



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MISC. CRIMINAL APPL. NO.305 OF 2015
THE AFRICAN PRIDE LIMITED.....APPLICANT
VERSUS
REPUBLIC.....RESPONDENT
RULING

I have heard the respective submissions. I have also had an opportunity of perusing the Lower Court file on which the order of freezing the applicant's account was granted. The learned Magistrate was moved by way of a Notice of Motion dated 19/08/2015 and was supported by the affidavit of PC Eric Wekesa, a Police Officer who is currently investigating the matter.

Under prayer (2) of the Notice of Motion, the DCI Headquarters prayed to have access to the applicant's subject account particularly;

- *Account opening documents*
- *Bank statements from 1.6.2015 to 21.08.2015*
- *Transfer of funds documents, outward and inward*
- *Freezing of the subject account for purposes of investigations.*

The gist of the supporting affidavit to the application was that the police had information that the applicant was involved in money laundering. This submission has been reiterated today by learned State Counsel Mr. Mureithi for the Respondent.

That being the case, the applicant before the Magistrates' Court (*Nairobi Misc. Criminal Application No. 1802 of 2015*) ought to have demonstrated on the face of it that there existed evidence of money laundering. No annexures in this regard were placed in the Supporting Affidavit. More interestingly, even as at today, no evidence yet of whatsoever nature has been shown to the Court or is annexed to the Replying Affidavit herein to demonstrate, at the very least that any monies from the applicants account has moved from the jurisdiction of this court.

Whereas it is a cardinal principle in the rule of fair justice that a party be accorded an opportunity to canvass its case, in such sensitive matters such as those involving intelligence information, a temporary order may be given ex-parte. However, the party seeking the order must demonstrate existence of the basis for granting the orders. In the present case, no basis was laid for granting the freezing of the

account. It is my view then that the freezing of the account was not only unprocedural but unlawful.

I do also agree with counsel for the applicant that the court ought to be moved under the correct Law. Whereas **Article 159** of the Constitution cushions against giving regard to technicalities, in the present case, the application before the Magistrate was a non-starter in that no evidence /basis was laid before the court to warrant the freezing of the account.

In the premises, I revise the order of the learned trial Magistrate made on 19th of August 2015 to the extent that the applicant's account No. 550-101600-04-6-53 with the African Pride Limited at UBA Kenya Bank Limited be unfrozen forthwith.

However, the police through the investigating Officer shall have access to the aforesaid account for purposes of obtaining account opening documents, account statements and any account fund transfer documents.

I further direct that the Respondent is at liberty to file a fresh application before the Magistrates' court seeking orders for freezing of the applicant's account based on evidence to warrant the granting of the orders.

DATED AND DELIVERED THIS 18TH SEPTEMBER, 2015.

G. W. NGENYE – MACHARIA

JUDGE

In the presence of:

1. Mr. Lusweti and Nabutola for the Applicant
2. Mr. Mureithi for the Respondent