



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ANTI-CORRUPTION & ECONOMIC CRIMES DIVISION

MISC. APP. NO. 20, 21 & 22 OF 2016

OGOLA MUJERA ADVOCATES LLPAPPLICANT

VERSUS

BANKING FRAUD INVESTIGATION UNIT.....1ST RESPONDENT

THE CHIEF MAGISTRATE COURT, MILIMANI2ND RESPONDENT

ASSET RECOVERY AGENCY1ST INTERESTED PARTY

HUSSEIN ALI SALAD2ND INTERESTED PARTY

ALLAMAGAN INTERNATIONAL TRADERS.....3RD INTERESTED PARTY

R U L I N G

Introduction

1. This application is brought by way of Notice of Motion under **Sections 362 and 364** of the **Criminal Procedure Code (Cap. 75 Laws of Kenya)** and **Articles 23, 24, 31, 40, 50 and 165(6)** of the **Constitution of Kenya**. It applies to Misc. Application No. 133, 134 and 135 all of 2016. The three applications, though not consolidated were argued together on 30th September, 2016 and this ruling abides in all three applications.

Orders Sought

2. The Applicant seeks orders that the record of proceedings in the Nairobi Chief Magistrate’s Court Milimani Miscellaneous Criminal Application No. 203 of 2016 – Banking Fraud Investigation Unit v Chase Bank of Kenya, Head Office & 3 others be called for and examined by this Court for the purpose of satisfying itself as to the correctness, legality and or propriety of the orders issued on 27th January 2016 and in particular the funds preservation orders issued to freeze the Applicant’s Account No. **[particulars withheld]** at Chase Bank Limited. That the said orders be lifted, and/or quashed pending the hearing and determination of this application.

Grounds of application

3. The application is premised on grounds that the Applicant is a duly registered Limited Liability

Partnership carrying on the business of legal practice, and operates inter alia the Bank Account No. **[particulars withheld]** at Chase Bank Limited Parklands Branch, in connection with the Applicant's legal practice and the aforesaid account holds client funds in trust. That the 2nd Respondent issued warrants to the 1st Respondent to investigate the Applicant's said Account and also issued funds preservation orders freezing the said account.

4. The Applicant alleges that the 1st Respondent sought orders to investigate allegations of theft at the National Youth Service and the Applicant has not been served with any Court orders emanating from the proceedings. That it only learnt of the said proceedings when it was denied access to its accounts by Chase Bank Limited. That the 1st Respondent's application in the lower court is grounded on speculation and misapprehension of readily explicable transactions conducted in the regular course of the Applicant's, business which misapprehensions the Applicant has in good faith, endeavored to assist the 1st Respondent in addressing to no avail.

5. The Applicant complains that it is not enjoined in the aforesaid proceedings, the duration of the orders granted is indefinite and no return date for hearing of the said application *inter partes* has been set, thereby leaving the Applicant no fair opportunity to address the 2nd Respondent, or challenge the allegations made by the 1st Respondent.

6. The Applicant asserts that the funds preservation orders issued by the 2nd Respondent serve no cognizable purpose, as the said account does not hold any funds relating to any of the matters stated to be under investigation. That the movement of the funds can and ought to have been concluded on the basis of readily available statements and records already availed to the 1st Respondent.

7. The Applicant contends that the orders by the 2nd Respondent remain in force and are of indefinite duration notwithstanding the fact that they were issued ex-parte on the basis of speculative and factually tenuous Applications filed by the 1st Respondent. That the 2nd Respondent has neglected or otherwise failed to adequately supervise, the conduct of the 1st Respondent as regards the execution of the warrants issued and failed to ensure that the continued subsistence of the preservation orders is reasonable, justifiable and proportionate in the circumstances.

8. The Applicant urges that handling, holding and transferring large sums of money on behalf of clients, such as those needed for the purchase of immovable properties, is a basic and fundamental element of numerous types of transactions that are a natural part of the Applicant's legal practice. It is thus impossible for the Applicant to properly conduct its business without unhindered access to its bank account and the continued freezing of the subject account on the basis of mere conjecture effectively amounts to running the Applicant out of business.

