REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL & ADMIRALTY DIVISION AT MILIMANI LAW COURTS

CIVIL CASE NO 175 OF 2014

VIABLE DECO SOLUTONS LIMITED .....APPLICANT

Versus

CO-OPERATIVE BANK OF KENYA LIMITED .....RESPONDENT

RULING

Unfreezing of an account

[1] The Applicant has applied by way of a Notice of Motion dated 30th April, 2014 applied for five (5) orders but prayers No 1, 2 and 3 are now spent. What are remaining for determination are the following prayers:

> 1) **That pending the inter-parties hearing and determination of this suit inter-parties, this Honourable Court be pleased to issue a temporary mandatory injunction compelling the Respondent to grant the Applicants access to its Bank A/c No. *[particulars withheld]* domiciled at the Respondents Ukulima House Branch and the Respondent whether by itself, its servants, employees, agents and/or otherwise be restrained from freezing the Applicant said account, more so relating to the Applicant accessing the fund held in the said account.**
>
> **4) That this Honourable Court be pleased to order the Respondent to unconditionally lift the freezing order placed by itself without any valid court order on A/c No. *[particulars withheld]* and do immediately grant the Applicant whether by itself, its employees, servants, agents and/or otherwise access to the said account and that the Respondent be restrained by way of an injunction from freezing the said account till further orders of this Honourable court.**
>
> **5) That the costs of this application be provided for.**

[2] The application is expressed to be brought under Order 40 rules 1, 2 and 3 of the Civil Procedure Rules (2010) and Section 1A, 1B, 3A and 63(e) of the Civil Procedure Act (Cap 21) Laws of Kenya, and is grounded on the several grounds appearing on the face thereof and the Affidavit of one Ronald Ratemo Moturi the Managing Director of the Applicant sworn on the 30th April 2014. For purposes of this Ruling, the title Applicant and Respondent will refer to the Applicant and Respondent, respectively.

The Applicant's gravamen

[3] The Applicant is questioning whether the Respondent Bank had any legal right to purport to freeze account number ***[particulars withheld]*** held at its Ukulima House Branch in the name of the Applicant herein. And the Applicant, for reasons it gives here below, submits it is entitled to an interlocutory mandatory injunction to force the Respondent to un-freeze the account in question.

[4] The Applicant submitted that the legal relationship between the parties hereto is that of a banker and customer, and it is trite law that a current account in the books of a commercial bank held on behalf of its customer constitute the bank as a debtor of its customer and where as in this case, the account is a current one, any monies deposited by the customer to that account is liable to be repaid on demand upon the presentation of a valid cheque drawn by the customer on that account. This is precisely the obtaining situation: see paragraphs 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the supporting affidavit sworn by the Applicant's Managing Director. The Applicant relied on the case of **BENSON ODONGO OKWIRI v CONSOLIDATED BANK OF KENYA LIMITED 2008 EKLR** where facts were strikingly similar to those in the instant case. The Respondent Bank purported to freeze a banking account held in its books on behalf of the Applicant. The Bank had not obtained a court order allowing it to freeze the account. The Bank's excuse was that there was a suspicion of fraud although the Applicant was not implicated in any such fraud. In the course of his judgement KIMARU J stated:

> **"It is clear that the Respondent failed to establish that either the Applicant or his sister participated in the fraud which the Banking fraud unit of the police is investigating. The Applicant is not a suspect. The Respondent has not placed before the court any evidence to suggest that the amount currently held on the two accounts were deposited therein as a result of fraud.**

The learned judge proceeded granted the mandatory interlocutory injunction sought by the Applicant.

