



Inland Africa Logistics Ltd v Republic (Through the Banking Fraud Investigation Unit (BFIU) & 3 others (Miscellaneous Criminal Revision 170 of 2022) [2022] KEHC 12911 (KLR) (3 August 2022) (Ruling)

Neutral citation: [2022] KEHC 12911 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CRIMINAL REVISION 170 OF 2022**

A. ONG'INJO, J

AUGUST 3, 2022

**IN THE MATTER OF: ARTICLE 50 OF THE CONSTITUTION OF
KENYA, 2010**

**IN THE MATTER OF: SECTION 362 AND 364 OF THE CRIMINAL
PROCEDURE CODE (CAP 75) LAWS OF KENYA**

**IN THE MATTER OF: THE CHIEF MAGISTRATE'S COURT AT
MOMBASA MISCELLANEOUS APPLICATION NO.**

E310 OF 2022

BETWEEN

INLAND AFRICA LOGISTICS LTD APPLICANT

AND

**REPUBLIC (THROUGH THE BANKING FRAUD INVESTIGATION UNIT
(BFIU) 1ST RESPONDENT**

CHIEF MAGISTRATE'S COURT AT MOMBASA 2ND RESPONDENT

I&M BANK 3RD RESPONDENT

NCBA BANK NKRUMAH BRANCH, MOMBASA 4TH RESPONDENT

RULING

1. By a notice of motion dated July 14, 2022, the applicant pursuant to sections 362, 364 (1) (b) of the [Criminal Procedure Code](#), article 50 (1), article 165 (6) of the [Constitution](#) of Kenya, 2010) sought orders that; -



- a. The application be certified urgent and service be dispensed with in the first instance.
 - b. The honourable court be pleased to call for and examine the record of criminal proceedings in Mombasa Chief Magistrate's criminal miscellaneous application number E306 of 2022: Republic (through Banking Fraud Investigation Unit, Mombasa) v I & M Bank & NCBA Bank for purposes of satisfying itself the legality, correctness or propriety of the trial court's orders to attach and suspend for 90 days the operations of the applicant's bank account number xxxxxxxx domiciled at NCBA Bank and bank account number xxxxxxxx domiciled at I & M Bank.
 - c. Upon calling for and examining the record, the honourable court be pleased to lift/ stay the trial court's orders suspending the operations the applicant's bank account number xxxxxx domiciled at NCBA Bank and bank account number xxxxxx domiciled at I & M Bank pending the hearing and determination of this application.
 - d. The honourable court be pleased to set aside in entirety the orders issued by the trial court on 5th July 2022 that attached and suspended for 90 days the operation of the applicant's bank account number xxxxxx domiciled at NCBA Bank and bank account number xxxxxxxx domiciled at I & M Bank.
 - e. Costs be provided for.
2. The application is premised on the grounds on the face of the application and by affidavit deposed by Roy Francis Mwanthi on July 14, 2022.
 3. The application was opposed by the replying affidavit of No 89822 PC Nickson Kiunga sworn on July 22, 2022 and a response thereto by way of further affidavit sworn by Roy Francis Mwanthi was filed on July 25, 2022.
 4. An application dated July 21, 2022 seeking that Bwanyange limited be joined as an interested party was allowed by consent of parties on July 26, 2022. Upon the joinder the said interested party filed a preliminary objection dated July 26, 2022 seeking to have the applicants application dated July 14, 2022 be dismissed.
 5. The application and preliminary objection were heard concurrently by way of written submissions. The interested party filed their submissions on July 28, 2022 whereas the applicant and 1st respondent filed their submissions on July 29, 2022.
 6. This court has considered the preliminary objection together with submissions filed in respect thereof and find that the same cannot be sustained because provisions of section 13A of the [Government Proceedings Act](#) are not applicable to causes such as the one in question. The applicant is seeking to have an order made by the trial magistrate revised and is not making any claims against the government to require statutory notice to be issued. Powers of revision by the High Court are provided under section 362 of the [Criminal Procedure Code](#) that 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.
 7. Section 364 of the [Criminal Procedure Code](#) also provides thus; -



