



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ANTI-CORRUPTION & ECONOMICS CRIMES DIVISION**  
**ACEC MISCELLENOUS APPLICATION NO. 25 OF 2017**  
**ETHICS & ANTI-CORRUPTION COMMISSION.....APPLICANT**  
**VERSUS**  
**EQUITY BANK LIMITED.....1<sup>ST</sup> RESPONDENT**  
**CHARITY MUENI MUSYIMI.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Applicant filed the Exparte Originating Motion dated 11<sup>th</sup> January 2017 under Section 118 Civil Procedure Code, Section 23(3), 29 & 56 of the Anti-Corruption & Economics Crimes Act. No. 3 of 2003, seeking the following orders:-

*a. This application be certified as urgent and fit for admission to hearing on a priority basis as prescribed under Section 56 of the Anti-Corruption and Economic Crimes Act.*

*b. The Honourable Court be pleased to issue an order to freeze account number: [...] in the name of Charity Mueni Musyimi held at Equity Bank Kenya Limited, Malindi Branch, thereby prohibiting the Respondents, by themselves or through their agents, servants or assigns from transferring, disposing of, wasting, or in any way dealing with the said account including a sum of Kshs.482,387.00/- in the said account; for a period of six (6) months.*

*c. Pending the interpartes hearing and determination of this application, all dealings with regard to Kshs.481,387.00/- in Account Number [...] in the name of Charity Mueni Musyimi held at Equity Bank Kenya Limited, Malindi Branch.*

*d. There be no orders as to costs.*

2. The application is supported by the affidavit of **Lucy Wanjiru Njeru** plus the grounds on the face of the application.

3. The Originating Motion was filed on 12<sup>th</sup> January 2017 under certificate of urgency and placed before Hon. Justice D. Chepkwony on 13<sup>th</sup> January 2017. The Judge granted prayer No. 2 of the application with an order that the Respondents be served for a mention on 31<sup>st</sup> January 2017 for directions.

4. Thereafter there were mentions on 31<sup>st</sup> January 2017, 13<sup>th</sup> February 2017 and 20<sup>th</sup> February 2017

before Hon. Justice Ogolla when various directions were issued. On 20<sup>th</sup> February 2017 this matter was then transferred from Mombasa High Court, to this Division. When the file reached here, several documents including supplementary affidavits, grounds of opposition and submissions had been filed on directions of the Court.

5. Section 56 Anti-Corruption & Economics Crimes Act (ACECA) provides:-

***“(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 on evidence that the property was acquired as a result of corrupt conduct.***

***(2) An order under this section may be made against a person who was involved in the corrupt conduct or against a person who subsequently acquired the property.***

***(3) An order under this section shall have effect for six months and may be extended by the Court on the application of the Commission.***

***(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.***

***(5) The Court may discharge or vary an order under subsection (4) only if the Court is satisfied, on the balance of probabilities, that the property in respect of which the order is discharged or varied was not acquired as a result of corrupt conduct.”***

6. The Applicant came before the Court ***ex parte*** as provided for under ACECA and orders were issued. Upon being served with the application and the orders the only way the Respondents could have challenged those orders was to approach the Court vide an application brought under Section 56(4) of ACECA.

7. That has not been done. Instead the 2<sup>nd</sup> Respondent has filed documents in response to the Originating Motion. This is unprocedural as the application under Section 56(1) ACECA is ***ex parte***. I am therefore not able to make any orders as there is no application before me to make any determination on. The orders sought vide the Originating summons dated 11<sup>th</sup> January 2017 were already granted on 13<sup>th</sup> January 2017. The orders being the preservation of funds in A/C No. [...] Equity bank Malindi branch in the 2<sup>nd</sup> Respondent's names. The Court did not give any indication on how long the orders were to remain in force. The Law provides for six (6) months, which applies to the said orders.

8. Since the Court is partly to blame for issuing directions which need not have been issued leading to what has transpired herein, I grant the Respondents leave to file an application under Section 56(4) of ACECA if she so wishes. The same should be filed and served within fourteen (14) days. Any responses should be filed and served within ten (10) days, and the matter fixed for hearing soon thereafter.

Orders accordingly.

***Delivered, signed and dated this 26<sup>th</sup> day of April 2017 at Nairobi***

**HEDWIG I. ONG'UDI**

**HIGH COURT JUDGE**