



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ANTI-CORRUPTION & ECONOMIC CRIMES DIVISION**

**ACEC MISC NO. 22 OF 2020**

**ETHICS & ANTI-CORRUPTION COMMISSION.....RESPONDENT**

**VERSUS**

**CHARLES MUIA MUTISO.....APPLICANT**

**RULING**

1. The respondent by an application dated 15<sup>th</sup> July, 2020 moved the court under Section 56 of ACECA for prohibition orders against the applicants Bank Account and several properties listed on the face of the application, which order was granted ex parte by the court on 16<sup>th</sup> day of July, 2020.

2. By a Notice of Motion dated 28<sup>th</sup> August, 2020, the applicant, under sections 1A, B and 3A of the Civil Procedure Code and Order 50 Rule 6 of the Civil Procedure Rules, moved the court for the following Orders:

*a) That the time provided for under Section 56(4) of the Anti- Corruption and Economic Crimes Act No. 3 of 2003 for the applicant to file response to the respondent's application for prohibition be extended to enable the applicant file a response.*

*b) The application be deemed to be duly filed and served upon the respondent within the prescribed time.*

*c) That the honourable court be pleased to discharge and or vary the orders issued on 15<sup>th</sup> July, 2020 Or thereabout prohibiting the supplicant and or his agent from withdrawing, transferring, disposing or in any way dealing with the funds listed in the said application and that the court do grant leave to the applicant to unconditionally access his money in his bank accounts namely:*

*- Bank account No 011xxxxxxxx cooperative Bank ltd*

*- Bank account No 203xxxxxxx. Absa Group Ltd*

*- Bank account No 203xxxxxxx. Absa Group Ltd*

*- Bank Account No 110xxxxxxx KCB.*

*d) That the honourable court be pleased to grant the applicant, his agent, servants or any person claiming under him unconditional access to his property namely:*

*- LR NO NAIROBI /BLOCK 140/775*

*- LR NO DONYO SABUK /KIBIKONIBLOCK 1/ 908*

*- LR NO 209/ 16764-IR102436*

*- LR NO 209 /12108*

*- LR NO MATUNGULU SENGANI /3503.*

3. The application was supported by the grounds on the face thereof where it was stated that the time set by law to file application under

Section 56 (4) to discharge/vary the orders of the court had expired.

4. That he was desirous to challenge the application by the respondent by filing response thereto.

5. That he had good grounds/reasons as to why he did not file the application within time specified in law and that the monies in the bank accounts and the properties herein were not obtained through corrupt conduct and or illegitimately.

6. In support of the application, the applicant swore an affidavit of the same date, in which he deposed that he is a Deputy Director at the National Treasury and Planning, since 2002, having been employed in the Public Service in 1993.

7. In the course of his employment, he had served and travelled a total of fifty (50) times to various countries representing Kenya.

8. He contended for the purposes of this application, that he was served with the application by the respondent sometimes after 16<sup>th</sup> of July, 2020 and the order thereon issued by the court pending completion of investigations and institution of recovery proceedings, as regards the assets allegedly obtained through corrupt conduct and or through illegitimate means.

9. It was contended that the said allegations were not supported by any fact and that he was able to account for how he acquired the said properties.

10. It was deposed that he had initially upon service retained the services of Nyachoti & Co. Advocates to file the response to the application for prohibition within time which was not done.

11. Directions were given by Onyiego J, that the application be heard by way of written submissions which were duly filed and when the matter was placed before me for hearing, I directed that since the applicant had not filed the response within the required time, the issues of the extension of time to file the response was to be determined first, as the respondent had opposed the same, before going into the merits of the application for setting aside.

12. This ruling is therefore limited as to whether the applicant should be granted leave to file response to the application by the respondent as provided for under Section 56 (4) and (5) of the Act.

### **SUBMISSIONS**

13. On behalf of the Applicant it was submitted by Mr. Mwangela that applicant had appointed an advocate within time who filed a notice of appointment but failed to file the application within 15 days. It was contended that the mistakes of an advocate should not be visited upon the applicant, who had already taken action by filing the application for which leave was sought.

14. On behalf of the respondent, Ms Odipo submitted that there were no good grounds advanced by the applicant for not having filed the application within the fifteen-day period provided for in the Act. It was submitted that once the fifteen days were over, the commission proceeded with investigations. It was submitted that the application was filed after 35 days which was not a reasonable delay.

15. In response Mr. Mwangele submitted that the applicant/respondent will not suffer any prejudice should the applicant be granted leave to present facts to the court, which might make the court to change the orders and had further come to court to seek justice.

### **DETERMINATION**

16. From the submissions and affidavit before the court, the only issue for determination, before going into the merit of the application by the applicant for setting aside the preservation order, is whether the Applicant has placed enough material, to enable the court extend time within which to file the application under Section 56 of the Act.

17. It must be stated for record purposes, that the application for order preserving suspected property is made ex parte, which order once granted shall have effect for six months and may be extended by court. Upon service of the order, the person affected may, within fifteen days after service apply to the court to discharge or vary the order.

18. It is not disputed that the applicant only filed a notice of appointment of advocate within the fifteen days but did not file the application for setting aside.

19. The principles upon which a court may extend time are:- the length of the delay and the reasons for the delay. Order 50 Rule 6 of The Civil Procedure Rules give the court the power to enlarge the time upon such terms as the justice of the case may require and Article 50 (1) of the constitution provides for the right to fair hearing.

20. I have taken into account the reasons advanced by the applicant that he had instructed a firm the fact that the same stands to lose his right to property and the fact that the same has already filed an application which the respondent has replied to. I am satisfied that the said reasons are good grounds and justifiable and therefore find merit on the application for extension of time to file the application under Section 56 (4) of the Act which I hereby allow and deem the application filed to be properly on record.

21. Each party shall bear their own cost.

**Dated, Signed and Delivered virtually This 19<sup>th</sup> Day Of January, 2021**

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**J. WAKIAGA**

**JUDGE**