9. The Applicant submits that the said order has created an atmosphere of uncertainty as to which of the Applicant's accounts or assets, or those of third parties and clients shall be frozen on a whim by the Respondents. That the aforesaid uncertainty shall be ultimately fatal to the continued operation of the Applicant's business should the court not grant the reliefs sought. That it is now threatened with legal action by third parties as a result of funds preservation orders obtained by the 1st Respondent

10. Mr. Patrick Onyango Ogola, swore a supporting affidavit dated 13th April, 2016 on behalf of the Applicant, in which he averred that he is an Advocate of the High Court of Kenya and practices as a partner in the Applicant firm. In his deposition he reiterated the grounds of the application. He also averred that on, or about 13th December, 2015, his firm was adversely mentioned on Citizen Television Networks' evening news broadcasts, in connection with a motor vehicle the subject of an asset freezing order by the Asset Recovery Agency.

11. The Applicant averred that on or about 14th December 2015, I&M Bank Limited, acting on its own volition, proceeded to freeze three of the Plaintiff's accounts held in its 2nd Ngong Avenue Branch being

Account Nos. *[particulars withheld]*, *[particulars withheld]* and *[particulars withheld]*. That on 17th December, 2015 the Applicant filed suit against I & M Bank Limited in Nairobi HCCC 640 of 2015 Ogola & Mujera Advocates LLP v I&M Bank Limited in which he sought inter alia mandatory orders to compel the said bank to unfreeze the subject account.

12. The Court notes that it is not disputed that on 13th January 2016, the Applicant recorded a statement with the 1st Respondent and supplied all the supporting documents to his assertions. In that statement, he confirmed that he had received US dollars 264,000.00 in cash from one Sarah Cholhok Marial Benjamin, the purchaser of a property in a transaction on behalf of the Vendor, A to Z Infrastructure Limited. That under the terms of the sale Agreement the purchase price for the property was Kshs.87,000,000.00 payable in a first instalment of kshs.30,000,000.00 and two subsequent instalments of Kshs.28,500,000.00 each.

13. The Applicant asserts that the purchase was made in cash vide deposits made into the Applicant's bank account with Chase Bank Kenya Limited, and the monies were thereafter transferred by RTGS to the Applicant's client's account held in Equatorial Commercial Bank. That the sum of US\$264,000.00 together with a sum of Kshs.1,500,000.00 that had been overpaid on the previous instalment represented the last instalment that was required to be paid towards the purchase price. That the monies were supposed to be converted into Kshs.27,000,000.00 at the rate of Kshs.102.27 and the aggregate sum of Kshs.28,500,000 forwarded to the vendor's account at Equatorial Commercial Bank.

14. The Applicant states that after he had made the statement, the 1st Respondent fell silent and did not seek further information from him nor seek to have the aforesaid funds preservation order rescinded. That the Applicant visited Chase Bank Limited, Parklands Branch to transact and the Bank declined to effect his instructions on the grounds that a court order had been issued freezing the Applicant's account at that bank. That to date, the Applicant has not been served with copies of the order granted in Misc. Criminal App. No. 203 of 2016 – Banking Fraud Investigation Unit v Chase Bank of Kenya, Head Officer & 3 others.

15. The Applicant states that he has now been served with a demand letter threatening legal action against him for failure to release US\$264,000.00 frozen in the Applicant's Account at I&M Bank Limited. That the Respondent's unlawful acts or omissions have put the Applicant at severe risk of being unable to meet its financial and legal obligations to its clients. That any further delay in granting the Applicant access to the frozen account shall only serve to expose the Applicant, its clients and third parties to irreparable loss and damage.

16. The application was canvassed before me on 29th September 2016.

Applicant's Case

Mr. Chacha, learned Counsel filed written submissions on behalf of the Applicant and argued that all the orders mentioned in the foregoing paragraphs, were granted pursuant to the subject applications anchored upon **Section 118 and 121(1) of the Criminal Procedure Code, Chapter 75 of the Laws of Kenya and Section 180 of the Evidence Act, Chapter 80 of the Laws of Kenya.**

17. Counsel asserted that in the proceedings before the Subordinate Court, except for Order No. 6, the nature of the orders issued were the orders which would be issued pursuant to an application made under the Evidence Act. Even so, the order would be limited to inspecting banker's books and taking copies of records and not freezing the account by way of a preservation order.

18. It was counsel's submission that neither the Evidence Act nor the Criminal Procedure Code donates power to the Magistrate to issue such order pursuant to an application made under the said statutes.

