

KENYA / JUDGMENT

Awino v Koross & 7 others

[2026] KEHC 13630 (KLR)

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COURT

High Court

BEFORE

BM Musyoki

CASE / FILE NUMBER

Anti-Corruption and Economic Crime Petition E005
of 2026

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Awino v Koross & 7 others (Anti-Corruption and Economic Crime Petition E005 of 2026) [2026]
KEHC 13630 (KLR) (Anti-Corruption and Economic Crimes) (18 September 2026) (Judgment)
Neutral citation:

[2026] KEHC 13630 (KLR) Republic of Kenya In the High Court at Nairobi (Milimani Law Courts)
Anti-Corruption and Economic Crimes Anti-Corruption and Economic Crime Petition
E005 of 2026 BM Musyoki, J September 18, 2026 Between Francis Awino Petitioner and
David Koross Respondent and National Social Security Fund 1 st Interested Party Ethics
And Anti-Corruption Commission 2 nd Interested Party Auditor-General Of Kenya 3 rd
Interested Party Public Accounts Committee (National Assembly) 4 th Interested Party
The National Treasury 5 th Interested Party Office Of The Director Of Public Prosecutions
6 th Interested Party Ministry Of Labour And Social Protection 7 th Interested Party

Judgment

1. This is a public interest petition which is challenging continued tenure of the respondent as Managing Trustee of the 1 st interested party based principally on matters contained in the 3 rd respondent's report for the financial year ended 30 th June 2023. The following are the specific prayers; a. A declaration that the continued tenure of David Koross as Managing Trustee of NSSF violates Articles 10, 73, 75, 201 and 232 of the Constitution . b. An order directing the Ethics and Anti-Corruption Commission to conduct a full forensic investigation and lifestyle audit on the respondent. c. An order compelling the respondent to refund all funds said to have been misappropriated, irregularly spent or unaccounted for, including Kshs. 9 billion in non-performing investments, Kshs. 4.3 billion in alleged irregular land acquisitions, Kshs. 2.1 billion in alleged unlawful procurements, Kshs. 2.5 billion in alleged stalled or ghost projects, Kshs. 215 million in unrecovered advance payments, Kshs. 541 million in rent arrears and Kshs. 9.5 billion in omitted contributions. d. An order of

prohibition restraining the respondent from holding any State or public office in future. e. An order directing the Auditor-General to conduct a comprehensive forensic audit of NSSF's operations from 2020 to 2024. f. An order compelling the 8th and 9th Interested Parties to suspend donor disbursements to NSSF pending investigations and structural reforms. g. An order directing the National Treasury and the Public Accounts Committee to table a report in this court detailing funds released to NSSF and the status of projects over the preceding five financial years. h. Costs and any other relief the court may consider just and expedient.

The petitioner's case 2. The centerpiece of the petitioner's case is that the 3rd interested party's report on the 1st interested party for the year ended 30th June 2023 discloses financial irregularities exceeding Kshs. 17.9 billion which the petitioner attributes to Kshs. 9 billion in non-performing investments, Kshs. 4.3 billion in irregular land acquisitions, Kshs. 2.1 billion in unlawful procurement contracts, Kshs. 2.5 billion in ghost projects said to include Hazina Trade Centre and Kshs. 9.5 billion in unremitted member contributions. He also relies on audit observations concerning payments of approximately Kshs. 12.5 million for travel services after expiry of a contract, an unrecovered advance of approximately Kshs. 215 million in the Embakasi Phase VI project, lack of lease documentation for property in Kisumu, contribution balances held in suspense accounts and other property-management concerns.

3. The petitioner also alleges that in September 2023, the respondent appeared before a Parliamentary Committee over unrecorded income of Kshs. 16.6 million from corporate bonds and outstanding rental debtors said to total Kshs. 541 million. He alleges further that the respondent had previously been linked in public reports to bribery and unethical conduct while at LAPFUND. The material relied upon for this allegation is described as a public investigative report rather than a finding of a court or statutory investigative body.

4. In view of the above averments, the petitioner argues that the respondent's continued tenure violates Articles 10, 73, 75, 201 and 232 of the Constitution . He also claims violation of Articles 27, 35, 43 and 47 on the basis that contributors have been exposed to unequal treatment, lack of financial information, risk to social security and unfair administrative action. He blames the 2nd Interested Party, for failure to take timely action to investigate, prosecute or recommend removal of the respondent. The respondent and 1st interested party's case 5. The respondent and the 2nd interested party oppose the petition. Their case is that the respondent was appointed as the Managing Trustee on 25th May 2023 after a competitive process and that the impugned audit relates to the financial year which ended barely one month after his appointment. They therefore contend that most of the matters relied upon are historical and cannot, without a specific evidential link, be attributed to him personally.