[5] In this case, the Applicant urged, the Respondent froze the said bank account on suspicion and without any concrete proof that fraud had been perpetrated through the said account and more so based on a letter dated 12th February, 2014 that emanated from the Advocates of the Co-Director. The Respondent herein has in its replying affidavit placed reliance on the provisions of clause 22, which forms its terms and general conditions and which is annexed as exhibit TK 3 in the replying affidavit of THOMAS KINIGA. The deponent of the said affidavit at paragraph 10 has emphatically stated that the Applicant undertook to comply, observe and be bound by the Terms and Conditions made by the Respondent from time to time. The annexures that are relied upon as TK1 are however wanting on this aspect as nowhere in the said account opening forms is there such provision. The general terms and conditions that the Respondent wishes to rely upon and which the Applicant's Directors signed, are also quite emphatic and clear on the issue of communication. At clause 22 thereof the Respondent has to communicate in the manner stated herein and this position is fortified by the Respondent terms and conditions annexed as exhibit TK3 where at clause 22 it is inter-alia stated that… **upon notice to the customer...** The said provision does therefore by itself imply that the Respondent has to issue the notice in accordance with its terms and conditions. No such notice was given to the Applicant herein at the time the Respondent decided to freeze its account and this thus goes contrary to the Respondents' own terms, as the Applicant was entitled to have been notified of the said actions and also to have been heard in opposition of otherwise to the freeing of its account.

On Freezing, the Applicant submitted.....

[6] The Respondent in the replying affidavit at paragraph 14 confirmed that it froze the Applicants account to the extent that no withdrawals were allowed. The Respondent thus confirms that it can accept deposits. The term **freeze** as defined by the **Black's law Dictionary, 9th Edition, at page 737** has been defined and it is clear therein that the term includes causing something to be fixed and unable to increase. The deposit in the Applicant's account ought not to have increased or otherwise had the Respondent really frozen the account. The action of the Respondent whilst on one hand accepting deposits, without notice to the Applicant is fraught with illegalities and the Respondent should not at this juncture purport to approbate and reprobate at the same breath.

[7] The general terms and conditions of the Respondent also purport to oust the jurisdiction of the Law on the other hand. The Respondent in its terms and conditions is trying to state that under clause 22 it has no obligation to institute **interpleader proceedings.** The above term is for all purposes and intents devoid of any legal backing. Parties cannot as has been restated time and time again by the Courts, consent to do away with any legal requirement or the law at all. To that extent the Respondent is estopped from trying to place reliance on such a provision. On that basis, the court should grant the mandatory injunction sought by the Applicant at the interlocutory stage as it has been established that there exist special circumstances that would compel the court to grant the same.

[7] The Applicant continued. In the present application it is clear that the Respondent had no legal justification in freezing the said account. The Respondent acted unlawfully in freezing the said account, in that, by its own conduct failed to follow the laid down provisions made by it in its terms and general conditions. Had it followed the same by notifying the Applicant through any of the means envisaged at clause 22, then the present situation that has befallen the Applicant and by extension, the present application and the suit would have been averted. Although the letter dated 12th February 2014 made reference to a court case (HCCC No. 42 of 2014) no court order was exhibited and indeed none exists. See paragraph 12 of the Affidavit in support. The Respondent's action in purporting to freeze the Applicant's current account is thus unlawful, in breach of the contractual and fiduciary relationship existing between a bank and its customer and is oppressive and extremely damaging to the Applicant.

[8] Counsel for the Applicant stated that the Authorities cited by the Respondent are all capable of being distinguished. Authority number 2 involved a matter relating to a bank loan and the Applicant/Appellant in that case had unsuccessfully sought an interlocutory injunction to restrain a mortgagee from exercising its power of sale. Cleary this is not the situation in the current case. Authority number 3 cited by the Respondent, the court expressly found that a bank account had been used to commit fraud and so the equitable remedy of injunction would not be granted since "he who seeks equity must come with clean hands". This authority is clearly distinguishable as there is no evidence of any fraud on the part of the Applicant or its Managing Director herein. Authority number 4 in the Respondent's list involves an Advocate/Clients relationship which is patently not relevant to this case. In the upshot, the Applicant submitted that it has passed the test set out in the celebrated case of **GIELLA Vs CASSMAN BROWN & CO. LTD (1973) E.A 358** and the interlocutory mandatory injunction sought is merited and the prayers sought in the Notice of Motion should be granted as prayed.