19. Counsel contended that **Section 118 Criminal Procedure Code** contemplates an order being issued to search and when the officer named in the search warrant finds what is named in the search warrant, he

may seize it and bring it before a court having jurisdiction to be dealt with according to the law. That the said Code does not contemplate a fund preservation order which is only provided for under Section 82 of the proceeds of Crime and Anti-Money Laundering Act No. 9 of 2009.

20. Under Section 82 of the Proceeds of Crime and Money Laundering Act (hereinafter POCAMLA) the power to apply for a preservation order is vested in the Director of Asset Recovery Agency and the nature of proceedings contemplated under this Section are civil proceedings. The powers under this section are not available to the 1st Respondent.

21. Section 83 of the said Act requires that where a preservation order is made, the Agency Director shall, within twenty one (21) days issue a notice of the order to all persons who have an interest in the property which is subject of the order and also publish a notice in the Kenya Gazette.

22. Section 84 limits the validity of the preservation order to ninety (90) days unless an application for an order of forfeiture is pending before court in respect of the property which is subject of the preservation order, or there is an unsatisfied forfeiture order in force in relation to the property subject of the preservation order, or the order is rescinded before expiry of that period. With respect to criminal cases, Part VII deals with criminal forfeiture. Part VII reveals that the 1st Respondent does not have powers to make any application for preservation of funds as it did in the application upon which the impugned orders were granted.

23. Counsel stated that none of the sections in the POCAMLA are of any benefit to the Respondent, to support their action in seeking and obtaining freezing orders against the Applicant. The only authority or agency that can seek and obtain orders under the said Act is the Director of Asset Recovery Authority and not the 1st Respondent.

24. The Applicant has explained the movement of funds that came into his law firm in the normal course of business. From his explanation, the funds are no longer in his firm's custody and no purpose is being served by the continued enforcement of the impugned orders which in any event had been issued without jurisdiction.

Respondent's Case

25. Learned State Counsel Mr. Ashimosi for the Director of Public Prosecution (hereinafter DPP) in his reply, stated that the 1st Respondent obtained freezing orders from the 2nd Respondent in respect of the monies that were transferred to the Applicant's account. The monies were subject to investigation under the National Youth Service (hereinafter NYS) scandal. The investigation of the said scam was led by a Multi-Agency team comprising of the National Police Service, The Ethics and Anti-Corruption Commission, the Asset Recovery Agency, the Banking Fraud Unit and the Office of the Director of Public Prosecutions.

26. Mr. Ashimosi explained that in the course of the above investigations under the Criminal procedure Code and the Evidence Act, the Applicant herein, among others, were charged with the offences of money laundering in **Criminal Case No. 301 of 2016**, before the 2nd Respondent, the Chief Magistrate's Court at Milimani. That the subject matter in this case was money and thus the orders sought by the 1st Respondent and subsequently granted by the 2nd Respondent were done in accordance with the provision of the law. That the Applicant challenged the said decision through Judicial Review Application No. 102 of 2016 and his application was dismissed.

27. The State Counsel argued that **Article 157(4)** of the **Constitution** gives power to the DPP to direct the Inspector General of Police (wherein the 1st Respondent falls), to investigate any information or allegation of criminal conduct and the Inspector General shall comply with any such direction. That the provision of the Constitution supersedes any act of Parliament. That conduct of the 1st Respondent in seeking for freezing orders under the directions of the DPP did not therefore, contravene any other written law as it was exercised as provided for under **Article 157(4)** of the **Constitution**.

28. The State Counsel argued that the power to investigate is donated to the National Police Service who established reasonable suspicion following investigations into the alleged theft of Kshs. 791,385,000/-. The investigators applied for freezing orders to investigate predicate offences into the money laundering in line with the provision of the **Section 118** of the **Criminal Procedure Code**.

29. The State Counsel argued that the law requires the Applicant to challenge the order before the court that issued it but that the Applicant **“has jumped the ship”** and moved to the High Court for subsequent orders without challenging the same before the 2nd Respondent. That the conduct of the Applicant shows that it has not suffered any prejudice by the orders of the 2nd Respondent for it has not challenged them.

30. The State Counsel argued that the provisions of **Section 37 of POCAMLA** relates to financial institutions and authorizes either the Agency, or authorized officers to act. Hence the Police who have been mandated under POCAMLA as authorized officers have acted accordingly. Similarly, Section 55 of the Act provides that:-

“A person who or a body which has functions relating to investigation or prosecution of offences under this Act and the Agency shall co-operate in the exercise of their powers or the performance of their functions under this Act.”

