



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYAMIRA**

**PETITION NO. 5 OF 2018**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF CONSTITUTIONAL RIGHTS**

**UNDER ARTICLES 3, 10, 19, 20, 21, 22, 23, 29, 35 AND 49 OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS**

**AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES 2012**

**BETWEEN**

**ZABLON OGUTU SIRO.....PETITIONER**

**=VRS=**

**1. DISTRICT CRIMINAL INVESTIGATING OFFICE**

**MASABA SOUTH SUB-COUNTY.....1<sup>ST</sup> RESPONDENT**

**2. DIRECTOR OF CRIMINAL INVESTIGATIONS.....2<sup>ND</sup> RESPONDENT**

**3. HON. ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**4. EQUITY BANK LIMITED.....4<sup>TH</sup> RESPONDENT**

**RULING**

Before me is an application by the 4<sup>th</sup> respondent seeking to be struck out of these proceedings on the grounds that it has no interest in the matter, that it is wrongly enjoined in the proceedings and that it is in the interest of justice that its name be struck out.

In the affidavit in support of the application, the 4<sup>th</sup> respondent's operations Manager deposes that the petitioner indeed had an account with the 4<sup>th</sup> respondent at its Keroka Branch to which his pension and gratuity were to be paid. He deposes that the 4<sup>th</sup> respondent did not disclose any information concerning that account to third parties but that the petitioner himself contacted one Nyamweya to process his pension and that upon receiving a complaint by the petitioner, the 4<sup>th</sup> respondent investigated the matter and came to the conclusion that the lien on his account was mistakenly lodged and having resolved the issue the petitioner managed to access his funds. It is further deposed that the 4<sup>th</sup> respondent had no part to play in the search at the petitioner's home by the police and that in view of the foregoing the 4<sup>th</sup> respondent is wrongly enjoined and its name should be struck out.

The application is not opposed and counsel for the petitioner/respondent did not attend the hearing although there is a hearing notice in regard to this application which his firm caused to be served upon the Advocates for the other respondents. Be that as it may, I have considered the application, the grounds thereof as well as the supporting affidavit and I am of the view that it would be premature to strike out the 4<sup>th</sup> respondent from the proceedings at this stage. Whatever is raised in the affidavit ought to be in defence to the petition. Accordingly, the application dated 30<sup>th</sup> November 2018 is dismissed. Costs shall be in the cause.

**Signed, dated and delivered in Nyamira this 23<sup>rd</sup> day of May 2019.**

**E. N. MAINA**

**JUDGE**