration.

I have looked at the search certificate dated 16th May 2024 appearing at page 842 of the originating summons and the green card appearing at page 846 of the originating summons both of which have been produced as part of the plaintiff’s annexure ‘CM8D’. These exhibits attest to the fact tat the 2nd defendant acquired the property on 8-08-2013 and title deed issued on 8-08-2018. As observed earlier in this judgment, the period of interest commenced in January 2013 and therefore this particular property was within the period and I therefore dismiss the 2nd defendant’s arguments to the contrary.

In view of the above, I do not believe that the green card exhibited by the 2nd defendant in her affidavit is genuine and I dismiss it. My finding on this property would be the same as the preceding ones.

iii. Motor vehicles registration numbers KDG 086B, KCW 500Y and KCG 098Y

These vehicles were acquired on 17-12-2024, 5-11-2019 and 21-04-2021. The only explanation offered by the 2nd defendant in respect of these motor vehicles is that she acquired the same using income generated from the 3rd defendant. She defers explanation of this to the affidavit she swore on behalf of the 3rd defendant. Looking at that affidavit dated 19th March 2026, the 2nd defendant avers that she used remainder of income and profits from the 3rd and 4th defendants to acquire the three vehicles. She does not however give details of the amounts or figures of the remainder neither is there exhibited any withdrawals or transfers from the said defendants' accounts showing payments to the persons or entities that sold the vehicles to the 2nd defendant. The excess or remainder is supposedly what was left after the 3rd defendant acquired its properties which have been queried.

The plaintiff has produced evidence in form of documents showing that the vehicles were purchased through cash deposits made by the 1st and 2nd defendants. According to the plaintiff's annexure 'CM7', motor vehicle registration number KDG 086B was bought from Cosmos Cars Limited vide agreement dated 15th August 2022 and an amount of Kshs 6,000,000.00 was deposited into the dealer's account by the 1st and 2nd defendants in installments. This timing does not logically match the explanation of the alleged remainder of the 3rd defendant's income.

The same annexure 'CM7' shows that motor vehicle registration number KCW 500Y which had a value of Kshs 2,500,000.00 was acquired from a dealer known as Car Soko through a trade-in arrangement where the 2nd defendant surrendered her motor vehicle registration number KCT 233U valued at Kshs 2,800,000.00 and she was paid the difference of Kshs 300,000.00. The 2nd defendant has not disclosed the source of the funds she used to acquire the trade-in motor vehicle registration number KCT 233U.

Just like the other two, the 2nd defendant has not been specific on the source of funds she used in acquiring motor vehicle registration number KCG 098Y. According to the statements and documents produced by the plaintiff in the same annexure, this vehicle was purchased from CFAO Mobility at a price of Kshs 2,799.999.88 which was paid to the company through transfer of funds by the 1st defendant. Considering these circumstances, it is my view that the explanation given by the 2nd defendant in respect of acquisition of the motor vehicles is not satisfactory.

iv. Bank and mpesa accounts

The 2nd defendant has claimed that the transactions in these accounts were from the 2nd and 3rd defendants' trading activities. She however did not explain why sales of limited liability companies were paid to her individual accounts. She also made a claim that some of the transactions were payments from insurance policies and treasury bonds and bills but failed to give details or specific transactions. Like the 1st defendant, she also claimed that she was engaged in business of farming, supply of stones, supply of sand and catering services and but all that she provided in respect of the alleged trading were logging permits or licences which I have already held are not proof of active business or income.

A business that has transactions of as much as over Kshs 88 million would be expected to have records of its business including its operations office or location and employees. It cannot be a one person's show. The 2nd defendant provided what she purported to be her financial statements which are contained in the plaintiff's annexure 'CM14B'. The statements appear to me to have been made for purpose of defence in this matter. They are not signed and are not accompanied by sufficient financial records. In the circumstances, I am persuaded that the logging permits and the accompanying leases were a decoy to mislead and divert attention of an illegal business and unless the 2nd defendant gives a better explanation and strict proof of existence of the businesses, the transactions must be declared to be unexplained.