The Respondent opposed the application

[9] The Respondent opposed the present Application and relied on the Respondent's Replying Affidavit by Thomas Kiniga, Branch Manager, Co-operative Bank of Kenya Limited, Ukulima Branch (hereinafter "the Respondent''), sworn on 7th May 2014 ("the Respondent's Replying Affidavit"). The Respondent found it useful to give the brief and essential facts giving rise to the Application. That the Applicant applied to open a Business Account with the Respondent Bank and signed a Business Account Form dated 20th November, 2006. The Applicant gave signing instructions in the said Business Account at the time of opening that: 1) Ronald Ratemo Moturi to sign alone or Julius Chala Kilelu and Olpher Bochere Nchaga to sign jointly. On 29th November, 2012, the Applicant wrote to the Bank and informed the Bank that Julius Chala Kilelu had resigned as a director of the company. Due to resignation of Julius Chala Kilelu, there were only two signatories to the Applicant's account being Ronald Ratemo Moturi and Olpher Bochere Nchaga. On 12th February, 2014, the Bank received a letter from Njiiru Kariu & Company Advocates stating that they act for Olpher Bochere Nchaga, a director of the Applicant and also a signatory to the Applicant's account with the Bank Account Number ***[particulars withheld]*** to the effect that some fraud had been perpetrated on the Account and that the Applicant's account should be frozen and that no change in the account signatories should be allowed. The letter also informed the Bank of a pending court case HCC No. 42 of 2014 between Olpher Bochere Nchaga and Ronald Ratemo Moturi and one of the issues in the matter was the Applicant's Account. Upon reviewing the letter and in the interest of the Applicant, the Bank invoked Clause 22 of the General Terms and Conditions and froze the account to the extent that no withdrawals were allowed awaiting an amicable resolution of the dispute between the two signatories to the account.

[10] The Respondent, therefore, sees the issues for determination to be:

a) Whether the Bank was entitled to freeze the Applicant's account; and

b) Whether the Applicant is entitled to the interim mandatory injunctions sought.

[11] On the first issue, the Respondent submitted that the parties are bound by the contracts they enter into provided there was no coercion, misrepresentation or fraud on either party. The Application to Open a Business Account Form created a legally binding contract between the parties and the Applicant and the Bank became bound by the terms contained therein and those incorporated into the Contract by reference to other documents. Under the said contract, the Applicant undertook **"to comply, observe and be bound by the Terms and Conditions made by you [the Bank] and in force from time to time or as amended by you [the Bank] pertaining to such account (s) … and the General Terms and Conditions documents."** Under Clause 22 of the General Terms and Conditions, the Applicant voluntarily authorized the Bank at any time to **"freeze any account of a Customer if and so long as there is any dispute or the Bank has doubt for any reason (whether or not well founded) as to the person or persons entitled to operate the same, without any obligation to institute interpleader proceedings or to take any step of its own initiative for the determination of such dispute or doubt."** Under this Clause, the Bank is neither required to obtain a court order to freeze the account nor to institute inter pleader proceedings in case of a dispute or doubt as to the person or persons entitled to operate the account. Accordingly, contrary to the Applicant's submission that Clause 22 of the General Terms and Conditions ousts the "jurisdiction of the law", parties are entitled to enter into a contract and dictate the terms thereof provided that the same does not amount to an illegality. Clause 22 of the General Terms and Conditions does not perpetuate any illegality and is therefore enforceable between the Applicant and the Bank.

