



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION

ACEC MISC. APPLICATION NO. E034 OF 2020

ASSETS RECOVERY AGENCY.....APPLICANT/RESPONDENT

VERSUS

KIMACO CONNECTIONS LIMITED.....1ST RESPONDENT/APPLICANTS

PESCOM KENYA.....2ND RESPONDENT

RULING

1. This court was moved by the Applicant/Respondent on 4th December, 2020 vide an ex parte originating summons of even date. Preservatory orders were issued against the cash in three accounts operated by the Respondents/Applicants.
2. The Respondents/Applicants filed a chamber summons dated 21st December 2020 seeking leave to be heard during the vacation and the same was granted on 23rd December 2020. Directions were given for the Applicant/Respondent to file its response within 10 days which has not been done, though the matter is for hearing today.
3. Mr. Githinji for the Applicant/Respondent has requested for time to file his response after verifying a few facts. The same has been opposed by Mr. Lutta for the Respondents/Applicants. Mr. Lutta has given several reasons and the key one is that the Respondents/Applicants have been unable to meet their several obligations due to the frozen accounts.
4. Mr. Lutta has submitted that Respondents/Applicants will only concede to the application for an adjournment if prayers No. 3 and 5 of their Notice of Motion are granted. Prayer No. 3 specifically requests for access to a sum not exceeding Kshs 64,262,499/60 from the three (3) accounts. This has been opposed by the Applicant/Respondent.
5. I have considered the submissions by both counsel on the issue of the adjournment and grant of access to the money in the three (3) bank accounts.
6. At this point in time this court is not in a position to make any conclusions on whether all the amount close to Kshs 304 million or part of it is proceeds of crime. This can only be determined after an inter-partes hearing of the present application.
7. The order for the Applicant/Respondent to file a replying affidavit was issued on 23rd December 2020 which was close to the Christmas and New year seasons when most of the enterprises have closed. It is therefore not surprising that the Applicant/Respondent was not able to obtain the information it required before filing its response to the application.
8. Counsel had requested for 7 days but later reduced it to 5 days for filing a replying affidavit. For purposes of having all the necessary material placed before the court to enable it arrive at a sound determination I find it prudent to allow the adjournment.
9. Prayer 3 and 5 cannot be allowed at this moment before a proper determination on the actual status of the amount in the 3 accounts, is made.
10. I therefore allow the adjournment and grant the Applicant/Respondent five (5) days within which to file and serve its response to the application.

11. The Notice of Motion dated 21st December 2020 to be heard on 12th January, 2021 at 10 am by the Duty Judge.

Delivered, signed and dated at Nairobi this 6th day of January, 2021.

H. I. ONG'UDI

JUDGE