REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI COUNTY

COURT NAME: MILIMANI HIGH COURT

CASE NUMBER: HCACECS/E020/2026

ETHICS AND ANTI-CORRUPTION COMMISSION VS PETER MURIITHI NYAGA AND TRUCO ENTERPRISES LIMITED AND 5 OTHERS

RULING

BEFORE HON. JUSTICE JOSEPH KIPKOECH BIOMDO

1. Before this court are two cross-applications filed under Certificates of Urgency; the first is the Plaintiff's Notice of Motion dated 28 August 2026, brought by the Ethics and Anti-Corruption Commission (EACC) seeking temporary restraining orders to preserve suspected illicit assets pending trial, and the second is the Defendants' Notice of Motion dated 10 September 2026, seeking to discharge or vary the ex parte preservation orders issued by this court on 1 September 2026.

2. The Plaintiff's application, brought under Sections 1A, 1B, and 3A of the Civil Procedure Act, Order 40 Rule 1 and Order 51 Rule 1 of the Civil Procedure Rules, is premised on the grounds on the face of the Motion and the supporting affidavit of Kawira Rauni sworn on 28 August 2026. The Plaintiff seeks the following reliefs pending the final hearing and determination of the main suit:

a)Spent
b)Spent
c)Spent
d)THAT the 7th Defendant/Respondent by themselves, their agents, servants, and/or employees or any other person whomsoever be restrained from alienating, wasting, transferring, disposing or in any other way dealing with land Reference No. Mbeti/Kiamuringa/49.

e)THAT the 1st , 2nd and 3rd Defendants/respondents by themselves, their agents, servants, and/or employees or any other person whomsoever be restrained form alienating, wasting, transferring, disposing or in any other way dealing with motor vehicles KHMA 624H, KDD 932H, KDC 857D, KDL 451F, KCQ 172W, ZF -9309.

f)THAT costs of this application be in the cause.

3. On 31 August 2026, this court considered the application ex parte and granted interim

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restraining orders pending hearing and determination of the application which prompted the cross-application by the Defendants.

4. By way of a Notice of Motion dated 10 September 2026, the 1st, 2nd, 3rd, and 7th Defendants moved the court under Articles 40, 43, 47, 48, 50, and 159 of the Constitution, Section 56(4) of the Anti-Corruption and Economic Crimes Act (ACECA), Section 68(9)(a) and (10) of the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), and Orders 40 and 51 of the Civil Procedure Rules. Supported by the affidavit of Peter Muriithi Nyaga sworn on 10 September 2026, the Defendants pray for:
i.Spent.

ii.THAT pending hearing and determination of the Notice of Motion dated 28th August 2026, the ex parte orders of 1st September 2026 be discharged or varied to restore the ordinary and commercial enjoyment, use, deployment, operation, maintenance and utilization of land reference number Mbeti/Kiamuringa/49 and motor vehicles KHMA 624H, KDD 932H, KDC 857D, KDL 451F, KCQ 172W, ZF -9309.

iii.THAT Notice of Motion dated 28th August 2026 be dismissed with costs.

iv.THAT costs of this application be provided for.

5. The Plaintiff’s case, contained in the said Motion and affidavit, and Further Replying Affidavit sworn by KAWIRA RAUNI on 22 September 2026, is that pursuant to its mandate—which includes the institution and conduct of court proceedings for the recovery or protection of public property, or the freezing or confiscation of proceeds of corruption or corruption-related matters—it launched investigations into allegations of conflict of interest against the 1st Defendant, the Mbeti North Member of County Assembly (MCA), regarding the award of tenders by the County Government of Embu to companies associated with him during the financial years 2017/2018 to 2023/2024.

6. The investigations established that the County Government of Embu awarded twenty (20) contracts for road works and maintenance to five (5) companies associated with the 1st Defendant, the Majority Leader, where a total of Ksh. 111,577,188.75 was paid for the said contracts. During this period, the 1st Defendant, being the MCA for Mbeti Ward following his elections on 8 August 2017 and 9 August 2022, served on various influential County Assembly Sectoral Committees, including the infrastructure, roads, public works, housing, and energy committees.

7. According to the Plaintiff, the 1st Defendant is a co-director with his son and the sole bank signatory to the 2nd and 3rd Defendants, while the 4th, 5th, and 6th Defendants are owned by his spouse, who is also the sole signatory to the bank accounts of the said companies.

