



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS CIVIL APPLICATION NO. 804 OF 2014

IN THE MATTER OF THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT, NO. 3 OF 2003 & THE ETHICS AND ANTI-CORRUPTION COMMISSION ACT, 2011

=AND=

IN THE MATTER OF AN APPLICATION BY THE ETHICS AND ANTI-CORRUPTION COMMISSION FOR AN ORDER UNDER SECTION 56(1) (2) AND (3) OF ANTI-CORRUPTION AND ECONOMIC CRIMES ACT, NO. 3 OF 2003 TO PROHIBIT THE TRANSFER OR DISPOSAL OF OR OTHER DEALINGS WITH THE SUM OF KSH.10,309,639.55 AND KSH.4,181,493.64 HELD IN ACCOUNT NO. 0100002572677 AND ACCOUNT NO. 0100000527003 RESPECTIVELY HELD IN CFC STANBIC BANK LIMITED, HARAMBEE AVENUE BRANCH-NAIROBI, OR ANY OTHER AMOUNT THEREOF IN THE NAME OF JIMMY MUTUKU KIAMBA WHICH PROPERTY IS SUSPECTED TO HAVE BEEN ACQUIRED AS A RESULT OF CORRUPT CONDUCT;

=AND=

IN THE MATTER OF ACCOUNT NOS. 0100002572677 AND 0100000527003 AND THE DOLLAR AND FIXED DEPOSIT ACCOUNTS CFC STANBIC BANK LIMITED, HARAMBEE AVENUE BRANCH-NAIROBI, HELD IN THE NAME OF JIMMY MUTUKU KIAMBA;

=AND=

IN THE MATTER OF AN APPLICANT FOR PRESERVATION OF THE PROPERTIES LISTED IN SCHEDULE 3(a) AND (b) OF THE NOTICE OF MOTION HERETO WHICH PROPERTIES ARE HELD BY THE RESPONDENT, HIS SEVANTS AND/OR AGENTS AND ARE SUSPECTED TO HAVE BEEN ACQUIRED AS A RESULT OF CORRUPT CONDUCT

=BETWEEN=

ETHIC AND ANTI-CORRUPTION COMMISSION.....APPLICANT/RESPONDENT

=VERSUS=

JIMMY MUTUKU KIAMBA.....RESPONDENT/APPLICANT

RULING

1. The subject matter of this ruling is the motion dated 30.07.2015 in which Jimmy Mutuku Kiamba, the

respondent herein is praying for the following orders:

- 1. THAT this application be and is hereby certified urgent and heard ex parte on priority basis in view of its urgent nature and service of the same be dispensed with in the first instance.**
- 2. THAT pending the hearing and determination of this application inter partes, a temporary stay of the ruling of the Honourable Mr. Justice Mbogholi Mshagha delivered in the matter on 25th June 2015 together with all orders emanating there from and all other consequential proceedings and in particular the notice dated 5th May 2015 from applicant/respondent to the respondent/applicant be and is hereby issued.**
- 3. THAT pending the filing, hearing and determination of the applicant's intended appeal in the Court of Appeal, a temporary stay of the ruling of the Honourable Mr. Justice Mbogholi Msagha delivered in this cause on 22nd July 2015 together with all orders emanating therefrom and all other consequential proceedings and in particular the notice from the applicant/respondent to the respondent/applicant dated 5th May 2015 be and is hereby issued.**
- 4. THAT this honourable court do issue any such further and appropriate orders in the circumstances of this matter as it deems fit.**
- 5. THAT the costs of this application be in the cause.**

The motion is supported by the affidavit of the respondent.

2. Ethics and Anti-corruption Commission, the petitioner herein, filed grounds of opposition to respond to the motion. When the motion came up for interpartes hearing on 8/10/2015 this court appreciated the fact that the Respondent/Applicant seeks vide the aforesaid motion to stay the ruling of Hon. Mr. Justice Mbogholi delivered on 22/07/2015. This court consequently issued an order directing the parties to appear before Hon. Mr. Justice Mbogholi to hear and determine the motion. Mr. Kagucia learned counsel for the plaintiff and Mr. Nyachoti learned counsel for the respondent/applicant returned to my court when they found out that Mr. Justice Mbogholi was not sitting on 8/10/2015.