[12] The Respondent submitted that, it froze the Applicant's account upon receipt of the letter dated 12th February 2014 by a director of the Applicant and a signatory to the subject account, that there was some fraud perpetuated on the account and that there was a pending court case HCC NO 42 of 2014 between the two directors of the Applicant over the Applicant's Bank Account Number ***[particulars withheld]***. The suspected fraud and the dispute between the directors of the Applicant warranted the invocation by the Bank of the provision of Clause 22 of the General Terms and Conditions. Therefore the Bank had all the legal right to freeze the account in the interest of both signatories to the account until the parties reached an amicable settlement of their dispute over operation of the Applicant's account.

Whether the Applicant is entitled to the interim mandatory injunction sought.

[13] The Bank submitted that the Applicant is not entitled to the prayers sought since the Applicant has not satisfied the principles for grant of injunction in the case of *Giella v Cassman Brown & Co. Ltd (1973) EA 358* that:

i. **An applicant has to establish a prima facie case with a probability of success;**

ii. **There has to be demonstration that damages would not be an adequate remedy in case the injunction is denied; and**

iii. **In case of any doubt on the above two considerations the court can consider balance of convenience having regard to the circumstances of the case.**

It relied on the case of **MRAO LTD v FIRST AMERICAN BANK OF KENYA LTD & 2 OTHERS CIVIL APPEAL NO. 39 OF 2002** where the Court of Appeal held:

"So what is a prima facie case? I would say that in civil cases it is a case in which on the material presented to the Court a tribunal property directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.

But as I endeavoured to show, and I cited ample authority for it, a prima facie case is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly a standard which is higher than an arguable case."

It also submitted that the Applicant has not produced any evidence: 1) to show that its right has been infringed given that the other signatory to the Applicants account also has rights to the Applicants Bank accounts which rights must also be protected; 2) to prove that the Applicant has suffered loss due to the freezing of the account to warrant an award of damages. And so, the Applicant has not satisfied the principles for grant of injunctions. The balance of convenience favours refusing the Interlocutory Injunction to the Applicant to protect the interest of the other signatory to the Applicant's Bank account.

[14] The Respondent went on to submit that since the Applicant seeks an Interlocutory Mandatory Injunction, in addition to the principles set out in Giella v Cassman Brown & Co. Ltd, the Applicant must also meet the following thresholds set out in **RAFIQUE EBRAHIM v WILLIAM OCHANDA T/A OCHANDA & ADVOCATES [2013] eKLR** that**:**

i. **a mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstance and only in clear cases where the Court thinks that the matter ought to be decided at once or where the injunction is directed at simple and summary act which can easily be remedied; and**

ii. **a mandatory injunction at interlocutory stage is merely granted, only where the Applicant's *case is clear and incontrovertible.***

See also **PAVIWA LIMITED V CO-OPERATIVE BANK OF KENYA [2013]** eKLR; **RATIQUE EBRAHIM v WILLIAM OCHANDA T/A OCHANDA & CO. ADVOCATES** wherein J.B. Havelock J quoted **TRINITY PRIME INVESTMENT LTD v SAVING & LOAN & ANOTHER CIVIL APPEAL NO. 90 OF 1998** and Waithaka, J is quoted in **SHEDRACH KIRUKI M'LAARI v SAMUEL KIPTANUI KORIR & 2 OTHERS CIVIL CASE NO. 262 OF 2012: (2013) eKLR** that:

"…**Where the Court has granted an interlocutory injunction prayed for, it should not grant a mandatory injunction whose effect shall bring the litigation to an end."**

[15] The Respondent Banks is of the view that there are no special circumstances in this case; the case is not clear and therefore, granting the interim mandatory injunction will be tantamount to bringing the litigation to an end before the substantial issues are fully heard and determined. The relief sought should not be granted. The Respondent distinguished the cases cited by the Applicant; in **BENSON ODONGO OKWIRI v CONSOLIDATED BANK OF KENYA LIMITED [2008] eKLR,** there was no clear evidence of a dispute between the parties and the action by the bank was not backed by any contractual terms.

