



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**MISCELLANEOUS APPLICATION NO. E099 OF 2021**

**IN THE MATTER OF AN APPLICATION FOR ORDERS UNDER SECTIONS 1A,**

**1B & 3A OF THE CIVIL PROCEDURE ACT CAP 21 LAWS OF KENYA**

**AS READ TOGETHER WITH ORDER 51 RULE 1 OF THE**

**CIVIL PROCEDURE RULES 2010**

**AND**

**IN THE MATTER OF PRESERVATION ORDERS FOR THE SUMS OF MONEY IN**

**ACCOUNT NO. 0102xxxxxxxxx NATIONAL BANK OF KENYA, HARAMBEE AVENUE**

**AND ACCOUNT NO. 0112xxxxxxxxx COOPERATIVE BANK OF KENYA MOI AVENUE**

**BRANCH IN THE NAME OF UNION OF KENYA CIVIL SERVANTS**

**BETWEEN**

**WALTER BIEGON.....APPLICANT**

**VERSUS**

**UNION OF KENYA CIVIL SERVANTS.....1<sup>ST</sup> RESPONDENT**

**TOM ODEGE.....2<sup>ND</sup> RESPONDENT**

**MARY MUKIRI.....3<sup>RD</sup> RESPONDENT**

**JUSTUS MUGO.....4<sup>TH</sup> RESPONDENT**

**AND**

**NATIONAL BANK OF KENYA.....1<sup>ST</sup> INTERESTED PARTY**

**COOPERATIVE BANK OF KENYA.....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

1. The motion before me is the one filed by the Applicant on 4<sup>th</sup> June 2021 seeking the issuance of preservation orders by the Court to restrain the Respondents from transacting in the accounts of the 1<sup>st</sup> Respondent held at the Interested Parties. The motion is supported by the affidavit of Mr. Walter Biegong the Applicant herein. The Respondents are opposed and filed an affidavit sworn by the 2<sup>nd</sup> Respondent Mr. Tom Odege who deposes that the entire application is fatally defective, frivolous, vexatious, bad in law, an abuse of the court process. He also asserts that the motion is an afterthought, misconceived, time wasting, unmerited and a conglomeration of lies and blatant concealments

of facts. The Respondents assert the Application is a perfect material for dismissal with costs.

2. The parties canvassed the motion by way of submissions and the common thread running through both submissions is that the matter is between Union officials. The Applicant asserts that there is fraud and economic crimes ongoing at the 1<sup>st</sup> Respondent. If the Court has comprehended the matter well, this is a matter that requires full hearing to determine the veracity of the matters raised by the Applicant. From the record before the Court it is clear there are accounts held at the National Bank of Kenya and the Co-Operative Bank of Kenya by the 1<sup>st</sup> Respondent. No documents were presented to show any illegal transactions and as such the order for preservation is misplaced and without any support. As such the Court declines the invitation to issue any order freezing the accounts of the 1<sup>st</sup> Respondent. As the matter is involving Union officials the matter will be placed for directions on 28<sup>th</sup> October 2021 to confirm the filing of responses and for directions as to the disposal of the suit. There shall be no orders granted in respect of the present motion as such there is no order on costs as the eventual determination of the suit will determine where the liability for costs will lie.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 29TH DAY OF SEPTEMBER 2021.**

**NZIOKI WA MAKAU**

**JUDGE**