31. The State Counsel urged that the Applicant has not suffered any prejudice since the said funds are to be used in evidence in the criminal trial to prove the prosecution case and the acts of the 1st and the 2nd Respondents can be construed to have been done in good faith to safeguard the public interest.

Issues for Determination

32. Having laid out the parties' cases and their submissions including the supporting law, I have framed the issues for determination as follows:

- a) Whether this Court has jurisdiction to entertain this Application.
- b) Whether the lower Court had jurisdiction to grant the inspection and freezing orders on the basis of the cited provisions of the law.
- c) Whether it was proper to uphold the orders sought without granting the Applicant a fair hearing.

Jurisdiction of the High Court to hear the Application

33. **Section 362 and 364** of the **Criminal Procedure Code** under which this application has been brought together with **Article 165(6)** of the **Constitution**, grant the High Court supervisory powers over the lower Court. Under **Section 362 CPC** the court has power to ***‘call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court’***. **Section 364** provides for the powers of the High Court on revision.

34. This power stems from **Article 165** of the **Constitution** as follows:

“(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of administration”

Jurisdiction to issue orders to inspect and freeze bank account

35. It was alleged by the Applicant that the provisions of the law relied upon by the Police in seeking the orders to freeze the bank account do not afford the Court jurisdiction to make such orders. The provisions of the law that were relied on in seeking the warrants were **Sections 118 and 121 of the Criminal Procedure Code and 180 of the Evidence Act.**

36. The enabling provisions of the law that gave power to the court to issue freezing orders are therefore to be found in the Evidence Act read together with the Criminal Procedure Code.

37. **Section 180** of the Evidence Act provides for the initial procedure to facilitate investigation into a bank account and reads as follows:

*(1) Where it is **proved on oath** to a judge or magistrate that **in fact, or according to reasonable suspicion, the inspection of any banker's book is necessary or desirable for the purpose of any investigation into the commission of an offence, the judge or magistrate may by warrant authorize a police officer or other person named therein to investigate the account of any specified person in any banker's book, and such warrant shall be sufficient authority for the production of any such banker's book as may be required for scrutiny by the officer or person named in the warrant, and such officer or person may take copies of any relevant entry or matter in such banker's book.** (emphasis provided).*

38. The Act, by this provision, takes into account acts have been done to necessitate investigation into the possibility of commission of a criminal offence. This provision alone authorises the Court to issue orders of investigation. It does not give powers to order the freezing of a bank account

39. A similar observation was made by Waki, J. (as he then was) in the case of **Erastus Kibiti Stephen vs. Euro Bank Ltd. and the Commissioner of Police Criminal Application No. 9 of 2003**, which is of persuasive value. The judge noted that:

“Section 180(1) does not encompass the freezing of a bank account. On the plain reading of the Section, this is indeed so. But one may loudly wonder why the law should permit the inspection of Banker's books...when it does not safeguard the funds existing in those accounts...How else would the investigator ensure that the horse has not bolted from the stable as it were before he finalizes his inspection? The answer, I think, lies in enacting a law whether substantive or procedural to resolve that difficulty.”

40. The limitation of **Section 180** therefore warrants the need to invoke the provisions of **Section 118 and 121 of the Criminal Procedure Code.** **Section 118** 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.”

41. The foregoing section should be read together with **Section 121(1)** which goes further to provide that:

When anything is so seized and brought before a court, it may be detained until the conclusion of the case or the investigation, reasonable care being taken for its preservation.

42. On whether **Section 118** does not apply to bank accounts as it provide for seizure of an item in premises that is, a ‘place, building, ship, aircraft, vehicle, box or receptacle’ I do associate myself with

the sentiments expressed by the Hon. Judge in the case of **Erastus Kibiti Stephen** (Supra), concerning the lacuna in the provisions of **Section 180** of the **Evidence Act**. The section fails to make a further provision for safeguarding evidence in the form of money held in a bank account.

43. A plain reading of this provision as advanced by the Applicant however, goes against the practical reality that the law anticipates the need for preservation of evidence, for purposes of not extinguishing the objects of a criminal trial where the item in question is the subject matter in the trial.