In respect of the amount stated as investments in treasury and infrastructure bond and bills, I form the opinion that the source of the initial capital of Kshs 10,395,000.00 should have been explained better. A general statement that it came from the 2nd defendant's savings from profits made by Fetemagra Screen Printers Stationery and Computers and 3rd and 4th defendants' business is not enough. It is worth to note that this business enterprise transformed to the 4th defendant in 19th May 2015 while this initial investment was in May 2018. I however accept the 2nd defendant's argument that the plaintiff lumped together credits which were in fact double entries and re-investments. That said, since the amount that finally landed in the respective accounts is within the initial balances, that point becomes moot until the court makes a decision on prayers for payment or forfeiture of the specified amounts to the government.

C. 3rd defendant's properties

i. Money in accounts numbers 1440272559689 and 1440278828192 and till number 763531

The 3rd defendant is said to have been incorporated on 27th February 2017 and its mpesa till registered on 4-05-2017. The 3rd defendant asked the court to rely on annexures 'CM14G', 'CM14H' and 'CM14I' of the plaintiff's supporting affidavit to find that it was operational. These documents are kitchen receipts, sales books and suppliers' payments. In addition, the till deposits statement indicates that the 3rd defendant used to receive monies for the services and goods offered to its patrons.

Paragraph 24 of the supporting affidavit gives the defendants' responses to its notices and its findings upon evaluation of the explanation. Under the items attributed to the 3rd defendant [C(ii), (1), (2) and (3)] the deponent averred that, after consideration of the responses, the plaintiff found that the business was able to generate revenue and the deposits including the mpesa till number and the 3rd defendant's explanation was found satisfactory. The till deposits statement indicates that the 3rd defendant used to receive monies for the services and goods offered to its patrons. With this kind of averment, I fail to understand why the plaintiff found it necessary to include these accounts and till in the originating summons and its submissions. I say no more about this save that the prayer seeking to declare the transactions as unexplained must fail.

ii. *Nairobi/Block 105/13772, Nairobi/Block 105/13773, Nairobi/Block 105/13774 and Nairobi/Block 105/13775*

In response to the plaintiff's notice on these properties, the 3rd defendant stated that it initially carried on business on them under lease and gradually acquired them using trading income from the hotel activities. The explanation is contained in the plaintiff's annexure 'CM14C' appearing on pages 8782 of the originating summons.

In the replying affidavit, the 3rd defendant explained that it made profits between the time of incorporation and the time of acquisition of the properties. It explained that it transacted a total sum of Kshs 155,399,853.59, as acknowledged by the plaintiff, during the period of interest and added that a conservative profit margin of this would give Kshs 46,619,956.00 which with additional funding of Kshs 69,782,681.00 from the 4th defendant giving a total of Kshs 116,402,637.77 was ploughed back to development of the properties. It contended that with this amount, it was able to purchase and develop the properties.

The above explanation is lacking in several aspects. First, the figure of Kshs 116,402,637.77 were it to be true reflection of the 3rd defendant's profits, was for the period between 2017 and March 2024 while the properties were acquired in 2019 and 2020. The 3rd defendant should therefore have explained the source of funds between 2017 and 2019 and not up to the end of the period of interest. Secondly, the 3rd defendant did not show how these profits were arrived at neither was there any document to show the transfer of the Kshs 69,782,681.00 from the 4th defendant. The 3rd defendant claimed in its response to the plaintiff's notice that the properties were valued at Kshs 60,000,000.00 and not Kshs 107,700,000.00 as claimed by the plaintiff but failed to provide documents evidencing the valuation or at least the exact amounts it paid to the vendor.

I have looked at the receipts provided by the 3rd defendant as proof of construction and operations costs and sales, which are exhibited by the plaintiff as annexure 'CM14D', 'CM14E', 'CM14F' and 'CM14G' and noticed that some pre-date the incorporation of the 3rd defendant and others post-date the period of investigations. A good number of them are not even addressed or billed to the 3rd defendant. This makes it doubtful that the said documents reflect the true status of the 3rd defendant's development and operations.

