



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA, AT NAIROBI**

**ANTI-CORRUPTION & ECONOMICS CRIME DIVISION**

**ACEC MISC. APPLICATION NO. 20 OF 2018**

**IN THE MATTER OF: THE ANTI CORRUPTION AND ECONOMIC CRIMES ACT NO. 3 OF 2003 (CAP 65) AND ETHICS AND ANTI CORUPTION ACT (CAP 65A) LAWS KENYA**

**IN THE MATTER OF: AN APPLICATION BY ETHICS & ANTI CORRUPTION COMMISISON FOR AN ORDER UNDER SETION 56(1) OF THE ANTI CORRUPTOIN AND ECONOMIC CRIMES ACT (CAP 65) LAWS OF KENYA; SECTION 11(1)(J) OF THE ETHICS AND ANTI CORRUPTION COMMISSION ACT ( CAP 65A) LAWS OF KENYA, TO PROHIBIT THE TRANSFER OR DISPOSAL OF OR OTHER DEALINGS CONNECTED AND/OR INCIDENTAL TO ACCOUNT NUMBER 1070172054577 IN THE NAME OF SAMUEL MURIITHI MURIUKI HELD AT EQUITY BANK, KAPENGURIA**

**AND**

**IN THE MATTER OF: SECTION 180 OF THE EVIDENCE ACT, (CAP 80) LAWS OF KENYA**

**ETHICS AND ANTI CORRUPTION COMMISSION.....APPLICANT**

**VERSUS**

**EQUITY BANK OF KENYA.....1<sup>ST</sup> RESPONDENT**

**SAMUEL MURIITHI MURIUKI.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. This Ruling is in respect of applications in ACEC Misc. Application Nos. 20 of 2018 and 21 of 2018. In both applications the applicant is the EACC while the 2<sup>nd</sup> Respondent is Samuel Muriithi Muriuki. In application no. 20 of 2018 the 1<sup>st</sup> respondent is Equity Bank of Kenya while the 1<sup>st</sup> respondent in application no 21 of 2018 is Kenya Commercial Bank. On 18<sup>th</sup> June the applicant/respondent filed an application (originating Motion) under section 56(1) of the Anti-Corruption and Economic Crimes Act (ACECA) and section 11(1)(i) of the Ethics and Anti-corruption Commission Act 2011(EACCA) for the preservation of funds in the 2<sup>nd</sup> respondent/applicant's accounts namely:

i. Account No 107\*\*\*\*\* Equity Bank Kapenguria branch

ii. Account No 110\*\*\*\*\* Kenya Commercial Bank Kerugoya branch.

2. The main ground for them seeking these orders was that the 2<sup>nd</sup> respondent/applicant was allegedly involved in some acts of corruption, bribery and economic crimes contrary to ACECA and the Bribery Act 2016. The applicant/respondent filed a sworn affidavit by Rashid Bett an investigator with the applicant/respondent enumerating what is being investigated.

3. Being an exparte application as per the law and the court being satisfied that prima facie the applicant/respondent had established a case proceeded to issue the said orders in both files.

4. The Notice of Motion applications dated 16<sup>th</sup> July 2018 in both files are challenging the orders of 18<sup>th</sup> June 2018. They are supported by the grounds on the face of the applications and the affidavit of Samuel Mureithi Muriuki the 2<sup>nd</sup> respondent/applicant.

5. He seeks to be granted immediate access to both accounts as he was not a party to the proceedings that granted the said orders. He also complains that the said orders are indefinite.

6. All in all he explains that he is a Civil servant/Police Chief Inspector seconded to KRA and earning a lawful salary from both employers. Mr. Rabala's complaint is that the seeking of the orders complained of followed a sting operation whereby several bank cards were recovered from the 2<sup>nd</sup> respondent/applicant. That since the issuance of the orders the applicant/respondent has not conducted any investigations yet the 2<sup>nd</sup> respondent/applicant was unable to access any money from the said accounts.

7. He further submitted that Kshs 20,000/- found on the 2<sup>nd</sup> respondent/applicant was confiscated yet it had nothing to do with the sting operation. In response to the replying affidavit he contended that the said affidavit had raised nothing new save for a repetition of the grounds in their initial application. He argued that there was no ground for suspecting the 2<sup>nd</sup> respondent/applicant of anything. That the charge the applicant is facing at the Coast has nothing to do with the closure of the account.