8. It was the Plaintiff's case that the money received from the said tenders was laundered and utilized in the acquisition of Land Reference No. Mbeti/Kiamuringa/49, registered in the name of the 7th Defendant on 10 June 2019 at a cost of Ksh. 9,000,000/-, and several motor vehicles. These vehicles include registration numbers KDC 857D, KDL 451F, and KDD 932H, all registered in the name of the 1st Defendant and acquired on 15 July 2021, 16 March 2023, and 23 August 2021 respectively; KHMA 624H, acquired on 3 May 2023 and registered under the 2nd Defendant; and KCQ 172W and ZF-9309, acquired on 21 June 2018 and 19 July 2018 respectively, both registered under the 3rd Defendant.

9. The Plaintiff’s case was therefore that the 1st Defendant, being a State Officer, acted in flagrant conflict of interest by knowingly engaging in and concluding contracts with the County Government

of Embu through his corporate entities, the 2nd to 6th Defendants, rendering all contracts signed by the said Defendants illegal, null, and void ab initio. It also contended that the Defendants unlawfully, fraudulently, in conflict of interest, and in breach of trust received the sum of Ksh. 111,577,188.75 from the County Government of Embu.

10. According to the Plaintiff, this case is factually and legally distinguishable from Assets Recovery Agency vs Nyaga & another (2025) KEHC 16687 (KLR) because the underlying facts and triable issues are separate and distinct. Consequently, the Plaintiff opposed the Defendants' Notice of Motion Application and sought its dismissal.

11. The court was thus urged to preserve the properties which are the subject matter of the recovery proceedings instituted through the Plaint dated 28 August 2026, pending the hearing and determination of the suit. It was the Plaintiff's case that if the properties are not preserved, there is a real and imminent danger of dissipation or alienation of the assets, which would render the pending suit entirely nugatory and cause irreparable loss and damage that cannot be adequately compensated by financial damages.

12. The 1st, 2nd, 3rd, and 7th Defendants, through their Notice of Motion and a Further Supporting Affidavit sworn by Peter Muriithi Nyaga on 28 September 2026, urged that the ex parte interim orders were improperly obtained based on false allegations. They contended that the Plaintiff failed to demonstrate any sufficient evidential nexus or tracing link between the alleged corrupt conduct and the specific assets now restrained by the court.

13. While admitting that the 1st Defendant was an MCA of Embu and a member of various sectoral committees, it was averred that neither the Assembly nor the sectoral committees awarded or executed the procurement contracts in question, and that the 1st Defendant did not influence the procurement decisions in issue.

14. It was further contended that the 2nd, 3rd, and 7th Defendants are separate corporate entities distinct from the 1st Defendant, and their funds, assets, contracts, and liabilities cannot—without proper legal and evidential basis—be attributed personally to the 1st Defendant.

15. The Defendants averred that the funds used to acquire the said properties constituted bona fide income lawfully earned from fully performed, lawfully, and competitively awarded public procurement contracts under Article 227(1) of the Constitution and the Public Procurement and Asset Disposal Act, as well as funds obtained through lawful credit facilities from Equity Bank (Kenya) Ltd, stating that none of the transactions were flagged as suspicious by the Financial Reporting Centre or financial institutions which are reporting entities.

16. The Defendants urged that the motor vehicles and land constitute core operational assets and equipment, transit logistics assets, and heavy machinery required daily for performing ongoing civil engineering works and public procurement contracts. They further stated that no evidence has been presented to demonstrate any danger of imminent disposal, transfer, concealment, dissipation of the assets, or advertisement for disposal.

17. It was the Defendants' case that the continued restraint of the property will cause substantial prejudice, including interference with legitimate business operations and the ongoing performance of contracts, while the grounding of the vehicles and machinery accelerates physical degradation and waste.

18. Furthermore, it was averred that the Plaintiff’s allegations substantially overlap with matters

and assets previously considered on the merits and determined in Assets Recovery Agency vs Nyaga & another (2025) KEHC 16687 (KLR), including the allegations of conflict of interest, illegal procurement transactions, and the acquisition and forfeiture claims for motor vehicles KDC 857D, KDL 451F, and KDD 932H. Consequently, the Defendants deem the current suit oppressive, duplicative, and an abuse of the court process.