6. They add that the petition confuses audit observations, operational weaknesses and legacy projects with proved corruption or breach of chapter six of the Constitution . According to them, the 3rd interested party's qualified opinion for the financial year 2022/2023 was an audit opinion on the 1st interested party's financial statements and systems and it was not a finding that the respondent stole, received or caused the loss of the amounts alleged by the petitioner. The 1st interested party states that a number of the matters complained of were under remedial process and that it subsequently received an unqualified audit opinion for the financial year 2023/2024.

7. On

the specific matters, they state that the Embakasi Phase VI project dates back many years before the respondent's appointment; that recovery of the advance payment is being pursued; that property and lease issues are being regularised; and that the contribution suspense account arose from historical system-integration and reconciliation problems. They deny that those matters establish personal enrichment, corrupt conduct or a constitutional violation by the respondent. 8. The respondent and the 1st interested party also raise the doctrines of justiciability and exhaustion. They argue that investigation of corruption, audit, parliamentary oversight, procurement disputes and financial administration have statutory mechanisms and that this court should not convert untested audit queries into constitutional sanctions against an individual officer. The 2nd interested party's case 9. In opposition to the petition, the 2nd interested party relies on Articles 79, 249 and 252 of the Constitution, the Ethics and Anti-Corruption Commission Act and the Anti-Corruption and Economic Crimes Act. The 2nd interested party states that the petitioner has not demonstrated a formal complaint made to it concerning the matters pleaded, a refusal to investigate, unreasonable delay after a complaint or any other omission capable of amounting to a constitutional or statutory breach. It argues that an order directing it to carry out a specified forensic investigation and lifestyle audit would, on the evidence before court, amount to controlling the manner in which it performs its investigative mandate. It contends that the petition makes no specific allegation that it violated the petitioner's rights under Articles 27, 35 or 47 and that the reliefs sought against it are premature. The 6th interested party's case 10. The 6th interested party avers that no identifiable prosecutorial decision is challenged and no specific relief capable of enforcement against that office has been pleaded. It relies on Article 157 of the Constitution and states that investigation precedes the exercise of the prosecutorial mandate.

Analysis and determination

11. I would start with observing that prayer of the petition makes reference to 8th and 9th interested parties whereas there are only 7 interested parties. The prayer also appears to me as superfluous and misplaced. That said, I have considered the submissions of the parties in this matter alongside the cited authorities, the pleadings and annexures. Having done so, I have formed opinion that;
 12. a. Whether the petitioner has locus standi and whether the petition is competent.
 - b. Whether the material placed before court proves a violation of the Constitution or the leadership and integrity framework attributable to the respondent.
 - c. What orders are appropriate in the circumstances.
13. There is little difficulty in determining whether the petitioner has locus standi to bring this petition. Article 258(1) of the Constitution provides; “Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.”
14. The petition concerns alleged misuse of public resources and integrity in management of the 1st interested party which is a statutory body hence a public institution. There is no doubt that Articles 10, 73, 75, 201 and 232 of the Constitution require integrity, accountability and prudent use of public resources and that the respondent being the head of an important

and strategic institutions as the 1st interested party has no luxury of choosing whether or not to adhere to the letter and spirit of the said Articles. These constitutional provisions are not ornamental and where a public officer is proved to have acted dishonestly, abused public resources or otherwise breached applicable leadership standards, a court is not powerless merely because the conduct also falls within the mandate of another institution. The court has powers to make appropriate orders in enforcement and protection of the spirit of the Constitution including giving directions to respective statutory and constitutional institutions and agencies while at the same avoiding a situation where it would usurp their mandates. 15. The 1st respondent and 1st interested have claimed that the petition does not meet the threshold of a constitutional petition as it is not specific about the provisions of the Constitution which are claimed to have been violated. In *Anarita Karimi Njeru v Republic* [1979] KEHC 30 (KLR) which they have cited, it was held that; We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed. 16. Reliance has also been placed on *Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] KECA 445 (KLR) where the Court of Appeal held that; ‘Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in *Anarita Karimi Njeru* (supra) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle.’ 17. In my considered view, where a petition is able to demonstrate what the petitioner is complaining about, the court should determine the substantive dispute. It is clear to me that the petitioner is complaining that the respondent does not meet the requirements of chapter six of the Constitution and the Leadership and Integrity Act for reasons that he has presided over irregularities and imprudent use of public resources by the 1st interested party. The petitioner seeks to enforce Article 10 and 232 of the Constitution which is a civic duty imposed on every person under Article 3(1) of the Constitution. That being the case, I hold that the petition is properly and competently drawn and meets the threshold of a constitutional petition. 18. I now turn to whether the material placed before court proves a violation of the Constitution or the leadership and integrity framework attributable to the respondent. The petitioner's case is anchored on the 3rd respondent's report for the year ended 30th June 2023 which he claims is enough proof of financial losses exceeding Kshs. 17.9 billion during the respondent's tenure. It is true that the report contains significant audit concerns but it does not in my view attribute the concerns to what the respondent claims. 19. The report expresses a qualified opinion. The Auditor-General states that, except for the effect of the matters described under the basis for qualified opinion, the financial statements present fairly, in all material respects, the financial position of NSSF as at 30th June 2023 and comply with the NSSF Act. A qualified opinion is not an acquittal of management from accountability neither is it by itself a judicial or investigative finding that a named officer committed corruption, stole public

