



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION**  
**MISCELLANEOUS APPLICATION NO. 79 OF 2017**

ETHICS & ANTI CORRUPTION COMMISSION.....APPLICANT

VERSUS

JARED PETER ODOYO OLUOCH KWAGA.....1<sup>ST</sup> RESPONDENT

ERNEST OMONDI OWINO.....2<sup>ND</sup> RESPONDENT

JORAM OPALA OTIENO.....3<sup>RD</sup> RESPONDENT

PATROBA OCHANDA OTIENO.....4<sup>TH</sup> RESPONDENT

JANTO CONSTRUCTION

COMPANY LTD.....5<sup>TH</sup> RESPONDENT/APPLICANT

MAROWA STORES LTD.....6<sup>TH</sup> RESPONDENT

MBINGO ENTERPRISES LTD.....7<sup>TH</sup> RESPONDENT

HELLEN ADHIAMBO ODIE.....8<sup>TH</sup> RESPONDENT

BEATRICE AKINYI OGUTU.....9<sup>TH</sup> RESPONDENT

KENNEDY ODHIAMBO AKELLO.....10<sup>TH</sup> RESPONDENT

KENNEDY ONYANGO ADONGO.....11<sup>TH</sup> RESPONDENT

**RULING**

1 The application herein has been filed by the 5<sup>th</sup> respondent Janto Construction Company Ltd. The said application is dated 5<sup>th</sup> July 2017. The prayer is for the release of Kshs 16,831,152/20 deposited into its account No 1132259770 KCB Branch Migori.

2 The application is supported by the grounds on its face plus the supporting affidavit of Ernest Omondi Owino a director of the 5<sup>th</sup> Respondent. He avers that the said deposit the subject of this application is not related to the matters under investigation. He further states that the 5<sup>th</sup> Respondent has completed the work it was contracted to do and the said payment received is lawful.

3 In his submissions Mr. Obach for the 5<sup>th</sup> Respondent/Applicant contended that the payment was in respect of two contracts by tenders No MC/95/2017-2018 & MC/138/2017-2018 for maintenance of Nyabisawa road and another. That the contracts were issued, performed and certificate issue.

4 He went on to submit that the freezing of the account had made it impossible for the company to meet its obligations.

5 The application was opposed by the Applicant/Respondent relying on the replying affidavit of Simon Chepka. M/s Kibogi for the

Applicant/Respondent submitted that the 5<sup>th</sup> Respondent/Applicant was under investigation and there was reasonable suspicion on the transaction between the 5<sup>th</sup> Respondent and the Migori County Government.

6 She also argued that the preservation orders were about to lapse and recovery suits would soon be filed. The replying affidavit explains the steps taken by the Applicant in respect to this claim. At para 13 the deponent has explained that the 5<sup>th</sup> Respondent/Applicant when given Notice to account for the said money, failed to give a satisfactory explanation to the same. Counsel submitted that the 5<sup>th</sup> Respondent/Applicant still trades and is therefore not under receivership.

7 Having considered the application plus the affidavits and having heard counsel in their submissions, all I have to determine is whether or not to set aside the orders of 21<sup>st</sup> June 2018.

8 In the said orders, this court extended the preservation orders on all the assets in this Originating Motion by four (4) months. The four (4) months lapse on 28<sup>th</sup> October 2018.

9 The Applicant/Respondent has vide the replying affidavit given details of the amounts of money paid into the 5<sup>th</sup> Respondents/Applicant's account plus, what has been and what has not been accounted for. I would not want to get into this at this point since it is evidence gathered during investigation.

10 The Applicant/respondent's main submission is that the 5<sup>th</sup> Respondent/Applicant is under investigation and has failed to offer a satisfactory explanation for the deposits it received from the Migori County government.

11 Owing to the fact that the Orders of 21<sup>st</sup> June 2018 gave the Applicant/Respondent more time to finalize its investigations against all the Respondents, the Applicant herein included, I find it unreasonable to isolate its case and order for release of the stated amount.

12 I have also considered the fact that the preservation Orders are lapsing in three weeks' time. This application is like a review of the said Orders and I find no reason to make me interfere with the current status as nothing new has been presented to this court. The application has no merits and is dismissed.

Orders accordingly.

**Delivered, signed and dated this 9<sup>th</sup> day of October 2018 in open court at Nairobi.**

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**HEDWIG I. ONG'UDI**

**JUDGE**