



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION**

**ACEC MISC NO. 51 OF 2018**

**IN THE MATTER OF AN APPLICATION FOR REVISION OF THE ORDER  
OF THE NAIROBI CHIEF MAGISTRATE'S COURT IN MISCELLANEOUS  
CRIMINAL APPLICATION NO 3966 OF 2018 MADE ON 22<sup>ND</sup> OCTOBR 2018  
HASAN MOHAMED.....APPLICANT**

**VS**

**ETHICS AND ANTI CORRUPTION COMMISSION.....1<sup>ST</sup> RESPONDENT  
CHIEF MAGISTRATE'S COURT AT MILIMANI.....2<sup>ND</sup> RESPONDENT**

**DIRECTION**

1 The Applicant herein has filed an application under sections 362, 364, and 365 Criminal Procedure Code and Article 165(6) of the Constitution asking this court to call for the court record in Nairobi Chief Magistrate's Misc. Criminal Application no. 3966 of 2018 for examination.

2 He states that the said court on 22<sup>nd</sup> October 2018 issued orders for search warrants against him. His concern is that there wasn't sufficient information placed before the said court to enable it grant the said prayer.

3 He therefore requests this court to set aside the said orders.

4 I have called for the said record and examined it. It contains a Notice of Motion filed under section 118 Criminal Procedure Code and sections 23 and 29 of the Anti Corruption and Economic Crimes Act. (ACECA). It is supported by grounds on its face plus a supporting affidavit of James Kariuki an investigator with EACC.

5 The application was heard ex parte and orders granted on 22<sup>nd</sup> October 2018 allowing the 1<sup>st</sup> Respondent (EACC) to investigate the Applicant herein.

6 First and foremost there was nothing wrong for the 1<sup>st</sup> respondent to be heard ex parte by the trial court as the law provides for it. Section 118 CPC provides:

**“Where it is proved on oath to a court or a magistrate that anything upon, with or in respect of which an offence has been committed, or anything which is necessary for the conduct of an investigation into an offence, is, or is reasonably suspected to be, in any place, building, ship, aircraft, vehicle, box or receptacle, the court or a magistrate may by written warrant (called a search warrant) authorize a police officer or a person named in the search warrant to search the place, building, ship, aircraft, vehicle, box or receptacle (which shall be named or described in the warrant) for that thing and, if the thing be found, to seize it and take it before a court having jurisdiction to be dealt with according to law.”**

Section 118A CPC provides

**“An application for a search warrant under section 118 shall be made ex-parte to a magistrate”**

7 The Applicant is challenging the exparte order and wants this court to find that the same should not have been issued by the trial court.

Over and over again this court has advised that the exparte orders issued for search warrants should not be open ended. They should not last as long as the investigator wants. There has to be a procedure where the court is given an account on how the search has progressed.

8 Owing to the many complaints arising from the exparte issuance of search warrants by the Magistrates courts under section 118 and section 121(1) CPC and for proper management of the process, as a Division, we have decided to issue the following guidelines.

(i) Upon issuance of the orders under section 118 & 118 A of the Criminal Procedure Code the Magistrate must state the duration within which the order shall remain in force.

(ii) The duration shall not exceed **14** days.

(iii) The court shall give a return to court date soon after the **14** days for the following purpose.

(a) For the Investigator to appraise the court on what he/she has done.

(b) For the affected party to raise any issues it may have.

(c) The court could extend the search warrant by a maximum of **7** days if satisfied of the need to do so.

(iv) The affected party must be served within **48** hours of the issuance of search warrants.

9 I am confident that the above guidelines will assist all parties involved in this delicate issue.

10 This direction should be circulated to all Magistrates courts to take note when handling any applications under section 118 and section 121(1) CPC in respect to Anti corruption and Economic Crimes only.

11 The warrants complained of herein were issued on 22<sup>nd</sup> October 2018 which is about 17 days ago. I therefore direct that the parties appear before the trial court on 12<sup>th</sup> November 2018 for the Applicant herein to raise his complaints there. The prayer for Review/Revision is therefore declined.

Orders accordingly.

**Dated, signed this 8<sup>th</sup> day of November 2018 at Nairobi**

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**HEDWIG I. ONG’UDI**

**JUDGE**