19. Citing Section 56(4) and (5) of the ACECA, the Defendants urged that this court is empowered to discharge or vary the ex parte orders or dismiss the Plaintiff's Motion dated 28 August 2026, stating that the balance of convenience strongly favours the dismissal of the said application while allowing controlled operational utility of the land and motor vehicles under judicial supervision. They ultimately urged the Court to dismiss the Plaintiff's application and lift the ex parte orders.

Plaintiff Submissions

20. The application was canvassed by way of written submissions which were duly filed by both parties. The Plaintiff filed written submissions dated 22 September 2026 in support of its Motion dated 28 August 2026, while the Defendants filed written submissions dated 24 September 2026 in opposition thereto. Simultaneously, the 1st, 2nd, 3rd, and 7th Defendants filed written submissions dated 24 September 2026 in support of their cross-Motion dated 10 September 2026. Both parties orally highlighted their respective submissions before this court on 16 September 2026.

21. The Plaintiff submitted that the principles governing the determination of an application for an injunction are well-settled under Giella v Cassman Brown & Co. Ltd (1973) EA 358, based on which it identified the relevant issues for determination. Addressing whether it has demonstrated a prima facie case with a probability of success, the Plaintiff cited Mrao Ltd v First American Bank of Kenya Ltd & 2 others (2003) eKLR and submitted that it has presented concrete evidence showing that the 1st Defendant is a State Officer elected as the MCA for Mbeti Ward who served on material sectoral committees, and that the County Government of Embu awarded twenty (20) contracts for road works and maintenance to five (5) companies associated with him, resulting in total payouts of Ksh. 111,577,118.75 as demonstrated in annexures "KR1" and "KR2".

22. The Plaintiff argued that it has established a clear evidential link showing that the subject assets were directly acquired using funds derived from the contested procurement contracts, which constitute illicit payments liable for forfeiture. Consequently, the Plaintiff submitted that it has established a prima facie case with a high likelihood of success at the main trial.

23. On the second issue, whether the Plaintiff is likely to suffer irreparable injury which cannot be adequately compensated by damages, it submitted that there is an imminent danger that the 1st, 2nd, 3rd, and 7th Defendants will dispose of or charge the land and motor vehicles with the aim of defeating the course of justice. Relying on Naftali Kinyua v Patrick Thuita Gachure & another (2015) eKLR, the Plaintiff submitted that this court should apply the doctrine of lis pendens in granting the injunction. To buttress this position, the Plaintiff cited Grace Chemutai Koech v Francis Kiplangat Chebiror & 2 others (2018) eKLR, where the court held that to effectively determine disputed titles, there is an absolute need to preserve the subject matter of the suit. The Plaintiff reiterated that it stands to suffer irreversible injury to its statutory mandate if the preservation orders are denied.

24. On the third issue, whether the balance of convenience favours granting the orders, it was submitted that the inconvenience the Plaintiff would suffer if the injunction is withheld—including being forced to file multiple subsequent lawsuits against new third-party buyers—far outweighs any hardship the Defendants might face if the orders are granted. The Plaintiff argued that the Defendants will suffer no real prejudice since they explicitly deposed at paragraph 19 of their

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Supporting Affidavit that they have no intention to dispose of, transfer, conceal, or charge the suit properties.

25. On the fourth issue, whether it is in the public interest to grant the orders sought, the Plaintiff submitted that preserving the subject assets directly serves the public interest by safeguarding property suspected to be the proceeds of corruption pending a full trial.

26. On the fifth issue, whether the interim orders should be lifted, the Plaintiff contended that the Defendants have not met the legal threshold for setting aside ex parte interim orders. It argued that the Plaintiff did not misrepresent any facts or circumstances to the court, nor did it fail to disclose any material facts during the ex parte hearing.

27. Regarding Assets Recovery Agency vs Nyaga & another (2025) KEHC 16687 (KLR), the Plaintiff argued that a mere overlap of assets across different cases does not render the underlying causes of action identical. It clarified that the instant suit specifically seeks the recovery of Ksh. 111,577,188.75 obtained from illegal county contracts and traces the subsequent purchase of the land and vehicles directly to those illegal proceeds. Consequently, the Plaintiff urged the court to dismiss the Defendants' Motion dated 10 September 2026 and allow its own Motion dated 28 August 2026.

Defendants Submissions

28. The Defendants filed submissions in opposition to the Plaintiff's Motion dated 28 August 2026, wherein they identified two primary issues for determination. Addressing the first issue—whether the Plaintiff has demonstrated circumstances that bring the application within the ambit of Order 40 Rule 1 of the Civil Procedure Rules—they submitted that the law requires a party to prove actual or threatened wasting, damage, or alienation by cogent affidavit evidence, and that it is legally insufficient for the Plaintiff to merely state that the subject properties are at risk.

