



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

MISC. CRIMINAL REVISION CASE NO 217 OF 2019

RISPER AWUOR ONGINJO.....APPLICANT

VERSUS

REPUBLIC.....DPP

(Being Revision of the order made in Thika Criminal Misc. Application No. 72 of 2019 made on 2nd August 2019)

R U L I N G

1. **Risper Awuor** (Risper) is a holder of two bank accounts with Equity Bank Limited Harambee Avenue Branch. Those accounts were on 2nd August 2019 the subject of Court's freezing order in case Chief Magistrate Thika Criminal Misc. No.71 and 72 of 2019. That order freezing the two accounts has remained in place to date. Risper has moved this Court by Chamber Summon dated 9th December 2019 whereby she seeks an order for revision of the said order of Thika Chief Magistrate's court, of 2nd August 2019. She has moved under Section 362 and 364 of the **Criminal Procedure Code** (Cap.75).

2. The application is brought based on the grounds that the order was obtained by the police on the pretext the police were investigating an offence of theft by servant; and on the basis the order was issued without affording Risper a hearing. In Risper's view the order was obtained by police who were assisting her business rival who wanted Risper's business to fail. That the reason the police gave to the Thika court for obtaining the court's freezing order over her account was false because it was alleged by police that it was suspected she had stolen from her employer yet she is self-employed.

3. When the application came for hearing before me the **Director of Public Prosecution** (DPP) through **Mr. Kasyoka** did not oppose the application. In acceding learned counsel stated that the police obtained the freezing orders for the two accounts on 2nd August 2019 and ever since obtaining those orders no criminal charge had been brought against Risper. Learned counsel submitted that the orders made were contrary to provisions of Article 47 of the **Constitution** and Section 4 of the **Fair Administrative Action Act**.

4. I have considered Risper's application which as stated before is acceded to by the DPP. The power accorded to police to obtain freezing orders to freeze bank accounts is intended to assist in investigation and to fight crime. It is not intended, as alleged in this case, to be used by a business rival to cripple other businesses. If indeed, in obtaining the freezing order against Risper's accounts, that was the intent, that is to assist Risper's business rival, then that is tantamount to abuse of the powers available to the police. It would amount to unlawful use of power or misfeasance of a public office. The allegation by Risper does

seem to be credible because the freezing orders which were obtained in August 2019 to date February 2021 have not resulted in Risper being charged with a criminal offence and yet she has been kept away from her funds.

5. The application for Revision of the freezing order, for the reasons shown above, is merited. I therefore grant the following orders:

(a) Prayer (a) of the Chamber summons dated 9th December 2019 is granted as sought, that is the freezing orders issued in Thika Chief Magistrate's Court Criminal Misc. Applications No.71 and NO. 72 of 2019 are hereby revised and set aside.

(b) The costs hereof are awarded to the Applicant.

SIGNED AND DELIVERED VIRTUALLY THIS 11TH DAY OF FEBRUARY 2021.

MARY KASANGO

JUDGE

11th February 2021

Before Justice Mary Kasango

C/A - Kevin

Applicant – Risper Awuor Onginjo – No appearance

For the Applicant – No appearance

For the Respondent – Miss Kathambi

COURT

Ruling virtually delivered in their presence.

MARY KASANGO

JUDGE