The 3rd defendant has not even made an attempt to demonstrate the source of the capital that promoted and financed its incorporation and establishment. The directors of the 3rd defendant who in no doubt were the promoters are closely related to the 1st defendant. Corazon who is the 1st defendant's daughter and a director of the 3rd defendant has not come out to explain where and how she generated enough capital to promote the incorporation of the 3rd defendant. The 2nd defendant who is also a director of the 3rd defendant has also failed to explain and I have already found that her own queried sources of income are unexplained. In these circumstances, it is my finding that the sources of funds used in acquisition of these proprieties are unexplained.

iii. Kshs 3,790,000.00 seized upon search

This money was seized from the 3rd defendant's premises. The 3rd defendant claimed that, the money was proceeds of sales from its business allegedly awaiting banking. The 3rd defendant may have a good explanation of why the money was in the hotel but that alone is not reason to find the same to be legitimate. Its source may be the hotel business but it must be appreciated that the business was not standing on legitimate ground and its origin or root was not satisfactorily explained as I have so found.

The 3rd defendant alleged that the cash was sales for four months but analysis by the plaintiff shows that during that period, the 3rd defendant had made sales amounting to Kshs 1,366,515.00, a statement the 3rd defendant has not rebutted. In addition to this, the bank statement of the 3rd defendant shows that during the four months preceding the search and seizure, there were large electronic deposits by the 2nd defendant and in the circumstances the explanation that the seized money was accumulated awaiting banking is not satisfactory. The cash is therefore declared as unexplained.

D. 4th defendant's properties

The questioned assets for this defendant were transactions in its bank account number 01148558833100 amounting to Kshs 78,782,681.65. Of this, the plaintiff was satisfied with explanation of Kshs 6,320,000.00 paid by Nyambaria High School. The plaintiff also submitted that it was satisfied with the explanation that the deposits in this account were rent collected on behalf of the 1st and 2nd defendants. Its only quarrel with the explanation was that the 4th defendant did not explain how the properties from which the rent was collected and deposited to the account was acquired.

The 4th defendant in its response to the notice which appears as plaintiff's annexure 'CM14J' explained that the deposits were payment by tenants but she did not mention the specific property for which the rent was being paid. The lease agreements which it attached to the response do not disclose the identity of the property. In the replying affidavit, the 2nd defendant on behalf of the 4th defendant explained that the 4th defendant's predecessor acquired LR 6845/1136-IR 203944 (Original 6845/12/273) upon which it completed construction by the end of 2012 and from that, they bought another property known as LR 6845/1136 IR 200522 (Original 6845/146/8) and completed construction of flats thereon by the end of 2013. It added that it was rent from these two that the 4th defendant was collecting rent and which continued after its predecessor was transformed to the 4th defendant on 19-02-2015 after the 4th defendant opened the account in question.

I note that the plaintiff has confirmed that it was satisfied with explanation given for LR 6845/1136 -IR 200522 (Original 6845/146/8) and in that regard any rent collected from that property would have been sufficiently explained. The 4th defendant however failed to differentiate and separate the rent collected from this property from that collected from LR 6845/1136-IR 203944 (Original 6845/12/273) which I have already held to be unexplained. It is apparent therefore that the funds through the said account hosted both legitimate and illegitimate funds.

One of the instances where part of the money collected by the 4th defendant intermingled and mixed with tainted assets is Kshs 3,000,000.00 said to have been transferred to the 1st defendant for acquisition of properties known as Mombasa/Block X/105, CR 41556-LR C.R 41556 - LR 9122/57 and C.R 41557 - LR 91275/58 which I have found to have been unexplained.