29. To satisfy this legal standard, the Defendants argued that the Plaintiff was required to establish an actual, objective danger—such as an active notice of sale or advertisement—which it had failed to do, thereby rendering the current allegations entirely speculative. In support of this argument, reliance was placed on Sena & 29 others v Cheruiyot & 80 others (2026) KEELC 903 (KLR) and Yejoka Garden Restaurant Limited v Staroot Residency (2023) KEELC 21472 (KLR), where the courts held that applications for injunctions must be supported by clear evidence demonstrating that the property in dispute is in imminent danger of being wasted, damaged, or alienated.

30. It was further submitted that under Order 40 Rule 1(b), the Plaintiff is strictly required to provide evidence of a clear intention by the possessor to remove or dispose of the property through affidavit evidence and accompanying exhibits. In this case, the Defendants contend that no evidence has been placed before the court to ascertain, first, the existence of an actual threat of wastage, damage, or alienation attributable to the Defendants, and second, that there exists a reasonable probability of obstruction or delay in execution by them.

31. Citing Sections 107, 109, and 112 of the Evidence Act, the Defendants submitted that the Plaintiff has failed to discharge its legal and evidential burden of proving these serious allegations as required by law.

32. On the second issue, whether the Plaintiff has satisfied the established principles governing the grant of interlocutory injunctive relief, the Defendants submitted that the Plaintiff has not

established a prima facie case by demonstrating the existence of a right which has been threatened.

33. Citing Nguruman Ltd v Jan Bonde Nielsen & 2 others, it was submitted that the Plaintiff has failed to identify the nature of its injury or explain why it cannot be adequately compensated by financial damages. In the circumstances, the Defendants submitted that the balance of convenience heavily favours the preservation of the status quo ante of the land and vehicles to minimize injustice pending trial, and they urged the court to vacate the interim orders of 1 September 2026 and dismiss the Notice of Motion dated 28 August 2026.

34. In support of their Cross-Motion dated 10 September 2026, the 1st, 2nd, 3rd, and 7th Defendants identified the central issue for determination to be whether the said motion has merit. They submitted that this court possesses the statutory power to vary or discharge the Plaintiff's interim orders by dint of Sections 56(4) and (5) of ACECA, Sections 68(9)(a) and (10) of the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), and Order 40 Rule 7 of the Civil Procedure Rules, placing reliance on Wairire T/A Bungoma Prestige Shuttle & 3 others v Joskies Bungoma Line Shuttle Ltd (2026) KEHC 1032 (KLR) and Tuwei v Barsoy (2024) KEELC 7552 (KLR).

35. The Defendants contended that whereas the Plaintiff claims the subject properties were acquired using funds from procurement contracts awarded by the County Government of Embu, it failed to produce any evidence showing that the 1st Defendant influenced or participated in any procurement decisions. They argued that as a Member of the County Assembly, the 1st Defendant does not award, execute, or control public procurement, which is a function undertaken exclusively by the executive arm of the County.

36. Citing Salomon v Salomon & Co. Ltd (1897) AC 22, it was submitted that the 2nd, 3rd, and 7th Defendants are distinct corporate entities duly incorporated under the Companies Act whose assets, contracts, and liabilities cannot be attributed to an individual shareholder or director without legal justification or the lifting of the corporate veil.

37. The Defendants reiterated that the properties in question were lawfully acquired through legitimate income and that none of their transactions were flagged by reporting institutions, including banks and other financial entities that dealt with them.

38. It was their case that the instant suit substantially overlaps with issues previously litigated and determined in Assets Recovery Agency vs Nyaga & another (2025) KEHC 16687 (KLR), thereby rendering this suit res judicata by dint of Section 7 of the Civil Procedure Act.

39. The Defendants argued that the restrained assets are essential operational, commercial, and logistics assets actively used in ongoing civil engineering contracts, while the land is used for the extraction of construction materials, meaning that leaving the specialized heavy machinery and vehicles stationary leads to rapid physical deterioration and irreparable financial waste. They averred that grounding these assets would lead to contract breaches, expose them to default penalties, performance bond calls, and liquidated damages, while simultaneously crippling taxpayer-funded public infrastructure projects. Consequently, they submitted that the balance of convenience strongly favoured dismissing the Plaintiff's Motion or varying the orders to permit controlled operational utility under judicial supervision.

