



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 68 OF 2018

ROSE WAMBUI KAMAU.....PETITIONER

VERSUS

DIRECTORATE OF CRIMINAL INVESTIGATIONS....1ST RESPONDENT

INSPECTOR GENERAL OF POLICE.....2ND RESPONDENT

CHIEF MAGISTRATE NAIROBI LAW COURTS.....3RD RESPONDENT

MARY MUTHONI MURIITHI.....4TH RESPONDENT

RULING

1. In the application dated 21st February 2018, which application has been brought under Articles 31 (a) (4), 47(2) and 50(1) of the Constitution, the applicant seeks orders that:

1. Spent

2. That pending hearing and determination of this application there be conservatory orders of prohibition directed to the respondents, either by themselves, agents and or associates from investigating or further investigating, inspecting or further inspecting and or lifting or further lifting copies of account opening documents, statements, cheques, deposit slips, telegraphic money transfers, bankers books and or any other information in respect to account No. [.....]in Family Bank Limited and account No. [.....] in U&1 Microfinance Bank held in the name of the petitioner Rose Wambui Kamau or any other account held by the petitioner.

3. That pending hearing and determination of this suit there be conservatory order of prohibition directed to the respondents, either by themselves, agents and or associates from investigating or further investigating, inspecting or further inspecting and or lifting or further lifting copies of account opening documents, statements, cheques, deposit slips, telegraphic money transfers, bankers books and or any other information in respect to account No. [.....] in Family Bank Limited and account No. [.....] in U&1 Microfinance Bank held in the name of the petitioner Rose Wambui Kamau or any other account held by the petitioner.

4. That costs of this application be borne by the respondents.

2. The application is premised on the grounds that on 15th February 2018 the petitioner/applicant being the holder of account No. [.....]in Family Bank Limited and account No. [.....]in U&1 Microfinance Bank, received communication from the aforementioned banks that they had been served with court orders dated 13th February 2018 from Nairobi chief Magistrates Court requiring the said banks to allow access to information regarding the said accounts in respect to an alleged investigation into an offence of theft.

3. The applicant’s case is that one **Mary Muthoni Muriithi** made a false and malicious report to an officer No. 63176 Cpl Joel Kiplagat of the Banking Fraud Investigations Unit alleging she had deposited money into the applicants said bank accounts which report prompted the said officer to rush to the Magistrates Court to rush to the magistrates court for orders to gain access to her bank accounts without carrying out any proper investigations thereby infringing on the applicants right to privacy and fair administrative action.

4. The applicant contends that the alleged investigations into her bank accounts was without basis and in contravention of the provisions of

articles 31, 47(1), 47(2) and 50(1) of the Constitution as the police officer and the 3rd respondent did not give her an opportunity to be heard.

5. The application was further supported by the applicant's affidavit sworn on 21st February 2018 wherein she repeats the grounds cited on the application and attaches copies of the Magistrates documents as annexure marked "RWK-1". She further avers that **Mary Muthoni Muriithi** made the report to the police without any supporting evidence and the police misled the court for warrants to investigate he accounts without any reasonable grounds and without getting her side of the story.

6. The petition and the application were served upon all the respondents who did not enter any appearance, file a response or attend court. Furthermore the respondents did not attend on the hearing date despite proper service.

7. I have considered the application dated 21st February 2018 together with the supporting affidavit and annexures. I am satisfied that the applicant has made out a prima facie case to warrant the granting of the conservatory orders sought pending the hearing and determination of the petition.

8. Consequently I allow the application as prayed and order that the costs of the application shall abide the outcome of the petition.

Dated, signed and delivered in open court at Nairobi this 20th day of November 2018.

W. A. OKWANY

JUDGE

In the presence:-

In the absence of the parties

Court Assistant- Kombo