



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**  
**CRIMINAL REVISION NUMBER 218 OF 2015**

**BETTY NJOKI MUREITHI**

**T/S BLUE STAR ENTERPRISES.....APPLICANT**

**VERSUS**

**THE INSPECTOR GENERAL.....1<sup>ST</sup> RESPONDENT**

**THE HON. DIRECTOR OF PUBLIC**

**PROSECUTIONS.....2<sup>ND</sup> RESPONDENT**

**RULING**

Betty Njoki Mureithi, herein the Applicant, by way of Notice of Motion filed 28<sup>th</sup> October 2015 prayed for the following orders:

- 1. That this Honourable Court be pleased to call and examine the records in Kiambu Chief Magistrate Misc. Criminal Case No. 328 of 2015 with a view at determining the legality, correctness and/or otherwise propriety of the order issued on 29<sup>th</sup> September 2015.**
- 2. That this Honourable Court be please to issue orders vacating and/or discharging the said order issued in Misc. Criminal Case No. 328 of 2015 at the Kiambu Chief Magistrate's court.**
- 3. That the Honourable Court be further please to make orders to free the account number [particulars withheld] held by the Applicant with M/S Paramount bank Limited for the time being frozen by the 1<sup>st</sup> Respondent, The Inspector General.**
- 4. That the Respondents be prohibited from taking any action intended to interfere and/or block the management and operation of account number [particulars withheld] held with M/S Paramount Bank Limited by the Applicant.**

The Application was supported by an affidavit sworn by the Applicant.

A Relying Affidavit was filed on 5<sup>th</sup> November 2015 deponed by IP Stella Chepchirchir in opposing the application. It had annexed various documents, namely; letter from Criminal Investigation Department *vis a vis* Banking Fraud Investigations Unit.

The application came up for hearing and this court granted all the Applicant's prayers on 12<sup>th</sup> November, 2015 after the investigation officer informed the court that she did not object to the orders being lifted.

Mr. Kemo for the Respondents, thereafter filed a Notice of Motion to vary the orders granted on 18<sup>th</sup> November, 2015 before Lesiit J. which was supported by an affidavit he swore. He averred in it that subsequent to the events of 12<sup>th</sup> November, 2015 it came to the Respondent's attention that the account was under investigation by the Ethics and Anti-Corruption Commission, herein EACC, involving payments made by the National Youth Service(NYS) to it. Further that the prosecuting counsel had acted on irregular directions from the police. This was since the police file pertaining to the investigation reached the office of the Director of Public Prosecutions (DPP) on 13<sup>th</sup> November, 2015, the day after lifting of the orders. He therefore prayed, in the interest of justice, that the orders lifting the freezing of the Applicant's bank account be reviewed and stayed pending finalization of the investigations by the EACC and directions from the DPP. The court granted the stay sought and the file was again placed before this court for hearing interpartes which forms the crux of this ruling.

This court granted the Respondent's application and set aside its order issued on 12<sup>th</sup> November, 2015 and effectively froze the account pending completion of investigations by the EACC, much to the Applicant's chagrin.

This court was informed on 17<sup>th</sup> February, 2016 that the following were the only matters pending in the EACC investigation:

1. Receipt of a valuation report by the Ministry of Transport and Infrastructure to ascertain if the cost of the equipment was inflated.
2. Recording of statements from five key NYS and Ministry of Devolution and planning officials.
3. Compilation of the case file.

The court granted them leave and consequently on 9<sup>th</sup> March, 2016 when Mr. Aschimosi holding brief for Mr. Kemo informed the court that a few of the matters had yet to be concluded. Court granted leave and on 9<sup>th</sup> March, 2016 Mr. Kemo appeared before this court and asked for an adjournment to allow for the compilation of the case file that would subsequently be forwarded to the office of the DPP. On 23<sup>rd</sup> May 2016 he informed this court that EACC would forward the file by 27<sup>th</sup> of the same month. The matter was mentioned on 31<sup>st</sup> May, 2016 and the Applicant's advocate, Mr. Wandugi, informed the court that they had been served with suit papers in High Court Civil Case Number 135 of 2016 and that in the suit, interlocutory orders had been granted in Misc. Civil Application 517 of 2015. Thereafter nothing appears to have happened with the file and the Respondents seemed to be getting to a dead end as no information on the compilation of the file by EACC was given. This prompted the court to grant a last adjournment to the Respondents.

But come the 15<sup>th</sup> August, 2016 when the application was slated for hearing, Mr. Kemo once again asked for adjournment. The application was disallowed. The court noted that more than sufficient time had been granted to them to complete investigations and it was no longer in the interest of justice to further delay the hearing of the pending application. I did note that EACC as at that time appeared no longer interested in pursuing investigations and were holding the Applicant at ransom with incessant intimations that they were still conducting investigations. In the ruling, I gave my considered convictions as to why I felt EACC was derailing the course of justice. The application was argued by oral submissions.

Mr. Kemo, who was applying to this court to revise its orders of 12<sup>th</sup> November, 2015, submitted that the EACC was still carrying out investigations on the account and that the only reason this court had initially granted the orders to unfreeze the account was due to the fact that the then prosecuting counsel had been given irregular instructions by the police. He prayed for the account to be frozen as allowing the orders of this court to unfreeze it would mean that the public funds in contention would go to waste.