Analysis and determination

40.Having considered the pleadings filed herein by both Parties, the oral and written submissions, the Constitution and the law, I narrow down the issues for determination as follows;

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i. *Whether the Plaintiff has met the threshold for grant of interlocutory injunction.*

ii. Whether the Defendants have made a case for the discharge or variation of interim orders dated 1 September 2026.

iii. What are the appropriate reliefs?

i. Whether the Plaintiff has met the threshold for grant of interlocutory injunction

41. By a Motion application dated 28 August 2026, the Plaintiff moved the court under Order 40 Rule 1 of the Civil Procedure Rules for grant of interlocutory orders to preserve the land and motor vehicles owned by the Defendants pending hearing and determination. Upon hearing the Motion ex parte, the Court granted interim preservative orders on 1 September 2026 pending hearing and determination of the Motion.

42. Vide Motion dated 10 September 2026, the 1st, 2nd 3rd and 7th Defendants moved this court under Articles 40, 43 , 47, 48, 50 and 159 of the Constitution, Section 56 (4) of the ACECA, Section 68 (9) (a) and 10 of POCAMLA and Order 40 and 51 of the Civil Procedure Rules.

43. The principles upon which a court considers before the grant of a temporary injunction are now well settled. In the case of Giella vs Cassman Brown & Company Limited (1973) E A 358, which has been affirmed in various cases (See Agengo & another v Kituyi & 3 others (2024) KEHC 2687 (KLR), the court set out three conditions that a party must satisfy for the court to grant an injunction as follows

i. First, an applicant must show a prima facie case with a probability of success.

ii. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages.

iii. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience."

44. Further, in the case American Cyanamid Co. vs Ethicom Limited (1975) A AER 50, the court set out the test for granting of an interlocutory injunction as follows;-

i. There must be a serious/fair issue to be tried,

ii. Damages are not an adequate remedy,
iii. The balance of convenience lies in favour of granting or refusing the application.

45. On whether the Plaintiff has established a prima facie case, in the case of Mrao Ltd v First American Bank of Kenya and 2 others [2003] eKLR, the Court of Appeal defined the phrase “prima facie” as follows:-
“A prima facie case in a civil application includes but is not confined to a “genuine and arguable case.” It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

46. The Plaintiff contends that suit properties are proceeds of corruption acquired through illicit funds. Its case is that investigations by the Commission revealed that between the 2017/2018 and

2023/2024 financial years, the County Government of Embu awarded 20 road maintenance contracts worth Ksh. 111,577,188.75 to five companies (the 2nd to 6th Defendants) associated with the 1st Defendant, the Mbeti North MCA and Majority Leader who sat on key infrastructure committees.

47. The Plaintiff asserts that the 1st Defendant acted in conflict of interest as a State Officer by executing contracts through entities owned or financially controlled by himself, his son, and his spouse, rendering the tenders null and void ab initio. It also argued that this suit is factually distinguishable from Assets Recovery Agency vs Nyaga & another (2025).

48. The Defendants on the other hand contend that the suit should be dismissed because the Plaintiff failed to prove that the 1st Defendant, as a Member of the County Assembly, influenced or controlled any procurement contracts awarded by the executive arm of the County Government. Citing Salomon v Salomon & Co. Ltd, they argue that the 2nd, 3rd, and 7th Defendants are distinct corporate entities whose assets cannot be attributed to individual shareholders without lifting the corporate veil.

49. Furthermore, they assert that the properties were lawfully acquired through legitimate income without any financial transactions being flagged by reporting institutions, and that the matter is ultimately res judicata under Section 7 of the Civil Procedure Act due to a substantial overlap with issues already litigated and determined in Assets Recovery Agency vs Nyaga & another (2025).

50. In my view, the facts and evidence presented above raises triable legal and factual issues regarding;

i. whether there is evidence of a conflict of interest, where the 1st Defendant allegedly used his influential role on key county committees to secure 20 tenders worth Ksh. 111,577,188.75 for companies controlled by his immediate family;

ii. whether the corporate veil of the 2nd to 6th Defendants should be pierced due to suspected fraud and money laundering;

iii. whether the suit properties were directly purchased using these illicit tender funds;

iv. whether the suit is factually distinct from Assets Recovery Agency vs Nyaga (2025), or if it is procedurally barred by res judicata under Section 7 of the Civil Procedure Act.