44. A plain reading of **Section 121** as adopted by the Applicant would imply that a bank account does not encompass the objects covered by that provision. However, the purpose of this provision is to allow the search of anything capable of holding an item that can be seized. A bank account does qualify to the extent that it holds money.

45. Money in a bank is a special kind of item. Since it cannot be practically seized as an object to be physically presented in Court, the act of ‘seizing’ money is by way of freezing the relevant account. The understanding of this provision ought to be viewed in the context of its object and that is, to preserve evidence to facilitate the prosecution of crime.

46. This position was clarified by the Court of Appeal in the case of **Samuel Watatua & Another v Republic, Court of Appeal, Nairobi, Criminal Appeal No. 2 of 2013 (unreported)**, where the Court said,

“A reading of Section 180 of the Evidence Act together with Sections 118 and 121 of the Criminal Procedure Code leaves no doubt in anybody’s mind that the Court, upon application, has power not only to authorize access by police to bank accounts of suspected criminals but also to freeze those accounts for the purposes of preserving evidence and the subject matter of the alleged crime.”

And further,

“In this case, we find that the limitations in Section 180 of the Evidence Act together with Sections 118 and 121 of the Criminal Procedure Code are in consonance with Article 24 of the Constitution.”

On this basis, I find that the lower Court had jurisdiction to issue the orders of inspection and freezing of the subject bank account.

Failure to accord the Applicant a fair hearing

47. Mr. Chacha argued that the proper procedure was not followed in freezing the subject bank account, and that the learned Magistrate was obliged to ensure that the police were ordered to report the result of their investigation to the Court, in order to safeguard supervision of the police by the Court. That to date no one has been charged with any offence thereafter, with regard to the specific sum of 264,000 USD.

48. Counsel submitted that **Section 83** of the **POCAMLA** requires that where a preservation order is made, the Agency Director is required to within twenty one (21) days, issue a notice of the order to all persons who have an interest in the property which is subject of the order and further to publish a notice in the Kenya Gazette.

49. **Section 118** of the **Criminal Procedure Code** on the other hand requires that once anything is seized in execution of a warrant, it should be taken “before a court having jurisdiction to be dealt with according to law.” A further reading of **Section 121(1)** of **Criminal Procedure Code** indicates that further detention of seized items is to be done with the direction of the Court. **Section 121(3)** further directs that:

(3) If no appeal is made, or if no person is committed for trial, the court shall direct the thing to

be restored to the person from whom it was taken, unless the court sees fit or is authorized or required by law to dispose of it otherwise.

50. The Applicant's case is that the continued freezing of the subject bank account is against the law. The above provision emphasizes the earlier fact that once anything is seized, there must be a return to the court for the thing so seized be dealt with in accordance with the law. The purpose of this requirement is to inform the court of the outcome of the search and inspection, and to get direction whether or not the seizure of the subject matter will be maintained.

51. Since the warrants are often granted *ex parte* due to the nature of the orders, **Sections 118** and **121** have a condition of a return to Court, and as **Section 121** implies, further detention of the subject items is upon the direction of the Court. It is therefore implied that, the persons so affected would have an opportunity at this stage to challenge the seizure of items. The purpose for laying down the conditions is to ensure that the Court continues to maintain a supervisory role over the police. Mr. Chacha was therefore correct in his observation as set out at paragraph 45 of this ruling.

52. A bank account being a special kind of place, not capable of seizure in the sense of the word, would, in practical terms be 'frozen' so as to preserve the contents of the account until further direction of the court. This requirement is important as it is in accord with the constitutional requirement under **Article 50**, that all persons should be granted an opportunity to be heard on matters affecting them.

53. As stated by the Court of Appeal in **Samuel Watatua & Another v Republic (Supra)**

"In certain cases as stated in the Kibiti case (supra) where properties or monies in bank accounts may be dissipated before the matter is heard inter partes, ex parte orders may be granted but only for a short period. Thereafter the application should be served upon all persons likely to be affected by any ensuing orders and no final order should be made until the matter is heard inter partes with all parties, pursuant to Article 50 of the Constitution accorded an opportunity to be heard."

54. As an observation and from previous matters before me, a situation often arises where parties affected invoke the revisionary jurisdiction of the High Court as soon as they become aware of the orders adverse to their interests. Such knowledge may not be surprising since a bank account under obligation to freeze a client's account will often bring such order to the attention of its clients.