money or is constitutionally unfit for office. 20. The report identifies Kshs. 9,545,509,225.00 as long outstanding contributions receivable comprising Kshs. 1,933,630,444.00 in mandatory contributions and Kshs. 7,611,878,781.00 in outstanding penalties which had not been included in the statement of net assets available for benefits. That is materially different from a finding that the respondent misappropriated Kshs. 9.5 billion of members' contributions. The report also identifies Kshs. 942 million in contributions in transit or suspense account which had accumulated over the years because of lack of integration between employers' bank accounts and the Fund's collection system. The audit concern was the inability to reconcile and promptly post the contributions to individual members' accounts. The report does not attribute that accumulation personally to the respondent. 21. On travel services, the report states that Kshs. 12,555,265.00 was paid between May and June 2023 after expiry of the relevant contract and that regularity of the payments could not be confirmed. This is a serious audit query. The respondent assumed office on 25 th May 2023 and there is therefore a limited temporal overlap. But the report does not identify him as the person who procured, authorised or received those payments. No payment voucher, approval or other evidence connecting him personally to the impugned payments was produced in this petition. 22. The report further refers to an advance payment of Kshs. 215,540,774.00 on the stalled Embakasi Phase VI project and states that the advance had not been recovered by the time of audit in February 2024. The material before court shows that the project long predates the respondent's appointment. The existence of an unrecovered public advance requires accountability, but the petition does not identify an act by the respondent which created the advance, caused the project to stall or unlawfully prevented recovery. In relation to Kisumu, the report refers to investment property which included Kshs. 220 million for Kisumu Estate land and notes absence of lease or tenancy material for some occupiers and inconsistent remittance of rents. It does not contain a finding of Kshs. 4.3 billion in irregular land acquisitions attributable to the respondent. 23. More fundamentally, I have not found in the exhibited report the pleaded audit findings of Kshs. 9 billion in non-performing investments, Kshs. 4.3 billion in irregular land acquisitions, Kshs. 2.1 billion in unlawful procurement contracts or Kshs. 2.5 billion in ghost projects including Hazina Trade Centre in the form in which they are pleaded. The petition also attributes Kshs. 16.6 million in corporate bond income and Kshs. 541 million in rental debtors to the audit narrative, but the report placed before this court does not establish personal liability of the respondent for those sums. 24. Audit queries are an important constitutional accountability mechanism. They may justify explanation, recovery action, surcharge, investigation or other statutory processes depending on the evidence. They do not become findings of personal corrupt conduct merely because they concern large figures. For court to make serious declarations and orders which are likely to permanently destroy one's career, there must be identifiable personal conduct that is inconsistent with the tenets of the Constitution and good public governance. 25. Whereas it appears that there are governance and audit issues concerning public finance and resources in the 2 nd interested party, there would be difficulty in issuing orders that are personal to the respondent while most of the evidence concerns the 1 st interested party as an institution and spans period before the