Where separation of legitimate and illegitimate assets is not possible with some degree of accuracy, the defendant must suffer the consequences because mixing clean assets with tainted ones poses risk to the property owner of losing the clean ones. That is the essence of forfeiture proceedings as the aim is to prevent the criminal enterprise from enjoying the fruits of their illegal or criminal activities. I resonate with the holding of Honourable Lady Justice E.N. Maina in ***Kinuthia & another v Attorney General & 2 others; High Court of Kenya & another (Interested Parties) [2023] KEHC 1785 (KLR)*** where she stated that;

> *'In my view the purpose of this section is to ensure that one does not benefit from crime more so given that corruption is a crime that is often times difficult to detect as in most cases it is usually a conspiracy between parties who are more than willing and therefore there is no one to make a complaint. The crime of corruption has at times been referred to as a "happy" crime. To say therefore that a crime must first be established before recovery or forfeiture proceedings can be instituted would mean that many would get away with it and continue enjoying the fruits of their illicit conduct and proceeds.'*

Conclusion and orders

The defendants have not been accused of committing a specific offence but it is notable that there was high possibility of abuse of office and corrupt conduct. This however does not protect the defendants from suffering forfeiture of the assets they are unable to explain. In ***Ethics and Anti-Corruption Commission v Patrick Ochieno Abachi & 6 others [2021] KEHC 8155 (KLR)***, it was held that;

> *'Thus, the jurisprudence from our courts is that the plaintiff, in seeking to recover unexplained assets, is not required to prove corrupt acts on the part of the public servant concerned. All that is required is for the plaintiff to show, on a balance of probabilities, that the defendant in a matter has acquired assets which are not commensurate with his known legitimate source of income. Once that is done to the satisfaction of the court, the burden shifts to the defendant to explain the source of the assets at issue.'*

The aim of an order for forfeiture is to divest the property owners of that which does not apparently belong to them legally. As observed above, where the properties are so intermingled that some are subsumed in others, the court will use its discretion to take away that which is reasonably underserved. Having said that, it is my opinion that the transactions in the bank and mpesa accounts save for the available balances must be taken as having been absorbed in the landed proprieties and businesses therein and the cash seized from the 1st, 2nd and 3rd defendants since it is apparent that what hit the accounts was utilized in either purchasing and developing the landed properties and establishing and growing the 3rd defendant's business.

Having evaluated and considered that the said transactions are largely part of the properties and although I have declared some of the transactions unexplained, in my view, I do not think that it would be fair to order the defendants to pay the said sums in addition to forfeiture of the identified assets. I am minded to forfeit what has been traced rather than going for restitution in terms proposed in prayer 5, 6 and 8 of the originating summons.

Based on the above, questions 1, 2, 3, 4, 7, 9, 10 and 11 of the originating summons dated 19th May 2025 are answered in the affirmative. Consequence to this, I proceed to make the following specific orders;

1. The following funds constitute unexplained assets within the meaning of Section 55 of the Anti-Corruption and Economic Crimes Act, Chapter 65 of the Laws of Kenya.

   a. Kshs 50,398,428.00 transacted through the 1st defendant's bank account number 01100017871500 held at the Cooperative Bank.

   b. Kshs 16,323,000.00 transacted through the 1st defendant's bank account number 1002195069 held at the NCBA Bank.

   c. Kshs 27,760,908.00 transacted through the 1st defendant's Mpesa line number 0722226389.

d. Kshs 9,334,194.00 transacted through the 1st defendant's Mpesa line number 0717999279.

e. Kshs 4,260,000.00 seized by the plaintiff pursuant to orders in Milimani Chief Magistrate's miscellaneous criminal application number E129 of 2024.

f. Kshs 2,062,665.30 transacted through the 2nd defendant's account number 1440179887489 held at Equity Bank.

g. Kshs 12,242,381.50 transacted through the 2nd defendant's account number 1440180507475 held at Equity Bank.

h. Kshs 88,088,547.86 transacted through the 2nd defendant's account number 1440164969154 held at Equity Bank.

i. Kshs 13,150,000.00 transacted through the 2nd defendant's account number 147496-0004 held at Equity Investment Bank.

j. Kshs 14,221,858.08 transacted through the 2nd defendant's mpesa line number 0724584639.

