



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MALINDI**

**MISC. CIVIL APPLICATION NO. 77 OF 2015**

**ETHICS & ANTI-CORRUPTION COMMISSION.....APPLICANT**

**VERSUS**

**OREGONIA SUPPLIES SERVICES.....1<sup>ST</sup> RESPONDENT**

**EQUITY BANK KILIFI.....2<sup>ND</sup> RESPONDENT**

**RULING**

The application dated 9<sup>th</sup> October, 2015 sought the following two main orders: -

1. ....
2. The Honourable Court be pleased to issue a warrant to the Ethics and Anti-Corruption commission or any of its investigators duly appointed by the applicant to investigate, inspect and lift originals of records, application forms, mandate cards, instructions notes, bankers books, statements of accounts and any other relevant documents to investigate account number **1060164259179** in the name of **Oregonia Supplies Services** held at **Equity Bank Limited, Kilifi Branch**.
3. A further order do issue to freeze account numbers **1060164259179** in the name of **Oregonia Supplies Services** held at **Equity Bank Limited, Kilifi Branch** thereby prohibiting the respondents, by themselves or through their agents, servants or assigns from transferring, disposing of, wasting, or in any other way dealing with the said accounts for a period of **six (6)** months.
4. There be no order as to costs.

The application is supported by the affidavit of Anthony Murathi sworn on 9<sup>th</sup> October, 2015. On its part, the 1<sup>st</sup> respondent filed an application dated 9<sup>th</sup> November, 2015 seeking to have the interim orders discharged. The two applications were heard together. The respondent filed a replying affidavit sworn by Rosalyn Karimi Ngari on 9<sup>th</sup> November, 2016.

Miss Olivia Mureithi, counsel for the applicant relied on her application. Counsel maintains that they got information that some money had been deposited in the 1<sup>st</sup> defendant's account. The money was proceeds of unlawful transactions with the Kilifi County Government. The applicant would like to record a statement from the 1<sup>st</sup> respondent. When the court granted the interim orders, the applicant managed to access the 1<sup>st</sup> respondent's account. The account show that Kshs.200,000/= was deposited in Kitui while

Kshs. One Million was deposited over the counter in Kilifi. The applicant's investigations are almost complete. Initial investigations were for Kshs.40 Million and the 1<sup>st</sup> respondent was mentioned as one of the beneficiaries.

Mr. Shujaa, counsel for the 1<sup>st</sup> respondent opposed the application counsel maintains that the applicant sought to be given freezing orders for a period of six (6) months. That period has now lapsed. No evidence has been brought to court to justify the freezing of the account. Initially, the applicant contended that the 1<sup>st</sup> respondent had received Kshs.40 Million from the Kilifi County Government. No such amount was found in the 1<sup>st</sup> respondent's account.

It is further submitted for the 1<sup>st</sup> respondent that the applicant has now shifted its case from Kshs.40 Million to two large deposits of Kshs. One Million and Kshs.200,000/=. Counsel would like to have the interim orders discharged.

The application by the applicant is made pursuant to the provisions of Section 56 of the Anti-corruption and Economic Crimes Act, Chapter 65 Laws of Kenya. Section 56 states as follows: -

**Order preserving suspect property, etc.**

- (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.

The supporting affidavit to the application indicate that the 1<sup>st</sup> respondent is alleged to have received about Kshs.40 Million from the Kilifi County Government being payment for questionable tenders. This court granted the applicant's prayer to freeze the 1<sup>st</sup> respondent's account. The account has now remained frozen for over six (6) months.

The 1<sup>st</sup> respondent filed a replying affidavit and annexed the certificate of registration of the company. The company was registered on 20<sup>th</sup> June, 2014. The respondent has also annexed a receipt for Kshs.405,000/= being the purchase of a Tuk Tuk from Tikama Enterprises Ltd. The Tuk Tuk was bought on 11.05.2015. The applicant has also annexed two deposit slips for Kshs.200,000/= and one Million respectively. The record shows that Kshs.200,000/= was deposited on 16.07.2015 by one Jackline at the Kitui Branch of the 1<sup>st</sup> respondent. Kshs. One million was deposited on 14.9.2015 by one Rose at the Kilifi branch of the 1<sup>st</sup> respondent. These are direct deposits as opposed to electronic transfers from the Kilifi County Government.

The 1<sup>st</sup> respondent's account was frozen on 9.10.2015. The applicant has had ample time to investigate the allegations that the 1<sup>st</sup> respondent received payment for questionable tenders. So far no document has been produced to tie the deposits with any form of payment from the Kilifi County Government.

There is no law stopping a citizen from depositing money in his/her own account. The applicants have not established that the money is proceeds of economic crimes. Under Section 56 (5) the court may discharge the freezing orders if on a balance of probabilities, the property in issue was not acquired as a result of corrupt conduct.

Given the circumstances of this case, I do find that the money deposited in the 1<sup>st</sup> respondent's account cannot be connected to any economic crime. It is not possible for the Kilifi County Government to pay someone in cash by way of depositing money in one's account. The depositors, Rose and Jackline have not been connected to the Kilifi County Government. What remains is suspicion which cannot sustain continued freezing of the 1<sup>st</sup> respondent's accounts.

I do find that continued freezing of the 1<sup>st</sup> respondent's account would be tantamount to violating its right to acquire and own property under Article 40 of the Constitution. The information given to the applicant relating to the source of funds seems to have been incorrect. Under Section 56 (3), a freezing order shall have effect for a period of six (6) months. This provision has been satisfied and no proof that the money was acquired from economic crimes has been presented to the court.

In the end, I do find that the applicant's application dated 9.10.2015 has been fully satisfied and the orders granted at ex-parte stage have lasted their full lifespan. There is no need to extend the orders. The 1<sup>st</sup> respondent's application dated 9.11.2015 is hereby granted in terms of prayer one (1). The interim orders issued on 9.10.2015 are hereby discharged. Each party shall bare its own costs.

**Dated and delivered in Malindi this 19<sup>th</sup> day of May, 2016.**

**S.J. CHITEMBWE**

**JUDGE**