



**Republic v Betting Control and Licensing Board; Safaricom PLC & 3 others  
(Interested Parties) (Judicial Review Miscellaneous Application E061 of 2020)  
[2022] KEHC 13110 (KLR) (Judicial Review) (22 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13110 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E061 OF 2020  
AK NDUNG'U, J  
SEPTEMBER 22, 2022**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**BETTING CONTROL AND LICENSING BOARD ..... RESPONDENT**

**AND**

**SAFARICOM PLC ..... INTERESTED PARTY**

**BHARTI AIRTEL NETWORK (K) LIMITED ..... INTERESTED PARTY**

**COMMUNICATIONS AUTHORITY OF KENYA ..... INTERESTED PARTY**

**PEVANS EAST AFRICA LIMITED ..... INTERESTED PARTY**

**RULING**

1. This court has delivered 2 rulings as follows:
  - 1) A ruling in respect of applications dated August 5, 2022 and August 8, 2022 by Sabrina Kanini and Joy Masinde respectively. The order granted is that the applications be heard and timelines were duly given.
  - 2) A ruling on the question whether the consent dated May 26, 2022 between the *ex parte* applicant and the respondent should be adopted. The outcome was that the court for reasons stated, declined to adopt the consent.



2. Aggrieved by the 2<sup>nd</sup> ruling, the *ex parte* applicant has expressed the intention to appeal, sought the proceedings and ruling of the court and contemporaneously sought a stay of these proceedings pending appeal.
3. Mr Gatheru for Paul Wanderi Ndung'u opposed the application on the basis that a stay would contradict the orders and timelines given by court in the first ruling herein above.
4. I have considered the oral application for a stay of proceedings. The record as it stands shows:
  - 1) The respondent board members have been convicted of contempt of court vide a ruling of court dated February 17, 2022.
  - 2) The attempt to purge the contempt through a consent recorded with the *ex parte* applicant has come a cropper as the consent has been rejected.
  - 3) The rejection of the contempt forms the basis of the intended appeal.
  - 4) Applications dated August 5, 2022 and August 8, 2022 seek a review of the orders of contempt and directions have been given.
  - 5) There are no stay orders of the conviction of the board members for contempt and in the absence of a consent they are due for sentencing.
5. In these circumstances, it is my considered view that an order staying the proceedings herein shall be a double edged sword. It will on the one hand insulate the board from sentencing proceedings thus cushioning the directors from substantial loss through penal consequences and on other hand maintain the status *quo* and allow the *ex parte* applicant the opportunity to lodge the intended appeal and a formal application for stay.
6. I note that the application before court is an oral one based only on the intention to appeal. The order that commends itself to me is that stay if granted must be a temporary one and over a short period of time to allow the *ex parte* applicant to move this court or the Court of Appeal formally for stay orders.
7. Consequently, I allow a stay of the proceedings herein for 30 days.
8. Matter be mentioned on October 24, 2022 for further orders.

**DATED SIGNED AND DELIVERED THIS 22<sup>ND</sup> DAY OF SEPTEMBER, 2022**

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**A.K. NDUNGU**

**JUDGE**