COURT'S RENDITION

Issues

[16] The ultimate question is whether an interlocutory mandatory injunction should issue against the Respondent; direct it to lift the freeze it has placed upon A/c No. ***[particulars withheld]*** and allow the Applicant whether by itself, its employees, servants, agents and/or otherwise access to the said account. And should the Applicant be successful on the interlocutory mandatory injunction, a temporary injunction is just an adjunct that should restrain any adverse action or another freeze on the account by the Respondent before the case is heard. But, for the court to make the decision hereof, it will have to determine:

a) Whether there was any necessity for the Respondent to notify the Applicant of the freezing of the account in question herein;

b) Whether the Respondent was under an obligation to take out interpleader proceedings herein; and

c) Whether the Respondent acted in accordance with the law in placing a freeze on the account in issue.

The legal threshold

[17] It may be notorious but necessary to state the threshold for the grant of interlocutory injunctions is as set out in the case of **GIELLA v CASSMAN BROWN.** And the threshold for the grant of interlocutory mandatory injunction which is quite different from that for grant of temporary injunctions is as enunciated in the case of **KENYA AIRPORT AUTHORITY V NEW JAMBO TAXIS NBI. CIVIL APPEAL NO 29 OF 1997 (C.A),** where the Court of Appeal, while applying the decision of Megary J. (as he then was) in **SHEPHERD HOMES V SANDHAM [1979] 3 WLR 348**, cited with approval the passage in **"Halsbury's Laws of England," Volume 24**, at paragraph 948 to be that:

> **"A mandatory injunction can be granted on an interlocutory application, as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempts to steal a march on the plaintiff … a mandatory injunction will be granted on an interlocutory application."**

[18] I also find the following statement by **Ringera J** (as he them was) in the case of **SHOWIND INDUCSTRIES LTD v GUARDIAN BANK LTD & ANOTHER [2002] 1 EA 284 (CCK)** to be useful, that**:**

> **''As I understand the law, an interlocutory mandatory injunction is granted very sparingly and only in exceptional circumstances such as where the applicant's case is very strong and straight forward. Moreover, as the remedy is an equitable one, it may be denied where the applicant's conduct does not meet the approval of a court of equity or his equity has been defeated by laches''.**

[19] I now set out to determine the issues herein within the above legal dimensions.

Necessity of notice to Customer

[20] Notice to the customer of important matters touching on the account held in a bank is almost an indispensable necessity. And although methods of communication are various and varied, most banks have adopted technology in communication of important matters to the customer; a method that is fast and almost instantaneous. The necessity of communication arises from the fiduciary nature of Customer-Bank relationship which is undergirded by absolute faith and trust. Ordinarily, full disclosure of any action taken by the Bank, especially those which are adverse to the Customer is imperative aspect of that relationship. Therefore, whereas the Applicant agreed **"to comply, observe and be bound by the Terms and Conditions made by you [read the Bank] and in force from time to time or as amended by you [read the Bank] pertaining to such account (s) … and the General Terms and Conditions documents",** any such terms and conditions so made must be brought, one way or other, to the attention of the Applicant without delay. Equally, any adverse action taken by the Bank on the account held by the Applicant must be brought to the attention of the Applicant without any delay. Freezing an account is an intrusive measure of extreme dimensions and must be fully disclosed to the affected party, unless, the disclosure has been restricted or limited by law through what I call ''gag order'' which prohibits the Bank or the relevant officer of the Bank from disclosing the existence of a surveillance or freeze order. Of importance, such restriction must be sanctioned by law and under the superadded authority of a court order; they are common in legislations on Bank Fraud, Anti-corruption and Anti-money Laundering laws; for instance, the Proceeds of Crime and Anti-money Laundering Act. In the absence of such restriction, a contrary view on disclosure of adverse actions by the bank would be unconscionable and a negation of the

law especially in contractual and mutual engagement of a Customer and a bank. Accordingly, informing the Customer of the taking of an adverse action authorized by the contract is not an onerous task whatsoever. In the present case, the Respondent was under an obligation to notify the Applicant of the freezing of its account as well as any other Terms and Conditions that the Applicant was subject to. The Notification could be by making an express reference to or by incorporating existing Terms and Conditions into the signed contract document or by a general advertisement or notification to the customers generally especially of those Terms and Conditions which are made subsequent to the Contract. It is worth of repeat that the methods for communication may be various and varied as long as they achieve the intended results.

