



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**CIVIL CASE NO. 33 OF 2016**

**ETHICS & ANTI CORRUPTION COMMISSION.....PLAINTIFF**

**VERSUS**

**JIMMY MUTUKU KIAMBA ..... 1<sup>ST</sup> DEFENDANT**

**TRACY MBINYA MUSAU..... 2<sup>ND</sup> DEFENDANT**

**JIMBISE LIMITED .....3<sup>RD</sup> DEFENDANT**

**MUTHAIGA GREEN ACRES LIMITED.....4<sup>TH</sup> DEFENDANT**

**AND**

**EQUITY BANK LIMITED.....INTERESTED PARY**

**RULING**

1. Mr. Nyatochi, learned advocate for the 1<sup>st</sup> respondent applied to this court to vary and or set aside by way of review the orders of lady Justice Njuguna issued on 24.03.2016 so that it does not affect in any way the orders of Mr. Justice Ochieng issued on 8.2.2016 vide **Nairobi H.C. Misc. App. No. 285 of 2015 Kenya Revenue Authority =vs= Jimmy Mutuku Kiamba**
2. Mr. Kagucia, learned advocate for the plaintiff/respondent opposed the application arguing that the plaintiff's interest is to preserve all the assets, the subject matter of this suit. He further informed this court that the plaintiff is not party to the suit that is before the Hon. Mr. Justice Ochieng. In essence Mr. Kagucia was opposed to the order issued by Mr. Justice Ochieng that allowed the 1<sup>st</sup> respondent to access Account no. 0100002572677 C.F.C Stanbic bank ltd to withdraw kshs.4,000,000/=. I found the request by the 1<sup>st</sup> respondent rather puzzling because the matter should have been placed before Lady Justice Njuguna. Unfortunately, the learned judge is currently on leave hence I have no option but to determine the issue, since the dispute appears to be extremely urgent.
3. I have carefully perused the proceedings taken before Lady Justice Njuguna and it is clear that on 24.3.2016 the motion dated 15.2.2016 filed by the defendants came up for interpartes hearing before her. In the aforesaid motion, the defendants sought for interalia, the setting aside of the order that had basically stayed and or contradicted the orders of Mr. Justice Ochieng issued on 8.2.2016 vide **Nairobi H. C. Misc. App. No. 285 of 2015 K.R.A =vs Jimmy Mutuku Kiamba.**

4. Mr. Nyachoti, learned advocate for the defendant eventually had the motion dated 15.2.2016 withdrawn on 22.3.2016 presumably when he noticed that the interim order for stay enjoyed by plaintiff had not been extended. On the same date it dawned on Mr. Kagucia that the interim order granted on 9.2.2016 had lapsed since he had not applied for its extension.
  
5. On 23.3.2016 the plaintiff's advocate successfully applied for the reinstatement of the interim order. Apparently, Mr. Kagucia appears to have informed Lady Justice Njuguna that he was aware of the orders issued by Mr. Justice Ochieng. It is also clear that Mr. Kagucia informed the court that if the interim order is reinstated it will not affect the orders issued by justice Ochieng. It has now been brought to the attention of this court that the interim order reinstated and issued by Lady Justice Njuguna sort of stayed and or contradicted the order issued by Mr. Justice Ochieng. In the circumstances it is apparent that Lady Justice Njuguna appears to have been misled. Consequently, the orders issued by Lady Justice Njuguna on 24.3.2016 are hereby reviewed, varied and set aside to the extent that the orders do not stay nor contradict the orders or Mr. Justice Ochieng issued on 8/2/2016.
  
6. For the avoidance of doubt, first that the 1<sup>st</sup> defendant is at liberty to enjoy the benefits of the orders issued by Justice Ochieng, that is to say that the 1<sup>st</sup> defendant should be able to access a/c no.0100002572677 C.F.C Stanbic Bank Ld and only withdraw kshs.4,000,000/=. Secondly, that the rest of the properties and monies lying in various accounts shall be preserved in terms of interim orders reinstated and reissued by Lady Justice Njuguna pending the hearing and determination of the motion dated 29<sup>th</sup> January 2016. In the circumstances of this case a fair order on costs is to order which I here do that each part bear its own costs.

Dated, Signed and delivered in open court this 13<sup>th</sup> day of April, 2016.

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

.....for the Defendant