respondent assumed office. The respondent was appointed on 25 th May 2023 while the financial year under audit began on 1 st July 2022 and ended on 30 th June 2023. Much of the report therefore concerns transactions, balances, investments and projects which existed before he became Managing Trustee. 26. The petitioner does not identify a decision made by the respondent, a payment authorised by him, a benefit received by him, a procurement directed by him, an instruction by which he frustrated recovery or an omission after notice which can reasonably be said to amount to the pleaded constitutional violations. The earlier allegations concerning his service at LAPFUND may be supported by public reports and assertions but no adverse judicial, disciplinary or investigative finding was produced in this record. 27. The authority of *Republic v Kenya Rural Roads Authority; Muthiani (Ex parte Applicant) [2023] KEELRC 1377 (KLR)* relied upon by the petitioner, arose from a challenge to a recruitment process and the constitutional and statutory requirements governing that process. It does not stand for the proposition that historical audit queries against an institution, without proof of personal culpability, should invalidate the tenure of its current Chief Executive. Similarly, the broad leadership principles discussed in *Matemu* case do not dispense with evidence. Indeed, the lesson from it is that, integrity scrutiny must be tied to proven facts and the applicable legal standard. On the material before me, the petitioner has not proved that the respondent's continued tenure violates Articles 10, 73, 75, 201 or 232 of the Constitution . 28. The court's power to supervise legality does not mean that it may choose investigations for an independent commission or prescribe the manner in which those investigations must be conducted. The 2 nd interested party is an independent constitutional Commission. Article 249(2) of the Constitution provides that; “ The commissions and the holders of independent offices- a. are subject only to this Constitution and the law; and b. are independent and not subject to direction or control by any person or authority.” 29. However, the independence does not mean that the 2 nd interested party has immunity from judicial review. If a Commission fails to perform a clear public or statutory duty or acts outside the law or violates the Constitution , the court may intervene. In *Agoro & 2 others v Ethics & Anti-Corruption Commission & 4 others [2024] KEHC 7955 (KLR)* it was held that; ‘The other relevant matter is that, the Commission bears a constitutional and statutory public duty to, inter alia, investigate corruption and economic crimes and to recover proceeds of crime thereto. And, in case of violation of the Constitution or failure to perform the constitutional mandate or public duty, EACC is subject to judicial review remedy. Doubtless, therefore, exercise of judicial review power of the court, is not an interference with the independence of the Commission.’ 30. In *Commission for Human Rights and Justice v Torrut & 5 others [2022] KEHC 11931 (KLR)* similarly recognised the constitutional independence of Ethics and Anti-Corruption Commission, the National Police Service and the Office of Director of Public Prosecution in the discharge of their respective mandates by holding that; ‘This court respects the above Constitutional imperative and will hesitate to interfere with the functions of the EACC, the Police and the ODPP unless there is a clear and proven case of breach of the Constitution .’ 31. The petitioner has not produced a complaint lodged with 2 nd interested party, correspondence showing a refusal to assess it, an unexplained period of inaction after the Commission was properly seized of it, or a

decision by the Commission capable of review. Although the 2nd interested party has powers to act on its own without necessarily receiving a complaint, it can only do so upon evaluation of information it holds and not every audit query or infraction must attract its attention and it is not for the court to assess existence of corrupt conduct in public institutions unless tacit evidence is placed before it. There must be clear evidence that the 2nd interested party received credible information and has failed to discharge its statutory and constitutional mandate to investigate. In *Agoro & 2 others v Ethics & Anti-Corruption Commission & 4 others* (supra), Honourable Justice F. Gikonyo stated that; ‘It bears repeating that, the 1st Respondent Commission being an independent commission is not under the control of any person and or organ in the exercise or performance of its mandate. The court will also not compel the Commission to act except where it is demonstrated that, actions or omissions by the Commission amount to violation of the Constitution or law. The petitioners have not proved the Commission has violated the Constitution or the law.’ 32. The same scenario applies to the other interested parties. Having said the above, I do not think that an order directing a particular forensic investigations and lifestyle audit and production of reports would be appropriate. The role of overseeing operations of public institutions belongs to the Parliament. The petitioner has the right to petition the Parliament in respect of overseeing of the finances and projects of the 1st interested party. Granting the prayer seeking tabling of reports on the same by the 4th and 5th interested parties would amount to converting this court to an oversight authority which jurisdiction it does not have. The petitioner has not pleaded that he has requested for such oversight or report from the said interested parties. A court of law comes in only where there is proof of breach or violation of the law by the Parliament which has not been established in this petition. 33. Having said the above, nothing in this judgment should be construed as validation or passing verdict on the audit concerns or placing any public officer beyond investigation. The 3rd respondent’s observations remain subject to the constitutional and statutory accountability mechanisms created for audit follow-up, recovery, parliamentary oversight and where credible material warrants it, investigation by the relevant agencies. What fails in this case is the attempt to convert those institutional audit matters into personal constitutional culpability without proof of the necessary link. 34. In conclusion, I find and hold that this petition has no merits and the same is hereby dismissed. This being a public interest litigation, I order that each party shall bear their own costs. DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF SEPTEMBER 2026. B.M. MUSYOKI JUDGE OF THE HIGH COURT. Judgment delivered in presence of Mr. Awino (the petitioner), Miss Salim for the 1st interested party and Mr. Mbaka for the 2nd interested party. 7 | Page

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