



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT BUNGOMA.**

**MISC. APPLICATION NO. 3 OF 2017.**

**IN THE MATTER OF AN APPLICATION BY PAUL MAINA MUKUNDI FOR LEAVE TO APPLY FOR ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS**

**AND.**

**IN TH MATTER OF AGENCY NOTICE DATED 3<sup>RD</sup> FEBRUARY 2017 WHICH WAS ISSUED BY THE KENYA REVENUE AUTHORITY.**

**BETWEEN.**

**REPUBLIC.....APPLICANT**

**VERSUS.**

**KENYA REVENUE AUTHORITY.....1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**EXPARTE**

**PAUL MAINA MUKUNDI T/A MAMU AGENCIES.....APPLICANT**

**RULING**

The exparte applicants' application dated 7.6.2018 seeks an order of this court to unfreeze the exparte applicants' account at Co-operative Bank and the funds deposited be made available to the exparte applicant. The main ground of this application is that the court by order dated 19.5.2017 directed the exparte applicant to deposit a guarantee within 30 days as security but the exparte applicant was not able to do so as the process of obtaining the Bank guarantee which involved the processing of a loan facility took longer than anticipated. Exparte applicant has now obtained the Bank guarantee requested issued by the Co-operative Bank dated 7.5.2018 in favour of the 1<sup>st</sup> Respondent.

The Exparte applicant in Supporting Affidavit explained that upon being granted an order to deposit sufficient Bank guarantee within 30 days, he applied for a loan which was later granted. The Bank then by error issued guarantee dated 8.9.2017 in favour of the High Court Civil Registry by the Co-operative Bank Bungoma (Annexure PMM3). This error had to be corrected and a fresh Guarantee issued on 7.8.2017 now properly issued in favour of Kenya Revenue Authority (Annexure PMM 4). The Exparte applicant now prays that the order freezing his account be issued as sufficient Bank guarantee has been executed in favour of the 1<sup>st</sup> Respondent.

Mr. Ochieng for the 1<sup>st</sup> Respondent opposes the application stating in his grounds of opposition that the exparte applicant was granted leave to file Judicial review application within 30 days on 19.5.2018 and furnish the 1<sup>st</sup> Respondent Bank guarantee to secure payment within 30 days; that the orders lapsed on 18.6.2017 and therefore the Judicial Review application abated and that this application has been triggered by the enforcement measures taken by the 1<sup>st</sup> Respondent, and finally that the exparte applicant is guilty of inordinate delay which is not excusable.

I have considered the application and the grounds of opposition. It is not in dispute that this court Aroni – J granted the exparte applicant to apply for an order of Certiorari to remove to the Court and quash the agency Notice by the 1<sup>st</sup> Respondent dated 3.2.2017, and also an order for Prohibition in respect of any further agency Notice. These prayers did not have time frames.

The court also granted that the leave to operate as stay of the agency Notice on the condition that the Exparte applicant avail to the 1<sup>st</sup> Respondent an acceptable security in terms of Bank Guarantee for the sum of tax liability of Kshs.12,897,441/= within 30 days. In default the prayer (3) order of prohibition and (4) stay of the agency Notice would lapse.

The Exparte applicant readily admits that he did not comply with the 30 days limit. He however explains the delay thus;

*(1) That he was unable to obtain the Bank guarantee immediately as it required cash which he did not have. Due to this he had to apply for a loan facility that took time to process.*

*(2) When he finally obtained the loan and obtained the guarantee in September 2017 the Bank issued it in favour of High Court Civil Registry – Bungoma by error.*

*(3) The process of rectifying the error by the bank was commenced and on 7<sup>th</sup> May 2018 the Bank issued the Bank Guarantee in favour of the 1<sup>st</sup> Respondent.*

The explanation for the delay in compliance with the timelines mainly because of the obtaining loan facility, error in issuance of the Bank guarantee are in my view plausible and reasonable. This application was brought to court on 7.6.2018; directions issued on 14.6.2018 parties certified compliance on 5.7.2018 and ruling was set for 2.10.2018 and rescheduled to 8.10.2018. On perusal of the Bank guarantee issued, the same expired on 8.9.2018 at 3 p.m. when this matter was pending for ruling, for which I cannot fault the exparte applicant. In view of these reasons above I order as follows;

*1. The exparte applicant to file a renewed Bank Guarantee in favour of the applicant within 30 days.*

*2. Upon such furnishing of the Bank guarantee for the tax liability in favour of 1<sup>st</sup> Respondent Kenya Revenue Authority the Exparte Applicants Bank account to be unfrozen.*

*3. The exparte applicant to file substantive application within 30 days.*

*4. The substantive application be heard and finalized within 6 months from todays date.*

**Dated and Signed at Bungoma this 8<sup>th</sup> day of October, 2018.**

**S.N. RIECHI**

**JUDGE**