

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.217 OF 2014

MUSIC COPYRIGHT SOCIETY OF KENYA.....APPLICANT

VERSUS

CHIEF MAGISTRATE’S COURT.....1ST RESPONDENT

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

RULING

The Applicant was aggrieved by the decision issued by the magistrate’s court (E. Agade, Resident Magistrate) on 19th October 2015. That order froze all the accounts held by the Applicant pending further orders of the court. The accounts were frozen at the request of the police who were investigating complaints made by members of the Applicant in regard to alleged misappropriation of funds. The Applicant moved to this court pursuant to **Section 362** of the **Criminal Procedure Code** and **Article 165(6) & (7)** of the **Constitution** seeking to have the orders issued by the magistrate’s court stayed pending the hearing and determination of this application. The Applicant further requested the court to call for and examine the record of the magistrate’s court with a view to determining the correctness, legality or propriety of the decision. The grounds in support of the application are stated on the face of the application. The application is supported by the annexed affidavit of Maurice Okoth, the Chief Executive Officer of the Applicant. The application is opposed. Sgt Gilbert Kitalia attached to the Serious Crimes Unit under the Directorate of Criminal Investigations swore a replying affidavit in opposition to the application.

During the hearing of the application, this court heard oral rival submission made by Mr. Maloba for the Applicant and by Ms. Atina for the State. This court has carefully considered the said submission. The issue for determination by this court is whether the Applicant made a case for this court to invoke its jurisdiction under **Section 362** of the **Criminal Procedure Code**. The Applicant complains that its accounts were frozen by the magistrate’s court at the instance of the police without any justification. The Applicant complains that the order issued by the court has resulted in paralyzation of its activities. They explained that the activities of the Applicant have been conducted in accordance with the law and with a view to fulfilling the mandate given to the management of the Applicant by the members. From the affidavit sworn in support of the application, it was apparent that the Applicant was not impressed that the complainants who lodged the complaint with the police had either the mandate or *locus standi*. The Applicant was of the view that the complainants had not exhausted the existing machinery of dispute resolution before making the complaint to the police. The Applicant insists that the complaint was made in bad faith and in abuse of the due process of the court.

On its part, the 2nd Respondent states that it has the mandate to investigate any complaint of a criminal nature. It is the 2nd Respondent’s case that members of the Applicant had complained about misuse and misappropriation of funds due to members by the officials of the Applicant. In that regard, some members had also lodged a petition with the Attorney General with a view to seeking appropriate remedy on

account of the alleged misappropriation of funds. The investigating officer swore a replying affidavit in which he gave the status of investigations conducted so far. From the affidavit, it is apparent that the status of the Applicant as a duly registered society is in doubt. The investigation revealed that the Applicant has at one time being de-gazetted. The de-gazettment has not been lifted. However, the Kenya Copyright Board has issued the Applicant with temporary licence to operate. This licence has been issued with a view to enabling the Applicant comply with certain conditions before the Applicant is re-gazetted. According to the investigating officer, due to many complaints made against the Applicant touching on alleged theft and misappropriation, he had not yet concluded the investigations. So that the purpose of investigations is not defeated, the 2nd Respondent had sought an order freezing the accounts of the Applicant pending the conclusion of investigations. The thrust of the 2nd Respondent's case is that the magistrate's court made the correct order to freeze the Accounts of the Applicant pending the conclusion of the investigations.

Having carefully evaluated the facts of this application, this court takes the following view of the matter: it is clear from the affidavits sworn that the police have not concluded their investigations. There are several complainants who have lodged complaints with the police. Under the **National Police Service Act**, the police have the mandate to investigate any criminal complaint made by any person. That mandate extends to the police investigating organizations established under statute. In the present application, it is evident that some members of the Applicant have issues with the manner in which the officials of the Applicant are managing the financial affairs of the Applicant. They are of the view that the officials are stealing or misappropriating what is due to them as members. That is a legitimate complaint which must be investigated to its conclusion. However, this court is of the view that the investigations cannot go on forever. The Applicant has a legitimate concern to have its operations return back to normal. That includes having access to its accounts.

In the premises therefore, the 2nd Respondent is granted twenty-one (21) days to conclude its investigations and take whatever action it deems appropriate. During this period the order issued by the magistrate's court freezing the Applicant's account shall remain in place. After the expiry of twenty-one (21) days, the Applicant shall be at liberty to renew the application for the unfreezing of the account. It is so ordered.

DATED AT NAIROBI THIS 3RD DAY OF NOVEMBER 2015

L. KIMARU

JUDGE