3. The respondent's learned counsel sought for an interim order in terms of prayer 2 of the motion dated 30.7.2015 to be issued pending the interpartes hearing of the motion. Mr. Kagucia, protested that the petitioner had no sufficient time to respond to the oral allegations made by Mr. Nyachoti, hence he was not in a position to properly address the court over those oral allegations. However, this court allowed learned counsels to make oral submissions what orders should be issued at this stage pending the interpartes hearing of the aforesaid motion.

4. Mr. Nyachoti, urged this court to grant prayer 2 of the motion. In essence the respondent sought for a temporary order of stay of the ruling delivered by Justice Mbogholi on 25th June 2015. The learned advocate also orally and passionately informed this court that the petitioner has stationed uniformed police officers to harass the respondent's tenants. He also argued that the uniformed police men were ordering tenants not to pay rent to the respondent's bank accounts because he is under investigation. For this reason Mr. Nyachoti urged this court give protection to the respondent. Mr. Kagucia argued that he was not in a position to respond to the allegations because they were made from the bar and hence he had no knowledge of the same.

5. I have considered the respondent's oral submissions which he anchored to prayer 2 of the motion dated 30th July 2015. At the beginning of this ruling this court clearly stated that the motion should be heard and determined by Justice Mbogholi because the motion seeks to stay his decision but unfortunately he was not sitting on 8/10/2015. That still remains the position of this court. The only issue which I was invited to decide is the oral application by Mr. Nyachoti who complained that the petitioner has stationed uniformed policemen on the Respondents premises to harass his tenants with a view of influencing them not to pay rent to the respondent. The respondent appeared persistent and his advocate was so aggressive

and forceful in his arguments before this court. Though the respondent should have made a formal application to set out such allegations, I appreciate the fact that the matter was before this court on a certificate of urgency hence there was limited time to do a formal application. I also note that due shortage of time the plaintiff's advocate had difficulties in responding to the respondents oral application.

6. However I have no reason to doubt the veracity of the Respondent's allegations. He has come to this court to seek for protection. In the substantive originating motion dated 19.11.2014 the Plaintiff/applicant successfully obtained the following orders against the Respondent.

1) THAT the application be and is hereby certified as urgent.

2) THAT an order be and is hereby issued prohibiting the withdrawal, transfer, disposal of or other dealings howsoever described with the sum of kssh.10,309,639.55 in account No. 0100002572677 or any other credit balance thereof in CFC Stanbic Bank Limited, Harambee Avenue branch, Nairobi held in the name of Jimmy Mutuku Kiamba.

3) THAT an order be and is hereby issued prohibiting the withdrawal, transfer, disposal of or other dealings howsoever described with the sum of kshs.4,181,493.64 in account no. 0100000527003 or any other credit balance thereof in CFC Stanbic Bank Limited, Harambee Avenue branch, Nairobi held in the name of Jimmy Mutuku Kiamba.

4) THAT an order be and is hereby issued prohibiting the withdrawal, transfer, disposal of or other dealings howsoever described with any available assets including any foreign currency accounts, fixed deposit accounts and any other account or service in CFC Stanbic Bank limited held in the name of Jimmy Mutuku Kiama, ID NO. 13311449

5) THAT an order be and is hereby issued prohibiting the withdrawal, transfer, disposal of or other dealing howsoever described with any credit balances in any other bank or financial institution in Kenya held in the name of Jimmy Mutuku Kiamba, ID no. 13311449 which may be identified in the course of the investigations as property acquired as a result of corrupt conduct.

6) THAT Orders 2, 3, 4 and 5 above shall remain in force for six months in the first instance as provided for under Section 56 (3) of the Anti-Corruption and Economic Crimes Act.

7. It is therefore clear from the orders issued that the Plaintiff was not authorised to adopt the methods the Respondent has now complained of to harass the Respondent's tenants. What I got from the Respondent's counsel's oral submissions is that the Plaintiff has now embarked on the process of preventing the respondent's tenants from depositing or paying rent into the respondents accounts.

8. In my humble view it is for the good of both parties that the rental incomes from the attached properties continue following into those accounts pending the hearing and determination of the matter. Consequently the respondent is entitled to the protection of law. The Plaintiff/respondent and its agents are hereby restrained from harassing and or preventing the respondent's tenants from making rental payments as required in terms of their respective agreements they entered with their landlord pending the interpartes hearing of the motion dated 30.7.2015. For the avoidance of doubt, the parties are at liberty to canvass the issues raised in the respondents oral application when the motion comes up for interpartes hearing before Justice Mbogholi. The file to be placed before Justice Mbogholi for further orders and directions.

Dated and delivered in open court this 23rd day of October, 2015.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

.....for the Defendant