

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPEAL NO. 155 OF 2013

(An appeal arising out of the conviction and sentence of Hon. D.N. Mulekyo (Mrs.) – Ag. CM delivered on 28th August 2013 in Nairobi Anti-Corruption Case No.2 of 2010)

KOCHAR VISHAL.....1ST APPLICANT

**VULCAN LAB EQUIPMENT LIMITED.....2ND
APPLICANT**

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicants applied to have the order freezing their Account No.0402703902 at Equatorial Commercial Bank formerly Southern Credit Bank to be unfrozen. This court, on appeal, exonerated the Applicants from any criminal liability from the charges that were brought against them. They were ordered to refund the sum of Kshs.70 million together with the accrued interest. This order was given by the court on 4th November 2015. However, it later emerged that the sum had already been refunded to the government on 1st October 2013. In the circumstances therefore, the order made by this court that the Applicants refund the money together with the accrued interest was in fact made without taking into consideration that the money had already been refunded at the time the court delivered the judgment. The Applicants have annexed a copy of the Electronic Money Transfer in the affidavit in support of the application as proof of the said refund. Mrs. Murungi submitted on behalf of the State that they should be given more time to confirm if the money was indeed refunded as claimed by the Applicants. From the application, it was evident that the Office of Director of Public Prosecution was aware of the information as far back as 18th November 2015. If the Office was diligent enough, the confirmation would have been obtained by now. This court sees no impediment in granting the Applicants' application to have the frozen account unfrozen. In the premises therefore, the Applicants' application dated 24th February 2016 is allowed in terms of Prayer 2 thereof.

DATED AT NAIROBI THIS 9TH DAY OF MARCH 2016

L. KIMARU

JUDGE