- (1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—
 - (b) in the case of any other order other than an order of acquittal, alter or reverse the order.
8. The provisions of section 362 and section 364 of the Criminal Procedure Code coupled with article 165(6) of the Constitution empowers the High Court to supervise subordinate courts and any person, body or authority exercising a judicial or quasi-judicial function and it is therefore not true that it does not have jurisdiction in this matter. The preliminary objection is therefore incompetent and is rejected.
9. The 1st respondent has questioned the authority of Roy Francis Mwanathi as the deponent of the affidavit in support of the application dated July 14, 2022 for reasons no company resolution has been filed authorizing the filing of this suit.
10. From the supporting affidavit there is no express averment that the deponent t Roy Francis Mwanthi has been authorized by resolution of the company to file a suit on its behalf but at paragraph 8 it is indicated that he is a director of the applicant and pursuant to article 159 (2) (d) this court would consider substance and justice of the case rather than undue regard to procedural technicalities.
11. Turning to the application dated July 14, 2022, this court has perused the application in Mombasa Chief Magistrates Court miscellaneous criminal application number E 306 of 2022 and the prayers sought were as follows;
 - a. That the court be pleased to issue warrants to investigate bank accounts to the applicant so as to enable number 89822 PC Nickson Kiunga an investigator attached to banking fraud investigation unit –Mombasa to have access inspect/ investigate /obtain information and demand to be supplied with and carry away as exhibits certified copies of accounts opening documents; account statements and cheques /sips or RTGS cleared between May 1, 2020 and June 30, 2022 in respect of account numbers; -
NCBA Bank
KES; 1915150058
I & M Bank
USD 04301475961210
 - b. That the court be pleased to issue an order compelling managers of the above bank nominate authorized person to make and give to number 89822 PC Nickon Kiunga a police officer and an investigator attached to the banking fraud investigation unit Mombasa a certificate of production of electronic evidence under section 106B(4) of the Evidence Act in respect of evidence (certified copies generated electronically or from and by electronic devices that shall be given in compliance with order of this court.
12. Orders issued by the trial magistrate on July 5, 2022 were as follows; -
 - a. A warrant do hereby issued authorizing No 89822 PC Nickson Kiunga an investigator attached to the banking fraud to demand that you avail to him books of bank account numbers Ksh 1915150058 domiciled at Ncba Bank and account number USD xxxxxxxx domiciled at I & M Bank in the name of Inland African logistics Ltd for him to have access , investigate / inspect obtain information and require to be supplied with and carry as exhibit certified copies



of accounts opening documents, account statements cheques and slips or RTGS cleared for the period between May 1, 2020 and June 30, 2022.

- b. Above account to be suspended for operations for 90 days to enable completion of investigations.
 - c. An order do and is hereby issued compelling you to nominate authorized persons to make and give to No 89822 PC Nickon Kiunga a certificate of production of electronic evidence under section 106 B (4) of *Evidence Act* in respect of evidence (certified copies) generated electronically or from and by electronic device (s) that shall be given in compliance with order 1(above) of this court.
 - d. This matter be mentioned on July 5, 2022 to confirm compliance of orders 1,2 and 3 above.
13. It is apparent from the record of the trial magistrates court that the prayers sought did not include; suspension of the operation of the accounts in question and more so there was no prayer for the period within which the alleged suspension was to operate. The order that the accounts be suspended from operations for 90 days is therefore an illegality that requires this courts intervention in terms of revision. The application dated July 14, 2022 is allowed to the extent that the order suspending the operations of account Ncba Bank -Kes; 1915150058 and I & M Bank -USD xxxxxxxx is lifted.
14. There are no order as to costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 3RD AUGUST 2022.

HON. LADY JUSTICE A. ONG'INJO

JUDGE

IN THE PRESENCE OF: -

Ogwel- Court ASIISTANT

Ms Makau- Advocate for interested party – Mr. Makuto hold brief

Mr Masore Advocate for Applicant- present

Mr. Makuto for 1st Respondent

HON. LADY JUSTICE A. ONG'INJO

JUDGE

3/8/2022

ORDER

Certified copies of Ruling to be supplied to advocates for parties on payment of copying charges.

Leave to appeal granted.

HON. LADY JUSTICE A. ONG'INJO

JUDGE

3/8/2022

MR. MAKUTO

I pray for suspension of court's Ruling for 3 days to advise my clients.

MR. MASORE ADVOCATE



Freezing orders were an illegality. I object to application.

ORDER

Application to suspend a negative order is not allowed.

HON. LADY JUSTICE A. ONG'INJO

JUDGE

3/8/2022

