



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. CIVIL APPLICATION NO.178 OF 2014

ETHICS AND ANTI-CORRUPTION COMMISSION APPLICANT

VERSUS

JOHNCELE INSURANCE BROKERS LTD.....RESPONDENT

R U L I N G

1. On the 18th February 2015 this court made an order freezing a sum of Kshs.30 million in the applicant's account No.[*particulars withheld*] at Kenya Commercial Bank Kisumu Branch to allow the applicant undertake investigation against the respondent in respect to an insurance cover it is alleged it had offered. From the record it appears that the respondent was not satisfied or comfortable with the said decision and has since filed a notice of appeal, which copy is on record.

2. The applicant has subsequently filed this notice of motion dated 20/2/15 in which it seeks to extend the prohibitory orders by another 6 months pursuant to the provisions of Section 56(3) of the Anti-Corruption and Economics Crimes Act (ACECA). The application is supported by the sworn affidavit of **Wycliffe Sirengo** an investigator with the applicant.

3. The Substantive reasons advanced by the applicant are that due to the nature and complexity of this matter they have been unable to complete the investigations especially the recording of statements from various witnesses.

4. As naturally expected the respondent has vehemently opposed this application. The replying affidavit of **Kennedy Ogutu** say as much and in particular that the reasons disclosed in the affidavit of Mr. Sirengo are not sufficient to warrant such extension. That the same are generalities and not specific enough. In short there was no sufficient evidence to suggest that he was unable to attend to such investigation within the 6 months period it has had. The delay of the investigation has prejudiced his constitutional rights and in breach of Section 52-60 of the Public Procurement and Disposal Act.

5. I have perused the application together with the sworn affidavits and the written submissions. The substantive issue is whether there is plausible reason to extend time to the applicant so as to undertake the investigation. Section 56 of the ACECA provides as follows:

“56. Order preserving suspect property:

1) **On an ex-parte application by the Commission the High Court may make an order prohibiting the transfer or disposal of or allow 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 made under this Section shall have effect for six months and may be extended by the court on the application of the commission.”

6. My understanding of the above quotation is that it is the commission to satisfy the court on the necessity to extend the order for another period. There ought to be plausible reasons to permit extension. In short it is the discretion of the court to exercise it if it deems fit. That right is clearly submitted by the respondent ought to be exercised judicially and within the confines of the constitution and other relevant laws. It is noted that the respondent is a mere suspect and he has every right to be presumed innocent till proven guilty.

7. For the foregoing reasons it would not be fair to dwell on the merits and demerits of the investigation being carried out. However it is prudent that the respondents economic rights are not sabotage by the applicant's statutory right to investigate. Every exercise ought to come to an end. The orders issued on 28/5/14 and later varied on 18/2/15 cannot benefit the applicant forever.

8. Effectively the applicant has been enjoying the benefit of the orders for almost 9 months. As much as this court varied the order of 18.2.15, the question regarding the sum of Kshs.30 million now lying in the bank ought to be determined expeditiously. I do agree that the investigation could be complex, but then it behoves the commission who are alleging to prove their case.

9. In the premise and taking into consideration the circumstances herein and the fact that the extension prayed by the appellant is discretionary and taking cognisance of the respondent's constitutional liberties and rights as well as the need to enjoy its economic rights I do order as follows:

1) the application dated 20/2/15 is allowed only to the extent the applicant is hereby granted 3 months (90 days) to conduct and conclude their investigation from the date of this ruling

2) Costs in the cause.

Dated, delivered at Kisumu this 14th day of May 2015

H. K. CHEMITEI

J U D G E

In the presence of :

.....counsel for the applicant

.....counsel for respondent