51. I find that the Plaintiff has established a prima facie case as laid out in Mrao Ltd v First American Bank of Kenya and 2 others (Supra).

52. On the second limb of Giella v Cassman Brown, the Plaintiff contends that there is an imminent danger that the Defendants will dispose of or charge the suit properties to defeat the course of justice, establishing a clear need for preservation under the doctrine of lis pendens.

53. Citing Naftali Kinyua v Patrick Thuita Gachure (2015) and Grace Chemutai Koech v Francis Kiplangat Chebiror (2018), the Plaintiff argues that the land and motor vehicles must be preserved so the court can effectively determine the disputed titles. Consequently, the Plaintiff maintains that it stands to suffer irreparable injury that cannot be adequately compensated by financial damages if the preservation orders are denied.

54. The Defendants counter that the Plaintiff has failed to demonstrate a threatened right, arguing that the allegations of imminent asset dissipation are merely speculative and unsupported by

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affidavit evidence of actual danger, such as a notice of sale.

55. Citing Sena v Cheruiyot (2026) and Yejoka Garden Restaurant Limited v Staroot Residency (2023), they submit that an injunction requires clear evidentiary proof of a threat to the property, rather than unsubstantiated claims of risk.

56. Furthermore, relying on Nguruman Ltd v Jan Bonde Nielsen, the Defendants contend that the Plaintiff has failed to identify any irreversible injury that cannot be remedied through financial damages, and that the balance of convenience heavily favors maintaining the status quo ante of the land and vehicles to prevent injustice pending a full trial.

57. The suit herein seeks recovery and forfeiture of the land and motor vehicles which remain the subject matter of the main suit. I find that if the Defendants were to dispose of said properties, the Plaintiff will have no assets to recover in furtherance of its statutory mandate should the main suit succeed, creating a clear need to preserve the properties pending the hearing and determination of this matter.

58. This position is well anchored in Kenya Anti-Corruption Commission v Stanley Mombo Amuti [2011] eKLR, where the court emphasized the necessity of preserving suspected illicit assets to prevent recovery proceedings from being rendered entirely nugatory. The court stated thus;

“An order of forfeiture can only be made if the property was still available for such forfeiture and it follows therefore that if there was no conservatory order, the property may well have ceased to exist thus rendering the success of the appeal pyrrhic.”

59. On the balance of convenience, the Plaintiff submits that the hardship it would face if the orders are denied—such as being forced to file multiple lawsuits against new third-party buyers—far outweighs any inconvenience the Defendants would suffer if the injunction is granted.

60. The Plaintiff underscores that the Defendants will suffer no prejudice or harm from the preservation order, given their own sworn statement that they have no intention to dispose of, transfer, conceal, or charge the suit properties.

61. The Defendants argue that the restrained assets are essential commercial and logistics assets actively utilized in ongoing civil engineering contracts, meaning that grounding the specialized heavy machinery and vehicles would cause rapid physical deterioration and severe financial waste.

62. They contend that halting their use would trigger contract breaches, expose them to default penalties, performance bond calls, and liquidated damages, while simultaneously crippling vital taxpayer-funded public infrastructure projects.

63. Consequently, they submit that the balance of convenience strongly favors dismissing the preservation application or varying the orders to permit controlled operational utility under judicial supervision.

64. As established in Ethics and Anti-Corruption Commission v Charles Muia Mutiso [2022] eKLR (citing Pius Kipchirchir Kogo v Frank Kimeli Tenai), the balance of convenience is an assessment of comparative mischief, measuring whether the inconvenience to the Plaintiff if the injunction is withheld exceeds the hardship to the Defendants if it is granted.

65. The Defendants argue that grounding their specialized machinery and vehicles will cause rapid

physical deterioration, trigger contract breaches, expose them to default penalties on ongoing civil engineering projects, and that the balance favors dismissing the motion or allowing controlled operational utility. However, the Plaintiff's argument remains highly plausible. If the assets are dissipated, wasted or sold, it would exhaust colossal amounts of public funds and time just to trace them, leaving nothing left to forfeit.

66. This comparative mischief is further resolved by the Defendants deposition in paragraph 19 of their Further Supporting Affidavit sworn on 24 September 2026 it was deposed that the Defendants have no intention to dispose of, transfer, conceal or alienate the suit properties, meaning the injunctive order causes no real prejudice to the Defendants, while effectively preventing the statutory recovery mandate from being rendered nugatory. I find that the balance of convenience heavily tilts in favor of the Plaintiff, even when weighed against the Defendants' commercial hardships. However, this is will further be analysed shortly.

