



**REPUBLIC OF KENYA**

**High Court at Kisumu**

**Miscellaneous 110 of 2012**

ETHICS AND ANTI-CORRUPTION COMMISSION.....APPLICANT

VERSUS

ANN CATHERINE WANGUI MBORA.....RESPONDENT

**RULING**

This ruling follows the filing of submissions by both sides to dispose of the application dated 2/11/2012 and filed here on 27/11/2012.

The application is a Notice of Motion brought under Section 56 of the **ANTI CORRUPTION AND ECONOMIC CRIMES ACT NO.3 OF 2003**, Civil Procedure ACT (Cap 21) and Civil procedure Rules.

It was brought under a certificate of urgency and, as an interim measure, the Court granted prayer 2, which was a prohibitory order prohibiting the respondent – **ANN CATHERINE WANGUI MBORA** – by herself, or with or through others from transferring, disposing of, wasting, changing, or in any other way dealing with parcel of land NO. **KISUMU MUNICIPALITY BLOCK 8/176** pending the hearing and determination of this application.

The order was meant to run upto 8/12/2012 but has since been extended several times and is still in force.

In essence, what is sought is confirmation of that same order, this time to run for six months.

The confirmation is sought after the opposing side filed grounds of opposition on 28/11/2012. Subsequent upon that filing, parties agreed to have the application determined on the basis of written submissions.

The written submissions were then filed, first, by the applicant on 18/1/2013 and second, by respondent on 25/1/2013.

The application herein is a logical sequel to another application, an originating motion, brought earlier by the applicant and on the basis of which my brother Justice H. Chemitei, granted a prohibitory order preserving the suit property for 6 months to enable the applicant to conduct investigations on corruption – related transactions leading to the land's acquisition by the respondent.

The six months have since lapsed and hence this application for extension.

In opposing the present application, it was alleged that the application is misconceived and incompetent and that it is also incurably defective.

It was alleged too that the application was unprocedurally drawn and an abuse of Court process.

In the applicant's submissions, the applicants mandate under the law was explained and the history of this case was given.

In brief, it emerged that this suit was filed on 6/6/12 seeking preservation orders concerning suit property under S.56 of **ANTI -CORRUPTION AND ECONOMIC CRIMES ACT**. The orders were granted on the same date. The respondent was served with the orders. She didn't challenge them.

To support the grant of extension, it was submitted that land matters – like this one-are generally complex and this is more so where – like here – investigations concern fraudulent transactions.

Matters are not helped by the long lapse of time that may attend such fraudulent transactions. In this case such transactions are said to have taken place between 1999 and 2002.

Given that state of affairs, the applicant was unable to complete investigations within the first 6 months granted, hence the need for extension.

In the respondents submissions, it appears clear that what is opposed is not only the present application but the earlier one as well. The position taken is that the applications are an abuse of the Court process and are aimed at harassing and frustrating the respondent.

The Court has this to **SAY**:

The applicant is clearly mandated by the law to proceed the way it has. That mandate is clear generally and specifically in the provisions of Section 56 of **ANTI-CORRUPTION AND ECONOMIC CRIMES ACT NO.3 OF 2003**. Pursuant to that mandate, the applicant filed the originating motion and thereafter this application.

This is not the first of such move by the applicant. As an example, there are the decided authorities of **(1) KENYA ANTI-CORRUPTION V. MOSES NGETHA & 102 OTHERS: NRB HC:MISC Appl.781/06** and **(2) KENYA ANTI-CORRUPTION COMMISSION VS BETTY ALISON CHEBET KIPSAITA & ANOR: KITALE HC:M/S: App No.27/07**.

These two authorities are cited by the applicant and their import is a general acceptance by the Court to grant time to complete investigations.

The respondents response is a jumbled one and can be faulted on several fronts:

First, a careful reading of the submissions show that there is no substantiation of what is alleged in the grounds of opposition. It is not clear, for instance, how the application can be said to be incurably defective or unprocedurally drawn.

Second, the respondent cannot be heard to present a belated response to the first application. It appears well that that application is already spent. The respondent had a window of opportunity to challenge that application under S.56(4) of the **ANTI-CORRUPTION AND ECONOMIC CRIMES ACT NO.3 of 2003** but she didn't do so. It is a vain effort to try to do so now.

Three, the submissions of the respondent as drawn and filed do not offer reasons that may not justify extension of time.

Time was granted in the first instance. Time is sought in the second instance. The main issue is time, not whether somebody is trying to get respondents property or harass and frustrate the respondent. Those other arguments or assertions would have been of use only if the respondent had chosen to challenge the order issued on the basis of the first application.

Bearing all this in mind, it is clear that the applicants application can not be said to be successfully challenged.

Infact, looking at the explanations given in the applicant's application and submissions, there is merit in granting extension of time. This merit has not been displaced by the grounds of opposition filed or by the respondents submissions.

Accordingly then, prayer (2) which is for extension for another six months the orders made on 6/6/2012 by Justice Chemitei, and prayer (3) which is for service of extended order on the respondents and/or their advocates are hereby granted.

**A.K. KANIARU – JUDGE**

**22/4/2013**

**22/4/2013**

A.K. Kaniaru – Judge

Dianga – CC

No party - Present

Interpretation – English/Kiswahili

Owiti for defendant/Respondent

No other counsel present

**Court:** Ruling on application dated 2/11/2012 read and delivered in open Court.

Right of Appeal – 30 days.

**A.K KANIARU – JUDGE**

**22/4/2013**