55. This however, does not take away the duty of the DPP, to serve the parties involved so that they may be represented during the return to court, with the outcome of execution of the warrants as required by the law. The duty is upon the DPP upon executing the warrants freezing the account, to serve the parties affected and notify them of the date for appearing in court.

56. The return to court which would serve as the *inter partes* hearing does not often happen. This failure may also happen where the police do not as a matter of duty, return to Court with the result of their findings. As a result, parties come before the High Court to challenge the lower Court's orders that granted the warrants, in the first place.

57. The effect of this procedure is that the High Court is at this stage, sitting in what ought to be the *inter partes* hearing that should have first taken place in the lower Court. In this regard the learned State Counsel was right to say the Applicant "had jumped the ship," (although I suspect he meant "jumped the gun").

58. Subsequent to the orders of the lower Court after such *inter partes* hearing, any aggrieved party may approach the High Court to challenge the orders. The current practice creates the rare occasion where interested parties will seek to be heard on the same issue at the High Court, while ordinarily they would have had an opportunity to be heard in the lower court and present further evidence, to the trial Court during the date parties return to court.

59. In this case, the impugned orders were issued on 27th January 2016 according to the Applicant, but no information was shared with it with respect to these orders. The Applicant only learnt of the orders when it sought the services of its bank. This was unprocedural. To avoid the unusual scenario presented by the proceedings before me, the police officer as a matter of practice ought to follow the procedure as stated by the Court of Appeal and laid down under the Criminal Procedure Code.

60. It is therefore, advisable on the part of the Court issuing the orders to require the Applicant seeking its orders, to serve the application and the orders on the affected parties including the financial institution. The court should also give direction as to when parties will appear before the Court for hearing before final orders can be made as to whether or not, to allow continued seizure of the property or freezing of the bank account.

61. Such directions ought to be indicated in the order granting the warrants, as opposed to the usual practice of warrants being granted in generalized orders, that appear to give an open cheque to the police officers. It is upon such an order being served that any aggrieved party would approach the court.

62. The Application before me was filed in July 2016 seven months after the impugned orders were issued. There is no apparent reason why the police officer did not return to Court to report on the outcome of the execution of its orders and seek further directions from the Court.

63. Considering the time that has lapsed the interests of justice demand that I do consider this application on its substantive merits and not dismiss it for the reason of the procedural flaw on the part of the police officers pointed out above. I reason so on the basis that by this Application, all parties have had an opportunity to be heard.

64. Having set out the law which governs applications of this nature I now turn to the peculiar circumstances of this application. On 27th July, 2016 learned State Counsel Mr. Mohamed for Asset Recovery Agency sought and was given time to obtain the DPP's instructions on the unfreezing of the said funds.

65. During the next mention on 2nd August, 2016, Mr. Mohamed informed the court that the DPP needed time to consult the Multi-Agency Stakeholders on the fate of the 264,000 USD. Miss Aluda learned State Counsel confirmed that the instructions of the DPP, to the Asset Recovery Agency was limited to part only of the frozen money being the cash in question. Despite spirited objections from learned counsels Mr. Owiti for the Applicant and Mr. Omwebu for the Interested Parties, the court granted the Respondents an adjournment in the interest of justice to obtain the instructions of the DPP and Director Asset Recovery.

66. On 9th August 2016 Mr. Mohamed confirmed that the Asset Recovery Agency had no further interest in the specific sum of 264000 USD stated in **Misc. 134 of 2016**. Learned State Counsel, Miss Sigei informed the court that indeed the DPP was awaiting a response from the KRA. On that date the court set down the three applications for hearing on 29th September 2016.

67. It is noted that the accounts the subject of Misc. application Nos. 133 and 135 of 2016 were also frozen on account of the stated sum of 264,000 USD, although the said sum was no longer in those accounts. Further, the stated sum of 264,000 USD is no longer in existence in any of those accounts and the continued freezing of those accounts serves no useful purpose.

68. The unfreezing of the stated accounts on the other hand, does not bar the Asset Recovery Agency from going after any property that may be found to be proceeds of the crime that was being investigated herein and which led to the freezing of these accounts.

69. From the foregoing I find that the applications in Misc. 133, 134 and 135 all of 2016, all dated 13th April 2016 respectively have merit and are therefore allowed.

SIGNED DATED and DELIVERED in open court this **4th day of November, .2016.**

.....

L. A. ACHODE

JUDGE