67. Accordingly, I find that the Plaintiff has met the legal threshold for the grant of a temporary injunction to preserve the suit properties pending the final hearing and determination of this suit.

Whether the Defendants have made a case for the discharge or variation of interim orders dated 1 September 2026

68. By a Notice of Motion Application dated 10 September 2026, the 1st, 2nd, 3rd, and 7th Defendants sought an order to discharge or vary the ex parte preservation orders of 1 September 2026 pending the hearing and determination of the main application dated 28 August 2026. Specifically, they sought to restore the ordinary and commercial enjoyment, use, deployment, operation, maintenance, and utilization of suit land and motor vehicles.

69. They contend that since the restrained machinery, vehicles, and land are essential commercial assets actively used in ongoing civil engineering contracts, grounding them will cause rapid physical deterioration, contract breaches, and severe financial penalties on public infrastructure projects. Consequently, they submit that the balance of convenience strongly favors dismissing the application or varying the orders to permit controlled operational use under judicial supervision.

70. The Plaintiff opposed the application contended that the Defendants failed to meet the threshold for setting aside the interim orders, arguing that the Plaintiff neither misrepresented any facts or circumstances to the court nor failed to disclose any material facts. It urged the court to dismiss the Motion.

71. While the court recognizes the critical importance of preserving the substratum of the recovery suit to ensure it is not rendered nugatory, it also notes the undisputed fact that the restrained assets are specialized engineering machinery, vehicles and active project land. Grounding these assets entirely risks rapid physical deterioration, substantial financial waste and the disruption of public infrastructure contracts, consequences that serve neither party’s long-term interests.

72. Given that the Defendants have explicitly deposed that they have no intention to alienate, transfer or charge these properties, the balance of inconvenience is best satisfied by varying the interim orders to permit restricted, supervised operational utility while imposing stringent legal and procedural safeguards to mitigate the risk of asset dissipation.

What are the appropriate reliefs?

73. Accordingly, the court makes the following Orders;

i. The Notice of Motion Application dated 28 August 2026 is hereby allowed, subject to the variations set out herein below.

ii. Prayer 2 of the Notice of Motion Application dated 10 September 2026 succeeds only in part to allow for supervised operation, to the extent and in the terms provided herein below.

iii. The court hereby varies Prayers (d) and (e) in the Plaintiff's Notice of Motion application dated 28 August 2026 in the following terms:

a. The Defendants by themselves, their Agents, servants and/or employees or any person whomsoever be and are hereby restrained from selling, transferring, assigning, charging or otherwise disposing of or encumbering the land parcel Mbeti/Kiamuringa/49 and motor vehicles KHMA 624H, KDD 932H, KDC 857D, KDL 451F, KCQ 172W and ZF -9309 pending final determination of this suit.

b. The Land Registrar and the Director-General of the National Transport and Safety Authority (NTSA) are directed to maintain absolute restrictions and caveats against the title and logbooks of the subject land and vehicles, preventing any transfer of ownership.

c. The Defendants shall maintain fully paid comprehensive insurance policies for all six (6) motor vehicles with copies of the valid policies and payment receipts filed in court within thirty (30) days.

d. The Defendants shall install functional GPS tracking devices on all the subject motor vehicles at their own cost, and provide the Plaintiff with real-time tracking access credentials to monitor the location and deployment of the assets.

e. The Plaintiff's representatives and the Defendants' representatives shall conduct bi-monthly physical verification exercises at the extraction yard and active project sites to inspect the mechanical condition, mileage, and physical presence of the machinery and vehicles.

f. The Defendants shall file a verified quarterly report under oath detailing the operational status, current location, active contract utilization, and mechanical maintenance logs of the assets.

g. Any breach of these conditions or any unapproved attempt to move the vehicles out of the jurisdiction of this court shall trigger an automatic, immediate, and total grounding of all assets by the Plaintiff without further reference to this Court.

iv. Costs shall be in the cause.

Signed, Dated and Delivered virtually at Nairobi on 29 October 2026

JOSEPH KIPKOECH BIOMDO
JUDGE

SIGNED BY:
HON. JUSTICE JOSEPH KIPKOECH BIOMDO

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