8. In opposing the application Mr. Makori for the applicant/respondent relied on the replying affidavit by Stephen Mbugua. He argued that the applicant/respondent is simply carrying out its mandate under the ACECA and EACCA. Referring to paragraphs 9-12 of the replying affidavit he submitted that the investigations are ongoing and they had not received documents from the banks and the applicant's employer. That the report of a demand of Kshs 25,000/- by the applicant and other receipts of bribes by him (EACC -2) informed their investigations.

9. He further referred to annexure **EACC 4** a statement from Mohammed who gave the applicant Kshs 400,000/-. The commission is also investigating the element of receipt of double payment of salary by the applicant. He pointed out that the applicant had not filed any application under section 56(4) of ACECA. The fear of the respondent is that if the orders sought are granted the applicant would go and withdraw everything from the said accounts.

10. It was Mr. Rabala's final plea that the applicant be allowed to access some of the money.

### **Determination**

11. Section 56(1) of ACECA under which the orders of 18<sup>th</sup> June 2018 were issued provides as follows:

**(1) On an *ex parte* application by the Commission, the High Court may make an order prohibiting the transfer or disposal of or other dealing with property if it is satisfied that there are reasonable grounds to suspect that the property was acquired as a result of corrupt conduct.**

12. Section 56(4) of the same Act which gives a respondent an avenue to challenge the orders issued under section 56(1) ACECA provides:

**(4) A person served with an order under this section may, within fifteen days after being served, apply to the court to discharge or vary the order and the court may, after hearing the parties, discharge or vary the order or dismiss the application.**

There is no provision for participation by a respondent in the orders sought under section 56(1) ACECA and that is why the applicant was not invited by the court. The applications filed by the applicant have been filed under section 3A CPA, Order 51 Civil Procedure Rules (2010) and all other enabling provisions of the law. The applications ought to have been filed under section 56(3) ACECA. I have however noted that the substance of the application was clear to the applicant/respondent and to the court. Failure to cite to relevant provisions of the law did not prejudice anybody and the same can be resolved under article 159(2) (d) of the Constitution which provides:

**(2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles—**

**(d) justice shall be administered without undue regard to procedural technicalities;**

13. There is no dispute over the respondent's mandate to investigate under Article 252 of the Constitution, ACECA and EACCA. From the material before this Court it is not disputed that the applicant is under investigation by the EACC over issues of receipt of money. The said agency requires ample time to conduct its investigations.

14. After considering the issues being investigated I am concerned that since 18<sup>th</sup> June 2018 there are no responses from the two banks and the applicant's employer on the issues raised by the Applicant/Respondent. Their response will enable the respondent make decisions in respect of their investigations. The inaction by the two Banks and the applicant's employer is not furthering the cause of justice herein.

15. The applicant has deponed on the untold suffering he is going through after his two accounts became inaccessible. The respondent has not told the court that the applicant has another account or other sources of income. It is therefore true that the respondent/applicant is financially affected.

16. Taking into account all the concerns raised by the applicant and respondent over this matter I find the following to hold:

(a) The applicant/respondent be given an opportunity to complete its investigations.

(b) The respondent/applicant not to be rendered destitute while the investigations are ongoing.

17. For the said reasons I hereby direct as follows:

(i) The manager of Equity Bank Kapenguria to forward to the applicant/respondent (EACC) all the documents sought by the said

agency in respect to this matter within the next fourteen (14) days. Failure to comply will attract penal consequences.

(ii) The Kenya Police Service and Kenya Revenue Authority to avail to the applicant/respondent (EACC) all the information the agency requires in respect of this matter within the next fourteen (14) days. Failure to comply will attract penal consequences.

(iii) The preservation orders issued on 18<sup>th</sup> June 2018 shall remain in force.

(iv) There shall however be limited access of Kshs 100,000/- **only** per month in respect to the salary account only. (it is not clear from the affidavit which of the two accounts is the salary account.)

(v) These orders shall apply *mutatis mutandis* in ACEC Misc. Application No. 21 of 2018. Each party to bear its own costs.

Orders accordingly.

**Dated, signed and delivered on 1<sup>st</sup> day of August 2018 in open court at Nairobi.**

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**HEDWIG I. ONG'UDI**

**JUDGE**