



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. CIVIL APPLICATION NO. 332 OF 2014

IN THE MATTER OF : THE ANTI-CORRUPTION AND ECONOMIC CRIMES

**ACT (CAP 65) and the ETHICS & ANTI CORRUPTION COMMISSION
ACT (Cap 65A) LAWS OF KENYA**

AND

IN THE MATTER OF : AN APPLICATION BY ETHICS & ANTI-CORRUPTION

COMMISSION FOR AN ORDER UNDER SECTION 56 OF THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT [65] AND SECTION 11(1) (J) OF THE ETHICS & ANTI-CORRUPTION COMMISSION ACT [Cap 65A] TO PROHIBIT THE TRANSFER OR DISPOSAL OF OR OTHER DEALINGS (HOWSOEVER DESCRIBED) WITH MTWAPA FAMILY BANK LTD ACCOUNT NUMBERS 094000002104 AND 094000002728

ETHICS & ANTI-CORRUPTION COMMISSION APPLICANT

V E R S U S

FAMILY BANK LIMITED 1ST RESPONDENT

AMARI GENERAL SUPPLIES 2ND RESPONDENT

SONICO GENERAL SUPPLIES 3RD RESPONDENT

JUDGMENT

1. The Originating Summons dated 9th October 2014 is brought by Ethics & Anti-Corruption Commission seeking an order as follows-

“An order do issue to freeze account numbers 094000002104 in the name of Amari General Supplies and 094000002728 in the name of Sonico General Supplies held at Family Bank Ltd Mtwapa Branch thereby prohibiting the Respondents, by themselves or through their agents, servants or assigns from transferring, disposing of, wasting, or in any other way dealing with the said accounts for a period of six (6) months.”

2. The above order is based on the provisions of Section 56 of the Anti-Corruption and Economic Crimes Act, Cap 65. Section 56 (1) (2) (3) (4) and (5) provides-

“56.

1. **On an ex parte application by the Commission, the High Court may make an order prohibiting the transfer or disposal of or other 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 under this Section shall have effect for six months and may be extended by the Court on the application of the Commission.**
4. **A person served with an order under this Section may, within fifteen days after being served, apply to the Court to discharge or vary the order and the court may, after hearing the parties, discharge or vary the order or dismiss the application.**
5. **The court may discharge or vary an order under subsection (4) only if the court is satisfied, on the balance of probabilities, that the property in respect of which the order is discharged or varied was not acquired as a result of corrupt conduct.”**
3. Although as it will be seen above that the application under Section 56 is made ex parte and if the Court finds that the order to transfer or dispose of property acquired corruptly, should be granted, it is then granted for six (6) months; what however occurred in this matter is that the Applicants obtained on 9th October 2014 an order to freeze the subject accounts for only fourteen (14) days and as that order was extended the proprietors of the businesses of 2nd and 3rd Respondents filed an application dated 17th November 2014 seeking to discharge the orders freezing the subject accounts. The Court proceeded to entertain both the Originating Summons and the Respondent’s application.

BACKGROUND

4. It is not denied that Jacob Ngowa Ziro, the proprietor of 3rd Respondent and Absalom Ndori, the proprietor of 2nd Respondent are employees of the Kenya Government working at Shimo-La-Tewa Prison as Prison Guards.
5. The 2nd and 3rd Respondents have been supplying food stuffs and other provisions to that Prison. It is alleged by the Applicant, and it is indeed the basis upon which the Applicant seeks freezing order, that the 2nd and 3rd Respondents have received payments from the Ministry of Interior and Coordination of National Government on pretext that food and other provisions have been supplied to the Prison. Applicant further relies on the evidence that these payments by the Ministry were credited to the accounts the Applicant now seek to freeze. In the affidavit in support of the Originating Summons it is deponed thus-
4. **THAT my preliminary enquiries entailed the collection of documents from Shimo-La-Tewa Prison. (Exhibited at page 1 of the documents marked “KN1” is a photocopy of a letter addressed to Shimo-La-Tewa Prison dated 2.10.2014).**
5. **THAT the documents revealed a series of payments from the Ministry of Interior and Coordination of National Government to the 2nd and 3rd Respondents in their respective account numbers 094000002104 and 094000002728 held at Family Bank Limited, Mtwapa Branch.**
6. **THAT I obtained a warrant to inspect the ex-parte 2nd and 3rd Respondents’ bank accounts**

cited in paragraph 5 hereinabove. (Exhibited at page 2 of the documents marked “KN1” is a photocopy of the Warrant).

7. **THAT on the basis of the said warrant, I collected bank statements from the 1st Respondent for the respective accounts reflecting the suspicious payments. (Exhibited at page 3-20 of the documents marked “KN1” are photocopies of the bank statements).**
8. **THAT I am aware that the directors and shareholders of the 2nd and 3rd Respondent companies are Prison warders/officers employed in Shimo-La-Tewa Prison which in itself suggests a conflict of interest for those public officers.**
9. **THAT I believe that pending the conclusion of Investigations, there is urgent need to preserve the said assets by freezing account numbers 094000002104 and 094000002728 held at Family Bank Limited, Mtwapa Branch thereby prohibiting the transfer or disposal of, or other dealing with the property in question that may render these investigations and this application nugatory.**

10. THAT there are genuine reasons to believe that unless these

orders are granted, the ex-parte Respondents may, by themselves or through their agents, servants or assigns, cause the disposal of these assets.

It is important to note that just before the freezing order was served on 1st Respondent's Bank the 2nd Respondent withdrew Kshs. 3 million.

10. Absalom Ndori and Jacob Ziro both seek the discharge of freezing

order on the grounds that they were genuinely supplying goods to the Prison; that the supplies were made after the 2nd and 3rd Respondent successfully tendered; that the Applicants should have followed the procedure under the Public Procurement and Disposal Act to challenge that award and not seek freezing of their accounts; and that the Applicants had failed to satisfy the provisions of Section 56.

DETERMINATION

11. The Applicant's mandate as stated by Learned Counsel Mr. Kagucia

is to investigate reports of Corruption and Economic Crimes. It is alleged that there is a possibility that the 2nd and 3rd Respondents were involved in Corrupt dealings with the purported supply of goods to Prison. Although the Respondents have alleged that their dealing with the Prison was Legitimate I find that the Applicant need only prove on a balance of probability that the property the subject of the freezing order was as a result of corrupt dealing. I am satisfied after considering the material before me that the Applicant has met the necessary burden of proof. The 2nd and 3rd Respondents have not shown sufficient reason why the freezing order should be discharged. Accordingly I do grant the following orders-

a. **An order is hereby issued to freeze account numbers**

094000002104 in the name of Amari General Supplies and 094000002728 in the name of Sonico General Supplies held at Family Bank Ltd Mtwapa Branch thereby prohibiting the Respondents, by themselves or through their agents, servants or assigns from transferring, disposing of, wasting, or in any other way dealing with the said accounts for a period of six (6) months.

b. **The six (6) months in prayer (a) above shall run from 9th**

October 2014.

c. The Notice of Motion dated 17th November 2014 is hereby dismissed.

d. There shall be no order as to costs.

DATED and DELIVERED at MOMBASA this 18TH day of DECEMBER, 2014.

MARY KASANGO

JUDGE