Mr. Wandugi, in response, began by submitting that the application was incompetent in law since this court could not review its order and that the Applicant was better served by an appeal. He submitted that the application was brought under Sections 118, 121 and 346 of the Criminal Procedure Code and that Section 346 deals with defective warrants and could not be applied to the present case. He continued and submitted that Sections 118 and 121 touched on investigations and that the Respondents were better served by an appeal. He concluded by stating that there was no provision that granted the court the power to vary its own orders.

On stay of this court's orders of 12<sup>th</sup> November, 2015, he submitted that the EACC had been granted 10 months to carry out its investigations. Further that in the affidavit supporting the application they had indicated that the investigations were complete. In addition, he submitted that this court should note that EACC filed Misc. Civil Application 517 of 2015 and obtained orders for six months from 19<sup>th</sup> November, 2016. They had also filed a substantive suit HCCC 135 of 2016 which was transferred to the Anti-Corruption Court and became number 7 of 2016. The court was urged to note that Banking Fraud Investigation Unit had already completed their investigations and that this matter was being brought to frustrate the Applicant. He prayed that the court declines to grant the orders sought and reinstates the previous orders opening the Applicant's account.

I have considered the respective rival submissions by the counsel. I have also endeavoured to give a background of this matter. The first point of contention was that the application was brought under the wrong provisions of the law namely, Sections 118, 121 and 346 of the Criminal Procedure Code. Section 118 deals with power to issue search warrants whilst Section 121 provides for detention of the seized property. These are provisions invoked by a party when seeking orders to access a building, a ship, aircraft, vehicle, place, box or receptacle (to be named) for purposes of seizing anything in any of those premises where it is believed that the owner has committed an offence and investigations into that offence require the seizing of the thing(s) in the premises. Under Section 121, once a thing is seized under Section 118, the property seized may be detained for purposes of investigations. Those are the provisions that ordinarily Police Officers who are investigating bank accounts that require the money in those accounts be seized will invoke, and correctly so. Therefore, the initial freezing of the Applicant's account was in order.

The Applicant did however come to this court under revisionary powers of the High Court. Suffice it to say, the application was not heard *inter partes* as her account was unfrozen on grounds that the Respondents had information that investigations had been completed and had found the Applicant clean. But the Applicant quickly moved to set aside those orders. Section 346 on the other hand provides for amendments of errors and omissions in orders and warrants issued by a court. I do then agree with counsel for the Applicant, Mr. Wandugi that none of the provisions accorded the Respondents the right to come to court to set aside the orders unfreezing the Applicant's account. However, Article 159 of the Constitution provides that justice should not be denied on account of technicalities. This is a case in which technicalities had to be waived as borne out in the various rulings on record that precipitated the granting of adjournment to the Respondents.

In my ruling of 17<sup>th</sup> November, 2015, I gave concise considerations why the court thought that it was not in the interest of justice to unfreeze the Applicant's account. While I do not wish to belabor repeating myself it was in public domain of the scandalous financial dealings in the Ministry of Devolution, Department of National Youth Service. The court would not have turned a blind eye to the fact that thorough investigations required to be carried out into this scandal. And of course, the monies that were in the Applicants account touched on a tender given by NYS. In as much as the Applicant claimed innocence, national interests were paramount. It is for that reason that the court gave sufficient time to the EACC to thoroughly conduct their investigations.

This court has done enough to accord EACC sufficient time to complete investigations. The record will bear me right that over time, they appeared disinterested in the investigations. The excuses they brought to court as time dwindled were not only flimsy but sometimes laughable prompting no further indulgence to them. That culminated into my ruling of 15<sup>th</sup> August, 2016 in which I declined to further accord EACC more time to conduct investigations. And as I noted in that ruling, justice must be balanced for all parties

in a suit. It is now the time that the Applicant must carry the day on account of indolence on the part of EACC. In that respect, this court cannot any further continue to freeze the Applicant's account.

It was brought to the attention of the Court as earlier noted that the EACC obtained an interlocutory order freezing the Applicant's account in HCCC 135 of 2016. My take is that this case must be completely divorced from the pending civil matter as either court is independent of the other. The orders that I make herein are informed by the background and history of this matter exclusively. Probably the proceedings will aid the Applicant in the civil suit in whatever manner.

In the result, I find the Respondent's application dated 18<sup>th</sup> November, 2015 and amended on 3<sup>rd</sup> December, 2015 unmeritorious and I dismiss it accordingly. The result is that I reinstate my orders issued on 12<sup>th</sup> November, 2015 which were vacated on 18<sup>th</sup> November, 2015. In effect, the Applicants bank account No. [particulars withheld] at Paramount Bank is unfrozen. It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 29<sup>TH</sup> SEPTEMBER, 2016.**

**G.W. NGENYE-MACHARIA**

**JUDGE**

**In the presence of:**

- 1. Karoki holding brief for Wandugi for the Applicant.*
- 2. M/s Nyauncho holding brief for Kemo for the Respondent.*