



Republic v Sanjola Company Limited & 2 others (Criminal Revision E119 of 2024) [2024] KEHC 13306 (KLR) (Crim) (29 October 2024) (Ruling)

Neutral citation: [2024] KEHC 13306 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E119 OF 2024
LN MUTENDE, J
OCTOBER 29, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

SANJOLA COMPANY LIMITED 1ST RESPONDENT

SIDIAN BANK LIMITED 2ND RESPONDENT

MOSE & COMPANY ADVOCATES 3RD RESPONDENT

RULING

1. The Republic (Applicant) approached this court through a letter dated 5th February, 2024 seeking revision of an order made by the trial court lifting a preservation order that had been granted.
2. The substratum of the matter is that the applicant through No. 80998 Sergeant Hesbon Otieno, an investigator, obtained a warrant to investigate accounts held at Sidian Bank (2nd Respondent) namely: 010010xxxxxxx (KSH.); 010220xxxxxxx (USD); 010225xxxxxxx (KSH); 0102257xxxxxxx1(USD); and, 010140xxxxxxx(USD).
3. This was to establish the signatories of the accounts and any relevant documents that would assist in investigations.
4. On 2nd February, 2024, the Respondent sought orders that discharged the initial order granted that had frozen the account. The court that moved suo moto to grant the order was of the view that the Judge had given directions on the issue.
5. It is now the contention of the applicant that criminal proceedings can exist parallel to civil proceedings as the two can pre exist. That failure to preserve the accounts will render the investigations by the



Investigation Officer useless which would make the intended charges against the account holder untenable.

6. It is further urged that the accounts, save for Account No. 01022xxxxxxx are not subject to civil proceedings in the High Court which calls for preservation of the accounts. That the lifting of the preservation order was erroneous as the application sought an order lifting preservation of the order of Account No. 010220xxxxxxx.
7. The 1st Respondent through the firm of Ogado & Company Advocates filed submissions urging that the applicant is not interested in the escrow account in the names of the 3rd Respondent as the escrow agent and held by the 2nd Respondent being USD Account No. 010220xxxxxxx; investigations were concluded and one of the Directors of the 1st Respondent was charged for allegedly obtaining money by false pretence from the importer.
8. Further, that the orders for review of the preservation order were not erroneous and/or the court did not exercise Its discretion judiciously.
9. Following the application herein, I did call for the lower court record in accordance with Section 362 of the Criminal Procedure Code (CPC) which provides thus:

The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

10. This is a matter where the Investigating Officer obtained exparte orders on 1st February, 2024 to investigate five (5) accounts held at the 2nd Respondent namely Accounts Nos. 010010xxxxxxx (KSH.); 010220xxxxxxx (USD); 0102257xxxxxxx(KSH); 010225xxxxxxx(USD); and, 01014xxxxxxx(USD).
11. The order was to be in force for ten (10) days as the matter was to be mentioned on 12th February, 2024. However, on 2nd February, 2024, the following day, the stated orders were discharged by the court citing lack of jurisdiction as the High Court presided over by Mulwa J had granted orders in HCCC No. E024 of 2024 on interim basis directing funds held at the 2nd Respondent in the sum of USD 1 million in Account No. 010220xxxxxxx to be held in a joint interest earning account of the 1st and 3rd Respondent until the determination of the case.
12. The commercial matter is in respect of one account – namely, Account No. 010220xxxxxxx. The application for a warrant to investigate the accounts was in respect of five (5) accounts including the subject account in the commercial matter. The application was brought pursuant to Section 118 of the CPC as read with Section 180 of the Evidence Act which provide thus:
 118. Power to issue search warrant Where it is proved on oath to a court or a magistrate that anything upon, with or in respect of which an offence has been committed, or anything which is necessary for the conduct of an investigation into an offence, is, or is reasonably suspected to be, in any place, building, ship, aircraft, vehicle, box or receptacle, the court or a magistrate may by written warrant (called a search warrant) authorize a police officer or a person named in the search warrant to search the place, building, ship, aircraft, vehicle, box or receptacle (which shall be named or described in the warrant) for that thing and, if the thing be found, to seize it and take it before a court having jurisdiction to be dealt with according to law.



- (1) Where it is proved on oath to a judge or magistrate that in fact, or according to reasonable suspicion, the inspection of any banker's book is necessary or desirable for the purpose of any investigation into the commission of an offence, the judge or magistrate may by warrant authorize a police officer or other person named therein to investigate the account of any specified person in any banker's book, and such warrant shall be sufficient authority for the production of any such banker's book as may be required for scrutiny by the officer or person named in the warrant, and such officer or person may take copies of any relevant entry or matter in such banker's book.
- (2) Any person who fails to produce any such banker's book to the police officer or other person executing a warrant issued under this section or to permit such officer or person to scrutinize the book or to take copies of any relevant entry or matter therein shall be guilty of an offence and liable to imprisonment for a term not exceeding one year or to a fine not exceeding two thousand shillings or to both such imprisonment and fine.

13. It is apparent that the trial court lifted preservation orders before the initial application was heard inter-partes. In *Samuel Watatua & Another vs. Republic*, (Nairobi) Criminal Appeal No. 2 of 2013 (UR) the Court of Appeal held that after ex parte orders are granted, the application for seizure/freezing should be served on all persons likely to be affected by the orders and no final orders should be issued until the matter is heard inter partes.

14. Section 121 of the [CPC](#) provides that anything seized may be reasonably preserved until the conclusion of the case or investigation. On application for reversal of the order/decision, the court has the discretion to preserve it further for purposes of conclusion of the matter.

15. Investigations in the matter were to be conducted and the court without giving a hearing to the party seized of the order acted contrary to the laid down procedure. The act of setting aside the order was an irregularity that caused a breach of the law.

16. Notably, investigations that were to be conducted were Criminal in nature. This was to establish and/or ascertain if an offence had been committed by the suspects as opposed to the commercial dispute that would address the disagreement between the private parties. Section 193A of the [CPC](#) provides thus:

Notwithstanding the provisions of any other written law, the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition or delay of the criminal proceedings.

17. The fact of a criminal case and civil one running concurrently is provided for in law, therefore reaching a finding that there would be a conflict in the orders issued by two (2) different courts was not accurate.

18. The purpose of criminal proceedings was appropriately explained in the case of *Kuria & 3 others Vs. AG* (2002) 2KLR. The court stated that:

“...The normal procedure in the co-existence of civil and criminal proceedings is to stay the civil proceedings pending the determination of the criminal case as the determination of civil rights and obligations are not the subject of a criminal prosecution.”

19. Criminal proceedings are intended to resolve the question whether or not a crime has been committed. And, in the instant matter the Respondent's application having not touched on all accounts but to the



extent of only one account, No.010220xxxxxxx, issuing an order covering a broad subject, including other accounts that were not in issue was irregular.

20. In the result, I hereby call to this court orders issued on 2nd February, 2024 by Hon. Zainabu Abdul PM discharging the preservation orders issued on 1st February, 2024 which I quash and set aside.
21. Consequently, orders issued on 1st February, 2024 shall subsist pending further orders by the trial court.
22. It is so ordered

DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 29TH DAY OF OCTOBER, 2024.

L. N. MUTENDE

JUDGE

