



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MISCELLANEOUS CRIMINAL APPLICATION NO. E045 OF 2019**

**DAN OCHIENG OMBEWA.....APPLICANT**

**VERSUS**

**SBM BANK KENYA LTD.....RESPONDENT**

**RULING**

The applicant herein, DAN OCHIENG OMBEWA filed this application dated 10.2.2021 on 18.2.2021. The application, does not specifically state under which provisions it is made. It however seeks the following substantive prayers:-

- i) THAT this Honourable court do issue an order to SBM Bank Kenya Limited to open and unfreeze the Account Number [...], maintained in the name DAN OCHIENG OMBEWA to accord him unlimited access to the said account in order to withdraw, deposit, pay, transfer money and or deal in any other way as he may deem fit.
- ii) THAT the Honourable Court be pleased to make an order of declarations that the funds belonging to DAN OCHIENG OMBEWA and held in the said SBUM Bank Account number [...] which was previously under investigations was not obtained fraudulently and forthwith be availed to him.

The application is supported by an affidavit of the applicant. In the affidavit, the applicant has deponed that with 2 others, he was tried, convicted and sentenced to serve 1 year imprisonment in Criminal Case Number 1115/2013, Nairobi City Court. That the investigations never established that his above account held any fraudulent funds, and same were never subject of the case.

As at the time of hearing of this application, it was submitted that the applicant had fully served his prison terms of 2 years.

The applicant served the Respondent with a hearing notice for this application. The Respondent accepted service of the same and duly signed and stamped same to acknowledge receipt of the hearing notice. An affidavit of service with the duly signed hearing notice has been filed in court.

The court considered the above facts and allowed the application to proceed in the absence of the Respondent who had been duly served.

I have considered the application and the submissions made by learned counsel for the applicant. I have also perused the Judgment of the lower court read out on 13.6.2019. Indeed nowhere in the judgment is the instant account a subject. This application has also not been opposed.

I am therefore persuaded that the applicant’s application dated 10.2.2021 has merit. I allow the same in terms of prayer 2.

For prayer 3, the applicant failed to convince this court of the particulars of the same. I decline to grant the same.

Costs of this application shall be in the cause. Orders accordingly.

**D. O. OGEMBO**

**JUDGE**

**24.5.2021.**

Court:

Ruling read out in the presence of Mr. Lawi for the applicant, Mr. Wanjeri for Respondent (SBM Bank (K) Limited).

**D. O. OGEMBO**

**JUDGE**

**24.5.2021.**