Obligation to take out interpleader proceedings

[21] Under clause 22 of the General Terms and Conditions, the Bank is authorized at any time to **"freeze any account of a Customer if and so long as there is any dispute or the Bank has doubt for any reason (whether or not well founded) as to the person or persons entitled to operate the same, without any obligation to institute interpleader proceedings or to take any step of its own initiative for the determination of such dispute or doubt."** The account and the funds therein belong to the Company except the bank thought there was a dispute or a doubt as to the person or persons who should operate the account. I do not, therefore, think the Bank can be compelled to take out interpleader proceedings in the circumstances of this case.

Freezing the account

[22] The only limb of the above General Terms and Conditions which raises pertinent legal issues and invites a discourse thereto is in respect of; **"freeze any account of a Customer if and so long as there is any dispute or the Bank has doubt for any reason (whether or not well founded) as to the person or persons entitled to operate the same...''.** Clause 22 of the General Terms and Conditions does not create any necessity for the Bank to obtain a court order in order to freeze the account herein so long as there is a dispute or the Bank is in doubt for any reason as to the person or persons entitled to operate the account. First of all, there has to be a dispute or the Bank should have doubt as to the person or persons entitled to operate the account in question. I am mindful the words ''**whether or not well founded''** Clause 22 are likely to introduce some confusion, but the textual wording of the said Clause does not permit the Bank to act whimsically or as they wish without first determining whether there is a dispute or doubt as to the person or persons to operate the account. It is expected the Bank should give consideration to the prospects of any complaint raised on an account to see whether it amounts to a dispute or a serious doubt in the sense of Clause 22 referred to above, because not all complaints amounts to a dispute or to doubt. At the very least, a bank is expected to exhibit a sense of reasonableness in handling such complaints in deciding which complaint amounts to a dispute or doubt for purposes of Clause 22 and which ones does not. The law requires of the Bank as trustees and the custodian of customer's funds to attain that threshold. The next question then becomes;

Did the Bank act in accordance with the law?

[23] The question whether the Bank acted in accordance with the law, makes the court to ponder over two matters; 1) That the Account in issue belongs to a Registered Company; and 2) The dispute herein was based on a letter dated 12.2.2014 from NJIIRI KAIRU & CO ADVOCATES for one of the directors of the Applicant, and the Bank read a dispute and fraud from the said letter. For clarity of thought and good order, let me start with the last issue. The letter dated 12.2.2014 was written on behalf of one of directors of the Applicant and the relevant part from which the Bank read dispute and fraud is as here under.

> **''We are instructed that the co-director and other unknown persons are purporting that a resolution has been passed by the company and our client has been removed/resigned as a director of the said company a fact which is not true.**
>
> **We therefore demand that no changes signatories should be effected [sic] with respect to the**

said account without first seeking confirmation from our offices.....

Further we hereby inform that the aforesaid issues are subject to a Court matter ongoing between the only directors of the company i.e. H.C.C NO 42 OF 2014''.

