



Machira & another v Republic (Through Director of Criminal Investigations) & 2 others; I&M Bank Limited & another (Interested Parties) (Criminal Miscellaneous Application E339 of 2024) [2024] KEHC 11874 (KLR) (Crim) (3 October 2024) (Ruling)

Neutral citation: [2024] KEHC 11874 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL MISCELLANEOUS APPLICATION E339 OF 2024
LN MUTENDE, J
OCTOBER 3, 2024**

BETWEEN

GEOFFREY MACHIRA 1ST APPLICANT

GODMER ENTERPRISES 2ND APPLICANT

AND

REPUBLIC (THROUGH DIRECTOR OF CRIMINAL INVESTIGATIONS) 1ST RESPONDENT

CPL FRANCIS MULINGA 2ND RESPONDENT

OFFICE OF THE DIRECTOR OF PUBLIC PROSECURIONS 3RD RESPONDENT

AND

I&M BANK LIMITED INTERESTED PARTY

EQUITY BANK (K) INTERESTED PARTY

RULING

1. Geoffrey Machira (1st Applicant) and Godmer Enterprises Limited (2nd Applicant), approached the court through a Notice of Motion dated 16th September, 2024 seeking orders as follows:
 - 1, That this Application be certified as urgent and be heard ex-parte, in the first instance.
 2. That Orders of 6th September, 2024 issued in Nairobi Chief Magistrate's Criminal Court Milimani Miscellaneous Criminal Application No. E3231 of 2024 - Republic (Through



Directorate of Criminal Investigations) versus I & M Bank Ltd, Equity Bank (Kenya) Ltd and Cooperative Bank of Kenya be vacated, set aside/lifted, and/or quashed pending the hearing and determination of this Application inter- partes.

3. That the record of proceedings in the Nairobi Chief Magistrate's Criminal Court Milimani Miscellaneous Criminal Application No. E3231 of 2024 Republic (Through Directorate of Criminal Investigations) versus I & M Bank Ltd, Equity Bank (Kenya) Ltd and Cooperative Bank of Kenya be called for and examined by this Honourable Court for the purpose of satisfying itself as to the correctness, legality and or propriety of the Orders issued on 6th September, 2024 and in particular orders for warrants to issue and authority be given to No. 80929 CPL Francis Mulinga, an Investigator attached to the 1st Respondent and demanding that the 1st and 2nd Interested Party avail to him books of bank accounts of the 1st and 2nd Applicants' of Accounts Nos. 00101794XXXXXX, 00101012XXXXXX and 11901802XXXXXX held at Equity Bank (K) Ltd and Account No. 011922015XXXXXX held at I&M Bank Limited for him to have access to, investigate/inspect, obtain information and require him to be supplied with and carry as exhibits;
 - a) Certified copies of account opening documents.
 - b) Account statements for the period between 1st January, 2020 to 1st August, 2024; and
 - c) Any other information in the accounts which can facilitate the Respondents' investigations.
 4. That this Honourable Court be pleased to set aside/quash in entirety the ex-parte proceedings and Orders of 6th September, 2024 issued in Nairobi Chief Magistrate's Criminal Court Milimani Miscellaneous Criminal Application No. E3231 of 2024 Republic (Through Directorate of Criminal Investigations) versus I & M Bank Ltd, Equity Bank (Kenya) Ltd and Cooperative Bank of Kenya, for warrants and authority to No. 80929 CPL Francis Mulinga, an Investigator attached to the 1st Respondent and demanding that the 1st and 2nd Interested Party avail to him books of bank accounts of the 1st and 2nd Applicants of Accounts Nos. 00101794XXXXXX, 00101012XXXXXX and 11901802XXXXXX held at Equity Bank (K) Ltd and Account No. 011922015XXXXXX held at I&M Bank Limited for him to have access to, investigate/inspect, obtain information and require him to be supplied with and carry as exhibits;
 - d) Certified copies of account opening documents
 - e) Account statements for the period between January, 2020 to 1st August, 2024; and,
 - f) Any other information in the accounts which can facilitate the Respondents' investigations.
 5. That in the alternative, that this Honourable Court orders that the 1st and 2nd Respondents' discovery and investigation be limited to documents relating to the 1 and 2nd Applicants' transactions for the period between 18th October, 2019 to 16th March, 2020 for Accounts Nos. 00101794XXXXXX, 00101012XXXXXX and 11901802XXXXXX held at Equity Bank (K) Ltd and Account No. 011922015XXXXXX held at I&M Bank Limited
 6. That the cost of this application be in the cause.
2. The application is premised on grounds that orders were granted by the Chief Magistrate's Court, Milimani on 6th September, 2024 authorizing No. 80929 CPL Francis Mulinga to investigate accounts



- held by the applicants herein at Equity Bank (K) Ltd and I & M Bank Limited so as to obtain information concerning a transaction between them with Daniel Muriithi Waweru involving purchase of an equipment.
3. That the warrant issued has far reaching orders for inspection and seizure of banking records and accounts for a period of four (4) years. That the nature of the matters raised are civil in nature as the Investigating Officer has acknowledged existing Tribunal Proceedings.
 4. That in as much as the applicants are willing to comply with discovery, copies of the transactions should be limited to the applicants' Bank transactions of between 18th October, 2019 to 16th March, 2020.
 5. That the application in the lower court was grounded on speculation and misapprehension which were aimed at supporting a criminal case without any justiciable reasons being disclosed which would result into the applicants' constitutional rights to fair hearing and privacy being violated.
 6. In response thereto the 1st and 3rd respondent through No. 80929 Corporal Francis Mulinga depones that he was investigating allegations of obtaining by false pretence, cheating, stealing motor vehicles and fraud against Daniel Muriithi Waweru T/A Daniels Outlets Limited. The vehicle in question had been purchased by Prosper Sugai and shipped by Daniel Muriithi an agent.
 7. That the investigating team upon visiting the applicant he voluntarily recorded his statement and provided his accounts which were involved in the purchase and refund, but could not recall the exact dates when the transactions were done which necessitated them to apply for orders to get the information required.
 8. At the hearing it was urged by learned Counsel Ms. Wanjiku for the applicants that the order given by the lower court was an omnibus one hence they needed a clear order referring to the three (3) transactions.
 9. In response thereto learned Prosecution Counsel, Mr. Mutua Stated that the Investigating Officers were only interested in transactions involving the motor vehicle information that has been provided hence have no further interest in discovery of the accounts.
 10. Having considered the application, affidavit in support and reply thereto; and; further, having heard sentiments of both counsel; it is evident that orders sought have been overtaken by events.
 11. However, since the applicant is apprehensive, I do order that the 1st, 2nd and 3rd Respondent discovery and investigations thereto be limited to documents relating to the 1st and 2nd applicants' transaction for the period 18th October, 2019 to 16th March, 2020 for account Nos. 0010179XXXX, 0010102XXXX and 11901802XXXX held at Equity Bank (k) Ltd; and, Account No. 011922015XXXX held at I & M Bank Ltd.
 12. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 3RD DAY OF OCTOBER, 2024.

L. N. MUTENDE

JUDGE

