



**IN THE MATTER OF: AN APPLICATION BY THE KENYA ANTI-CORRUPTION COMMISSION FOR AN ORDER UNDER SECTION 56 OF THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT NO. 3 OF 2003 TO PROHIBIT THE TRANSFER OF OR DISPOSAL OR OTHER**

**DEALINGS (HOWSOEVER DESCRIBED) WITH VARIOUS ACCOUNTS, LAND, HOUSES, VEHICLES AND CASH.**

**AND**

**IN THE MATTER OF : SECTION 56 OF THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT**

**BETWEEN**

**KENYA ANTI-CORRUPTION COMMISSION.....APPLICANT**

**VERSUS**

- 1. JOHN JOEL RIA**
- 2. HARRIET HARRY KAPITE**
- 3. RIA INVESTMENTS**
- 4. IBABO ENTERPRISES**
- 5. CARRIBEAN PUB**
- 6. EVERLYN RITA RIA**
- 7. RAPHEAL JEW A RIA**
- 8. BRIAN NGOLO RIA**
- 9. HAPPINESS NINA W. RIA**
- 10. DONNEX ENTERPRISES**
- 11. DAVIS JUMA CHIGUBE**
- 12. BIJOSE INVESTMENTS**
- 13. FINA BANK**
- 14. NATIONAL BANK**

**15. BARCLAYS BANK**

**16. CFC STANBIC BANK**

**17. BANDARI SACCO**

**18. STANDARD INVESTMENT BANK.....RESPONDENTS**

**RULING**

On 30<sup>th</sup> July 2010 I gave preservatory orders pursuant to an *ex parte* Notice of Motion made by the Applicant dated 30<sup>th</sup> July 2010 invoking the provisions of **Section 56 of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003**. The order prohibited the Respondents from inter alia selling, charging, mortgaging, developing, subdividing, wasting, transferring, or disposal of or other dealings howsoever with properties and accounts listed in prayer 2 of the Motion. The order was to subsist for a period of six months from 30<sup>th</sup> July 2010. On 13<sup>th</sup> August 2010 counsel for the 1-11<sup>th</sup> Respondents made an application under certificate of urgency seeking the following orders:

**2. THAT this Honourable court be pleased to discharge and/or vary the Order made on 30<sup>th</sup> July 2010 upon the Applicants *Ex parte* Application dated 30<sup>th</sup> July 2010.**

**3. THAT the Honourable Court be pleased to discharge and/or vary the preservatory orders issued herein on 30<sup>th</sup> July 2010 in respect of the following properties”**

- a) MN/1/10400
- b) MTWAPA LR NO. 1
- c) HOUSE ON MTWAPA LR NO. 1
- d) KILIFI/NYALANI/1192
- e) KILIFI/NYALANI/1245
- f) KILIFI/NYALANI/766
- g) KILIFI/NYALANI/115
- h) KILIFI/NYALANI/780
- i) MOMBASA/MWEMBELEGEZA/1473
- j) MOMBASA/MWEMBELEGEZA/1472
- k) MOMBASA/MWEMBELEGEZA/301
- l) MOMBASA/MWEMBELEGEZA/300
- m) KAW 301N – TOYOTA SALOON
- n) KAY 495A TOYOTA VX
- o) KAU 553L, NISSAN DOUBLE CABIN, P/UP
- p) KAR 247Y, LAND ROVER

and/or any other properties or vehicles acquired before February 2007 and/or which the Respondents/Applicant is not in any way related to.

**4. THAT the Honourable Court be pleased to issue any further orders, it may deem fit and/or just in the circumstances.**

**5. THAT costs of this application be provided for.**

The grounds appear on the face of the application and nine grounds were listed. The application was supported by the sworn affidavit Joel John Ria. The crux of the application was that the Applicant had no right to interfere with properties acquired by the Applicant before February 2007 since the Applicant was only interested in the period after 2007. The Applicant replied to the application through a replying affidavit sworn by Ignatius Wekesa and filed on 28<sup>th</sup> October 2010. The gist of the reply is that the 1<sup>st</sup> respondent John Joel Joel Ria had declined to cooperate with investigators and that a search at his premises unearthed vital documentation that seemed to suggest that the 1<sup>st</sup> respondent was engaged in economic crimes. That the period in issue was not from February 2007 but dates back to the year 2003 when the Government through the Ministry of Transport started providing funds for purchase of two ferries. That a total of Kshs. 1,805,120,000/ was released to Kenya Ferry services and that only Kshs. 1,288,000,000 was documented as paid out.

It was therefore believed that Kshs. 500 million had been embezzled. That the 1<sup>st</sup> respondent has during his tenure acquired massive unexplained wealth which has become subject of interest to investigators at KACC in line with section 55(2) of the Anti-Corruption and Economic Crimes Act. A supplementary affidavit was filed by the 1<sup>st</sup> respondent on 12<sup>th</sup> November 2010 contesting some of the allegations of Ignatius Wekesa.

Written submissions were filed by both the Applicant and the Respondent. On 3<sup>rd</sup> December 2010 I made an order that ruling shall be delivered on 11<sup>th</sup> March 2011. I regret the delay in delivering the ruling. This was due to factors beyond my control. I have laboured as to whether I should go into the merits of the application taking into account the change in circumstances. Two circumstances are relevant:

- 1) The preservatory order was limited for 6 months from 30<sup>th</sup> July 2010.**
- 2) The Anti-Corruption and Economic Crimes Act, Act no. 3 of 2003 was repealed.**

The above two factors mitigate against ruling on the merits in the following manner. The order had a limited life span and by 1<sup>st</sup> February 2011 it ceased being in force. More fundamental is the question whether it would be prudent to continue the orders for over 24<sup>th</sup> months since they were done. The exercise of the powers under the repealed law also presents a problem. I express no opinion as to whether the section has been retained in the succeeding Act. The lapse of time has been sufficient for the Applicant to have concluded any investigations against the Applicant. The right of the Applicant to prevent and detect economic crime must be balanced with the fundamental rights of the Respondents not to be deprived of any interest in property.

I hold that the Order dated 30<sup>th</sup> July 2010 ceased being in force due to lapse of time. The change in circumstances makes the orders sought under Notice of Motion dated 18<sup>th</sup> August 2010 unnecessary. Accordingly, the Application is disallowed with no orders as to costs.

**DATED AND SIGNED AT NAIROBI ON THIS 17<sup>TH</sup> DAY OF JULY 2012**

**M.K IBRAHIM**  
**JUDGE**

**DATED AND DELIVERED AT MOMBASA ON THIS 21<sup>ST</sup> DAY OF AUGUST 2012**

**J.W. MWERA**  
**JUDGE**

Delivered in the presence of: N/A