[24] The letter dated 12.2.2014 talked of a purported resolution to remove him from directorship of the company. A simple inference is that there was not in fact any resolution, and if there was any, the same had not been annexed to the letter. The best that can be made of a purported resolution is that it is merely apprehensive; is of no any legal effect; cannot found a dispute in terms of Clause 22 of the General Terms and Conditions herein or be a basis for taking of an action so adverse as freezing of an account. Moreover, removal of directors of a company is a legal process ordained in the Companies Act and is done through resolutions of the Company which are then filed with the Registrar of Companies. Even if it were true that such processes of change of directorship was being undertaken by the Company, that fact cannot found a dispute as to the person or persons entitled to operate the account held by the Company with the Bank under Clause 22. The only feasible challenge of change of directorship is channelled through the provisions of the Companies Act or the court or meeting of the company i.e. the shareholders. And not through letters by individual directors to persons concerned such as banks. Thus, there could be merit in the argument by the Applicant that the letter dated 12.2.2014 could have been written to counter the court's refusal to grant orders to freeze the account in issue in NBI HCCC NO 42 OF 2014. It cannot be gainsaid that the pendency of NBI HCCC NO 42 OF 2014 does not amount to a dispute or proof of fraud. Equally, there is no fraud which can be read from the letter dated 12.2.2014 even with great stretch of imagination, which can warrant a freeze on the account of the Company. Fraud is a serious criminal allegation and where the bank is relying on fraud to freeze an account, it should at least meet the threshold of the law, that is, the bank has reasonable grounds to suspect an offence may have been committed or is about to be committed, and the threshold is normally drawn from the cogency of evidence or information presented. Accordingly, for purposes of freezing an account, the bank must be possessed of sufficient material and information on which to act; it must be credible information on which an investigation may ensue by the relevant investigative agencies. That is an obligation of the Bank as the trustee to the customer as well as a stakeholder in crime detection and prevention.

[25] Now that I have found that the account herein and the funds thereto belong to the Company; and it must be run in accordance with the instructions which are given to the Bank by the Company in accordance with resolutions of the Company, did the bank act in accordance with the law in freezing the account? The great legal innovation is that, a company is a separate legal entity from the people who compose it although it operates through human agents. Therefore, instructions by an individual director to the Bank to freeze the Company account, should only be acted upon by the Bank if they are backed by a court order or a resolution of the Company under seal, or are in the nature of a report of commission of an offence such as fraud, money-laundering, terrorism-financing, and others on the Company account, and on which the bank has reasonable suspicion that a crime may have or has been committed. I have held that, where there is a dispute or suspicion of fraud on the Company account held in the Bank; and the Bank decides to freeze the account, it beholden the Bank to bring the decision to the attention of the company immediately unless it is prohibited by law to do so. The bank did not do that; it has not even show that there was any prohibition on its part to notify the Company of the freeze of its account; it has placed absolutely nothing before the court to support its action to freeze the account and I therefore, hold that there was no reason to freeze the account on grounds that were unsubstantiated and quite untenable in law. Thus, a reasonable application of the judicial mind on the facts of this case suggests that this case possesses exceptional circumstances which make the Applicant's case to be very strong and straight forward with high possibility of success. The case is clear and one which the court thinks ought to be decided at once; the act done is simply a fragrant violation of the law by the Bank which can be remedied easily and in a summary manner; and sustenance of the freeze would be tantamount to aiding the Respondent in its attempt to steal a march on the Applicant. This is a perfect case for issuance of an interlocutory mandatory injunction.

ORDERS

[26] Accordingly, I hereby issue an interlocutory mandatory injunction directing the Respondent Bank

to lift the freeze it had placed upon A/c No. ***[particulars withheld]*** and allow the Applicant to access the said account. Except, the account should be operated in accordance with the lawful instructions given or as may be given to the Bank by the Applicant, but of course on due resolution of the Applicant Company. For clarity, the Applicant as a successful party at an interlocutory stage is also entitled to a temporary injunction as a corollary to the mandatory injunction and accordingly I restrain the Respondent from imposing any other or further freeze based on similar facts on the account A/c No. ***[particulars withheld]*** until this case is heard. It is so ordered. I award the Applicant costs of the application.

Dated, signed and delivered in open court at Nairobi this 9th day of June, 2014

F. GIKONYO

JUDGE

In the presence of:

Kinyua C/C

Njenga for Applicant/Plaintiff

M/S Maina for Malonza for Respondent/Defendant

F. GIKONYO

JUDGE