



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
MISC. APPLICATION NO. 94 OF 2015
ETHICS & ANTI-CORRUPTION COMMISSION.....PLAINTIFF
VERSUS
1. FAMILY BANK LTD.
2. AMARI GENERAL SUPPLIES
3. SONICO GENERAL SUPPLIER.....DEFENDANTS

RULING

1. This matter was slated to come before court today for hearing of a preliminary objection filed by the 2nd & 3rd Respondent and dated the 8th May 2015.
2. When the file was called out Mr.Lutta who appeared as holding brief for Mr. Mulama applied for adjournment on the basis that Mr.Mulema was bereaved and not able to attend and attend to this matter.
3. In Response to that application Mr.Bii holding brief for Mr.Kagucia for the applicant concede the application for adjournment but requested that the subsisting orders be extended. He reminded the court that the orders were last extended on the 19/9/2015.
4. On his side Mr.Tindi for the 2nd & 3rd Respondent did not oppose the application but pointed out to court that the entire matter has been overtaken by events in that the initial originating summons dated 15/4/2015 sought in the main an order that the two named accounts in the names of the 2nd & 3rd Respondents as held with the 1st Respondent be frozen for a period of six (6) months.
5. That application was before Judge Muya who granted order to last for 14 days as the Respondent were to be served. On the 11/5/2015 having served the matter was placed before Judge Kasanga who on 11/5/2015 granted orders in terms of prayer 2 of the originating motion with a further order that the matter be mentioned before the court on 19/5/2015 for further directions. There are no proceedings of 19/5/2015 but the next time them matter was in court on the 29/9/2015 when Mr.Bii prayed for an adjournment and matter was taken out of the hearing list by consent and the interim orders also granted by consent.
6. My reading and application of the facts of the matter is that the applicant sought and obtained orders to preserve the status of the two accounts for a disclosed period of six(6) months. It has also come to my attention for the submissions by the counsels that the orders of May 2015 were not the first one. Infact in

her ruling of 11/5/2015 Kasango J alluded to earlier orders in the same matter. It is therefore true, having read the file No. HC Misc App. No. 332 of 2014 that earlier order had been granted to the same effect.

7. What I am called upon to determine is whether or not to extend the orders and if the application dated 15/4/2015 has been overtaken by events.

8. I take the view that a party is bound by its pleadings and that in an adversarial system like ours, the court should not enter the arena of conflict by granting to parties more than they seek.

9. The originating motion dated 15/4/2015 is explicit on its terms that the Applicant needed six months to investigate the two accounts without any reservations. The court did grant of the applicant that prayer on the 11/5/2015 once that order was made, in my very humble view, the court became *functus officio* at least as far as the application was concerned, unless a further application was made for extension of the period already granted.

10. To date no application has been made to extend the initial time needed and I am convinced that the court remain *functus officio*. This file deserves no further Judicial time nor action unless the court is appropriately moved.

11. Consequently I am of the view that the orders granted on the 11/5/2015 were due to lapse on the 10/11/2015 and they did so lapse. It matters not that on the 29/9/2015 I was made to make a superfluous order extending the orders that were indeed in force and deserved no extension. However even if I was to extend the order as I did, I could not extend the orders so as to overlap the request of the applicant in the application.

12. I find and hold that this matter as it stands today, on the face of the pleadings, is fully dealt with and this file needs to be closed.

13. It is so ordered.

Dated, signed and delivered at Mombasa this 7th day of December 2015.

In the presence of

Mr.Bii for the Applicant.

Mr.Mutugi for 2nd & 3rd Respondent.

P.J.O.OTIENO

JUDGE