



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: KOOME, GATEMBU & J. MOHAMMED, J.J.A)

CIVIL APPLICATION NO. 173 OF 2020

BETWEEN

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

AND

CATHERINE NKIROTE MAINGI

(sued in her personal capacity and also t/a VENYTE SUPPLIERS

and JOSCATO SALES SUPPLIES).....1ST RESPONDENT

JOHN KAGO MURIMA.....2ND RESPONDENT

JANE MAKENA MAINGI t/a QSETTERS INVESTMENTS.....3RD RESPONDENT

(Being an application for stay of execution of the Judgment and Decree of the

High Court of Kenya at Nairobi (Onyiego, J.) dated and delivered on 8th April 2020

in

ACEC Civil Suit No. 6 of 2018)

RULING OF THE COURT

1. Pending the hearing and determination of its intended appeal from the judgment of the High Court (*J.N. Onyiego, J.*) given on 8th April 2020, the applicant in its application dated 25th June 2020, made under Rule 5(2)(b) of the Court of Appeal Rules, seeks an order of injunction to restrain the respondents from withdrawing funds, transferring, disposing of, wasting or in any other way dealing with the underlisted bank accounts, namely:

Account Number	Account Name	Amount (Kshs.)
i. A/c No. 0020192678243	John Murimi Kago	11,744,462.33
Equity Bank		
ii. A/c No. 0940197601341	VenYTE Suppliers	787,634.95
Equity Bank		
iii. A/c No. 1180263423271	Qsetters Investments	82,100,05

successful would be rendered nugatory. The authorities cited by counsel all support that position.

12. On the limb of arguability, the applicant contends that during the hearing of the appeal, it will urge, among other grounds of appeal, that the learned Judge erred in failing to address the question whether the respondents, as suppliers, have a duty to comply with the Public Procurement and Disposal Act and the Regulations thereunder; that the learned Judge erred in failing to find that every person, including a bidder, in the procurement process that entails expenditure of public finance has a responsibility to uphold the principle of prudent use of public resources; and that the learned Judge failed to address the question of collusion amongst the respondents as bidders. We are persuaded that the intended appeal is not frivolous. We think it is arguable.

13. As to whether the appeal will be rendered nugatory unless we grant the orders sought, the respondents have not demonstrated, beyond the statement that they are in a position to do so, that they have the ability to refund the amount in question if we decline the application and the appeal ultimately succeeds.

14. We are therefore satisfied that the applicant has satisfied the twin principles for the grant of an order of injunction pending the hearing and determination of the intended appeal in accordance with the jurisprudence underlying the consideration of the twin principles summarized by this Court in the case of *Stanley Kangethe Kinyanjui vs. Tony Ketter & 5 others* (supra). Accordingly, we allow the application in terms of prayer 3 of the application dated 25th June 2020 and hereby order that pending the hearing and determination of the intended appeal the respondents, whether by themselves their agents servants and or employees, are hereby restrained by order of injunction from withdrawing funds, transferring, disposing of wasting or in any other way dealing with the aforestated bank accounts, namely:

Account Number	Account Name	Amount (Kshs.)
i. A/c No. 0020192678243	John Murimi Kago	11,744,462.33
Equity Bank		
ii. A/c No. 0940197601341	Venyte Suppliers	787,634.95
Equity Bank		
iii. A/c No. 1180263423271	Qsetters Investments	82,100.05
Equity Bank		
iv. A/c No. 0260192617892	Joscate Sales and Supplies	704,974.45
Equity Bank		
v. A/c No. 01109416161300	Catherine Nkirote Maingi	15,888,804.50
Co-operative Bank		
TOTAL		29,207,976.28

15. The costs of the application shall abide by the outcome of the intended appeal.

Orders accordingly.

Dated and delivered at Nairobi this 4th day of September, 2020.

M.K. KOOME

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JUDGE OF APPEAL

S. GATEMBU KAIRU, (FCI Arb)

.....

JUDGE OF APPEAL

J. MOHAMMED

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR