

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

HIGH COURT MISC. CRIMINAL APPLICATION NO.318 OF 2015

(Arising from original conviction and sentence in Cr. Misc. No. 290 of 2015 of the Chief Magistrate's Court at Kiambu)

REPUBLIC.....APPLICANT

VERSUS

LUMUMBA & LUMUMBA ADVOCATES.....RESPONDENT

RULING

Pursuant to the Notice of Motion dated 10th September 2015, by the Applicants, I have considered the rival submissions by the respective advocates for the parties. It is not in doubt that the account that was frozen, being account No. 0170292003348 belonging to the Applicants is their clients' account.

The Applicants being practicing advocates are mandated by the Law, specifically the Advocates Act to maintain a clients' account. It follows that, that account holds monies belonging to various clients of the Applicants. It is then not prudent to impose a blanket shut down of the said account as this would negatively impact on the Applicants' Legal mandate. That said though, the police have a duty and are obligated by the law to carry out any investigations of fraud or theft that may be filed with them. To this extent, it is their duty as alleged by the respondent to carry out investigations that some stolen money may have been deposited in the Applicants' account. But again those investigations cannot take endless time. In that regard, this court must play a balancing role so as to ensure that even as the investigations are on-going, the Applicants' account is not held at ransom to the detriment of their legal obligation to their clients.

Having made those observations, my view is that the police should be given sufficient time to conduct their investigations with conclusive recommendations of what they intend to do with the Applicants' account. I am minded that the Applicants' account was frozen on 21st August 2015. It is now one and a half months since this date during which period it is expected that the police ought to have concluded the investigations. Accordingly, in balancing the interests of justice, I shall give the police only ten days from the date hereof to conclude their investigations. Those investigations must come up with recommendations of either to criminally hold the Applicants liable or to exonerate them entirely. The matter will be mentioned on 19th October 2015 when the police will file their report failing which this court will not hesitate to rule in favour of the Applicants. It is so ordered.

DATED AND DELIVERED THIS 8TH DAY OF OCTOBER, 2015

G. W. NGENYE – MACHARIA

JUDGE

Ms. Mbonye for the Applicant

Mr. Muriithi for the Respondent

