



**Langat v Attorney General & another (Anti-corruption and Economic Crimes Miscellaneous E017 of 2022) [2022] KEHC 12420 (KLR) (Anti-Corruption and Economic Crimes) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 12420 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**ANTI-CORRUPTION AND ECONOMIC CRIMES**  
**ANTI-CORRUPTION AND ECONOMIC CRIMES MISCELLANEOUS E017 OF 2022**

**EN MAINA, J**

**JULY 28, 2022**

**BETWEEN**

**EDWARD KIPROP LANGAT ..... APPLICANT**

**AND**

**ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT**

**ASSETS RECOVERY AGENCY ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. By a notice of motion dated April 8, 2022 the applicant sought orders to set aside and or unconditionally lift the freezing order obtained *ex parte* by the applicants in the court at Douglas, Isle of Man in respect of his account No xxxxx domiciled at Standard Bank Isle of Man Limited.
2. The notice of motion was however vehemently opposed through a preliminary objection filed by the 2<sup>nd</sup> respondent. The preliminary objection is premised on grounds that:-
  - 1) The honourable court lacks jurisdiction to determine this matter as the issues raised in the matter herein do not fall under article 165(3) of the *Constitution of Kenya*.
  - 2) The applicant's notice of motion application dated April 8, 2022 is an abuse of the court process as the court at Douglas Isle of Man which issued court order POC 2017/29 on January 11, 2018 is the proper court to deal with any issued regarding the said order.
  - 3) The applicant's notice of motion dated April 8, 2022 is incurably bad and defective and should be dismissed in line with costs to the 2<sup>nd</sup> respondent."



3. By consent of learned counsel for the parties the preliminary objection was heard first. It proceeded by way of oral submissions heard virtually on July 18, 2022.
4. Ms Muchiri, learned counsel for the 2<sup>nd</sup> respondent submitted that this court does not have jurisdiction to hear the application as the same does not fall under article 165 (3) of the Constitution. Counsel pointed out that the impugned order was granted by the Court of Douglas, Isle of Man and hence only that court could deal with any issues regarding the same. Counsel contended that indeed that court had indicated that the applicant had the liberty to seek to discharge or vary that order in that court. Counsel urged this court to strike out the notice of motion. To support her submissions, Counsel cited the following cases: -Petro Somoni Motoki v Jeremiah Matoke Nyangw'ara & 2 others [2017] eKLR.Phoenix of EA Assurance Co Limited v SM Thiga t/a Newspaper Service [2019] eKLR.
5. The preliminary objection was vehemently resisted by Mr Kiprotich, learned counsel for the applicant who submitted that the respondents obtained the impugned orders *ex parte*. Counsel relied on the Mutual Legal Assistance Act to submit that this court is a judicial authority as is envisaged by section 7 of that Act and hence it can grant the orders sought. Counsel urged this court to hear the application.
6. In reply Ms Muchiri reiterated that the order can only be varied by the Court of Douglas, Isle of Man. She contended that the order to freeze the account followed due process of the law and was obtained through the Central Authority pursuant to part V of the Mutual Legal Assistance Act and the notice of motion should be dismissed.

### **Analysis And Determination**

7. A perusal of the impugned order reveals that it was issued by His Honour Deemster Montgomerie in chambers at a court held at Douglas on January 11, 2018. The order was granted *ex parte* under the Proceeds of Crime (External Requests and Orders) Order 2009, upon the application of the Attorney General on behalf of the Director of the Assets Recovery Agency, Kenya.
8. The purport of the order is that it
 

“restrained the persons named therein, including the applicant herein, whether by themselves, their servants, agents or any of them or otherwise howsoever until further order from removing from the jurisdiction of that court or from otherwise disposing of, diminishing or otherwise in any way dealing with any accounts held in their names, whether held singly or jointly or in respect of which they are a signatory with Standard Bank Isle of Man Limited.”
9. The order further directed that the persons named therein be served with a plain copy of the order. It also gave them liberty to apply to the court to vary or discharge the order upon giving written notice of intention to make such an application to the Hon Attorney General’s Chambers, Belgrave House, Circular Road, Douglas, Isle of Man, IMI IAE.
10. Having perused the order I have no doubt that it is a valid order. This is because firstly, it is an order obtained under part Xii of the Proceeds of Crime and Anti-Money Laundering Act which provides for international assistance investigations and proceedings. Section 115 (1) (d) thereof states:-

“ 115. Request made by Kenya to other countries

1. For the purpose of an investigation or proceedings under this Act, the Attorney-General may request an appropriate authority of another country to arrange for—



(d) a restraint order or forfeiture order made under this Act to be enforced in that country, or a similar order to be obtained and executed in that country to preserve property that had it been located in Kenya would be subject to forfeiture or confiscation under this Act.” (Underlining mine)

11. The impugned order states that it was obtained in private under the *[Proceeds of Crime \(External Requests and Orders\) Order 2009](#)*. I would assume that “in private” is the equivalent of ex-parte in our case. The order having been obtained under that Country’s law upon a request under section 115 (1) (d) of the *[Proceeds of Crime and Anti-Money Laundering Act](#)* is a valid and enforceable order.
12. Secondly, section 6(2) (c) of the *[Mutual Legal Assistance Act](#)* gives power to the Attorney General of Kenya as the central authority, to seek mutual legal assistance for purposes of identifying, freezing and tracing proceeds of crime. Thirdly, under our own *[Proceeds of Crime and Anti-Money Laundering Act](#)* applications for preservation orders are made *ex parte*- (see section 82 of the *[Proceeds of Crime and Anti-Money Laundering Act](#)*). It is only once the orders have been granted that an order is made for service of the same upon the affected persons within twenty-one days. Section 83(2) of the *[Proceeds of Crime and Anti-Money Laundering Act](#)* contains a similar provision for variation and discharge of the order as does the law in Isle of Man. It cannot therefore be argued that the application is bad merely for having been made *ex parte*.
13. As to whether this court has jurisdiction to set aside the order my finding is that any application for the discharge or variation of the order is best made in the court which made the order. Indeed in our case section 89 of the *[Proceeds of Crime and Anti-Money Laundering Act](#)* makes it clear that it is only the court which made the preservation order which can vary or rescind the order. The impugned order makes it very clear that any application for its variation must be made to that court upon notice to the office of the Attorney General of the country. Accordingly, the preliminary objection has merit and it is sustained and the application dated April 8, 2022 is struck out with costs to the 2<sup>nd</sup> respondent only the 1<sup>st</sup> respondent having not participated in these proceedings.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 28<sup>TH</sup> DAY OF JULY, 2022.**

**EN MAINA**

**JUDGE**