2. Any credit balances in the accounts mentioned in orders 1(a)-(j) above are hereby forfeited to the Government of Kenya through the plaintiff which order shall be facilitated and complied with by the respective banks and service providers.

3. The following properties constitute unexplained assets within the meaning of Section 55 of the Anti-Corruption and Economic Crimes Act, Chapter 65 of the Laws of Kenya.
   a. C.R 41556- IR 9122/57 registered to Felix Mecha Nyakundi.

   b. C.R 41557- IR 9122/58 registered to Felix Mecha Nyakundi.

   c. Mombasa/Block X/105 registered to Felix Mecha Nyakundi and Stellah Nyaboke Otwori.

d. Lamu Mainland/Block 1(Bargoni)/795 registered to Felix Mecha Nyakundi.

e. Gatuanyanga/Ngoliba Block 3/47 registered to Felix Mecha Nyakundi.

f. LR 6845/1136 - IR 203944 (Original no. 6845/12/273) registered to Felix Mecha Nyakundi.

g. Kilifi/Chakama phase II Scheme/1851 registered to Stellah Nyaboke Otwori.

h. Kilifi/Chakama phase II Scheme/1072 registered to Stellah Nyaboke Otwori.

i. Kilifi/Chakama phase II Scheme/1095 registered to Stellah Nyaboke Otwori.

j. Kilifi/Chakama phase II Scheme/1259 registered to Stellah Nyaboke Otwori.

k. Kilifi/Chakama phase II Scheme/30 registered to Stellah Nyaboke Otwori.

l. Kilifi/Chakama phase II Scheme/491 registered to Stellah Nyaboke Otwori.

m. Mavueni B Settlement Scheme/2186 registered to Stellah Nyaboke Otwori.

n. Mavueni B Settlement Scheme/1000 registered to Stellah Nyaboke Otwori.

o. Nairobi/Block 105/13772 registered to The Bantu Hotel and Resort Company Limited.

p. Nairobi/Block 105/13773 registered to The Bantu Hotel and Resort Company Limited.

q. Nairobi/Block 105/13774 registered to The Bantu Hotel and Resort Company Limited.

r. Nairobi/Block 105/13775 registered to The Bantu Hotel and Resort Company Limited.

4. The properties mentioned in orders 3(a)-(r) above are hereby forfeited to the Government of Kenya through the plaintiff which orders shall be facilitated and complied with by the Chief Lands Registrar and all respective Lands Registrars.

5. The following motor vehicles constitute unexplained assets within the meaning of Section 55 of the Anti-Corruption and Economic

Crimes Act, Chapter 65 of the Laws of Kenya.

a. Motor vehicle registration number KDG 086B registered to Stellah Nyaboke Otwori.

b. Motor vehicle registration number KCW 500Y registered to Stellah Nyaboke Otwori.

c. Motor vehicle registration number KCG 098Y registered to Stellah Nyaboke Otwori.

6. The motor vehicles specified in orders 5(a)-(c) above are hereby forfeited to the Government of Kenya through the plaintiff which orders shall be facilitated and complied with by the Director General of the National Transport and Safety Authority.

7. The defendants shall jointly and severally meet the plaintiff's costs of this suit.

Dated, signed and delivered at Nairobi this **18th** day of **September** 2026.

B.M. MUSYOKI
<u>JUDGE OF THE HIGH COURT</u>.

Judgment delivered in presence of Mr. Muthama holding brief for Mr. Makori for the plaintiff and Mr. Kinyua for the defendants.

SIGNED BY:
HON. JUSTICE BENJAMIN MWIKYA MUSYOKI

THE JUDICIARY OF KENYA.
MILIMANI HIGH COURT
HIGH COURT ANTI CORRUPTION AND ECONOMIC CRIMES