



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION

MISCELLANEOUS APPLICATION NO. 64 OF 2017

ETHICS & ANTI CORRUPTION COMMISSIONAPPLICANT

VERSUS

THOMAS GITAU NJOGU.....1ST RESPONDENT

TERESIA NJERI GITAU2ND RESPONDENT

NJEGIT INVESTMENT LIMITED.....3RD RESPONDENT

TERESIA NJERI GITAU T/A

WANGMUG ENTERPRISES.....4TH RESPONDENT

TERESIA NJERI GITAU T/A

NJEGIT INVESTMENT LIMITED.....5TH RESPONDENT

RULING

1. By a Notice of Motion dated 23rd February, 2018 and brought under Section 56 (3) of the Anti-Corruption and Economic Crimes Acts No. 3 of 2003 (ACECA) and Section 11 (j) Ethics and Anti-Corruption Commission Act (EACCA) (Cap 65A) Laws of Kenya. The applicant sought the following orders;

(3) This Honorable Court be pleased to extend the existing Preservation Order issued on 25.8.2017 for a further six (6) months by prohibiting the respondents jointly and severally, their agents, servants or any other persons from withdrawing, transferring, disposing or in any other way dealing with the funds held in the bank accounts listed below;

i. 0240272120429 held in Equity Bank Kenya Limited, OTC branch in the name of Njegit Investment Limited;

ii. 1180165861994 held in Equity Bank Kenya Limited, Kasarani branch in the name of Wangmug Enterprises;

iii. 0910197000407 held in Equity Bank Kenya Limited, Ngara branch in the name of Njetash Enterprises;

iv. 0240101444652 held in Equity Bank Kenya Limited, Hurlingham branch in the name of Thomas Gitau Njogu;

v. 0120100282619 held in Equity Bank Kenya Limited, Tom Mboya branch in the name of Teresia Njeri Gitau;

vi. 01100092133600 held in Co-operative Bank of Kenya Limited, Co-operative House branch in the name of Thomas Gitau Njogu;

vii. 01100003015200 held in Family Bank Limited, Cargen House branch in the name of Thomas Gitau Njogu;

viii. 014000020914 held in Family Bank Limited, Kariobangi branch in the name of Teresia Njeri Gitau;

2. The application is premised on the grounds listed plus the supporting affidavit. The main ground raised is that the applicant is yet to complete its investigations into the matter at hand. That the applicant is investigating six (6) properties outlined at ground (d) (i) – (vi).

3. The supporting affidavit was sworn by Catherine Ngari on 23rd February, 2018. She averred that the investigations herein involve the embezzlement of public funds from various ministries to the tune of Kshs.37,400,000.00.

The investigations have been stretched to discoveries of some assets as listed in in her affidavit at paragraph 8 (vii) – (xii) and the document marked “CN3”.

4. She has deponed that the applicant has taken various steps during the investigations. This is found at paragraphs 6 – 11. This includes requests to the ministries for documents (CN4 and 5). Their apprehension is that if the preservation orders are not extended, their investigations may be futile.

5. **Mr. Nyoike** in his submission reiterated what had been averred by Catherine Ngari. He submitted that the matter under investigation was complicated and so requested for the extension to be granted. He further stated that the applicants had so far recorded statements from three (3) witnesses.

6. It was his submission that the applicant was in its final stages of analyzing the material in its possession. Counsel said, the issuance of notices under Section 26 ACECA seeking information had already been done.

7. The respondents opposed the application filed a replying affidavit dated 3rd April, 2018 through the 1st respondent (Thomas Gitau Njogu). He has deponed that sometimes in November, 2017 he was informed by his wife (2nd respondent) of her inability to access her bank accounts. He too could not access their joint accounts including his salary account. They learned that this was as a result of a court order. He denied any of them having been issued with a court order.

8. The respondents claim that they were never served with any pleadings or court order freezing any of the affected accounts. He states that the respondents only did letters to various Land Registrars on 26th January, 2018 and there is no explanation for the delay. Further that there was no evidence of potential witnesses having been summoned by the applicant. That there are no investigations which have been carried out in six (6) months.

9. He opposed further extension of the preservation orders as this would deprive them of their right to human dignity, as well as economic and social rights to health care services, sanitation and social security.

10. **M/s Njoroge** for the respondents, in her submissions reiterated what the 1st respondent had deponed in his replying affidavit. She submitted that the applicant had only recorded statements from the 1st and 2nd respondents in this matter.

11. She said the respondents continue to suffer as they have dependents who are minors and are in need of fees. She added that the respondents had been issued with a notice to furnish their list of properties. It was counsel’s view that an extension of the preservation orders by a further six (6) months would weigh heavily on the respondents.

12. In a rejoinder, Mr. Nyoike submitted that on 1st March, 2018 this court allowed limited access to the 1st respondent’s account No. 041000014991, which is the salary account. On that account, it’s only the amount in contention that is inaccessible.

13. He further submitted when notices for listing of the respondents properties were issued, they responded by requesting for more time to file them. The extension was expiring on 16th April, 2018. He therefore asked the court to extend the orders to enable them complete the investigations.

14. The record shows that on 25th August, 2017, this court issued preservation orders in regard to the exparte originating motion dated 25th August, 2017 filed under Section 56 of ACECA and Section 11 (j) of EACCA. The court directed that the orders be served on the respondents as soon as possible.

15. The respondents have said they were never served. That it was sometime in November, 2017 that they realized that their bank accounts were inaccessible. Does it mean between end of August to early November 2017 they were still accessing their said accounts? Or is that between that period, there was no activity on their said accounts?

16. If it is true that they were not aware of the preservation orders and were made aware of them in November 2017, what steps did they take? There is no evidence that they came to court to challenge the said orders. My finding on this claim is that they were served and they were well aware of the existence of the preservation orders.

17. Coming to the present application, the same has been filed under Section 56 (3) ACECA which provides;

“(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.”

18. The issue is whether the applicant has satisfied this court of the need for the extension.

In the grounds in support of the application plus the supporting affidavit, the applicant has explained the areas it has covered in the investigation. It has equally explained what is yet to be covered.

19. The amount involved in the area of investigation is Kshs.37,400,000.00 which is not small money. The writing of the letters (CN 3 and 4) may not have been done earlier because a basis for writing them had to be established. So far the applicant has given the court an overview of what it has done since the issuance of the said orders.

20. The respondents have raised issue with their inability to meet their basic needs. It has been explained and it is noted from the record that on 1st March, 2018 the court granted the respondents limited access to the salary account of the 1st respondent, namely; A/c No. 01400020914 Family Bank Cargen House branch and not 041000014991 as submitted by Mr. Nyoike.

21. Indeed, it is an inconvenience to the respondents but in the interest of justice to all, it is necessary for investigations to be fully carried out and completed. To achieve this, the applicant must also expedite the remaining process as investigations can't be carried on forever.

22. I therefore find that the applicant has satisfied this court of the need to extend the preservative orders to enable it complete its investigations.

The initial orders lapsed on 25th February, 2018. By virtue of the extensions given by the court since then, it is taken that the applicant has continued with its investigations uninterrupted.

23. I therefore allow the application dated 23rd February, 2018 and grant prayer No. 3. The extension is with effect from 25th February, 2018 when the last orders expired.

24. The orders of 1st March, 2018 in respect of the 1st respondent's A/c No. 014000020914 Family Bank Cargen House remain in force.

Orders accordingly.

Dated, signed and delivered in open court at Nairobi this 3rd day of May, 2018.

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HEDWIG I. ONG'UDI

HIGH COURT JUDGE