



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**JUDICIAL REVIEW DIVISION**

**JUDICIAL REVIEW MISC. CIVIL APPLICATION NO. 21 OF 2018**

**IN THE MATTER OF AN APPLICATION BY SIMON LONYIA FOR LEAVE TO COMMENCE  
JUDICIAL REVIEW PROCEEDINGS FOR ORDERS OF CERTIORARI, MANDAMUS &  
PROHIBITION**

**AND**

**IN THE MATTER OF THE DECISION OF THE INSPECTOR GENERAL OF POLICE  
THROUGH THE GENERAL SERVICE UNIT COMMANDANT TO INTERDICT SIMON  
LONYIA FROM SERVICE AT THE GENERAL SERVICE UNIT**

**AND**

**IN THE MATTER OF ARTICLES 10, 19, 21, 22, 23, 25, 27, 47, 73, 159, 165 & 244 OF THE  
CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF FAIR ADMINISTRATIVE ACTION ACT AND ORDER 53 OF CIVIL  
PROCEDURE RULES, CAP 21**

**AND**

**IN THE MATTER OF THE LAW REFORM ACT, CHAPTER 25, SECTIONS 8 & 9**

**BETWEEN**

**SIMON LONYIA.....APPLICANT**

**AND**

**INSPECTOR GENERAL OF POLICE.....1<sup>ST</sup> RESPONDENT**

**GENERAL SERVICE UNIT COMMANDANT.....2<sup>ND</sup> RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTION.....3<sup>RD</sup> RESPONDENT**

**R U L I N G**

1. The ex-parte applicant **Simon Lonyia** by his chamber summons dated 19<sup>th</sup> January, 2018 seeks from this court leave to institute Judicial Review proceedings challenging the decision of the Respondents interdicting him on 28<sup>th</sup> August, 2017, preferring criminal charges against him vide Milimani Cr. Case No. 1502/2017; seeking reinstatement and suspension of his interdiction or suspension from duty due to his conduct of 28<sup>th</sup> August, 2017 at the Supreme Court of Kenya. The applicant also seeks that the leave if granted do operate as stay of criminal proceedings in Cr. case No. 1502/2017 pending the determination of the application.
2. The application for leave is not opposed with the DPP conceding this morning. However, the prayer for stay is opposed on the ground that no material is placed before the court to warrant stay sought as the matter herein can be fast tracked since there are 8 (eight) witnesses lined up for testifying in the pending criminal case. Reference was placed on matter today **Madahana & others versus DPP & Another [2014] eKLR**
3. On the part of the Applicant's Counsel, Miss Kithi submitted that criminal proceedings led to the Applicant's interdiction on half pay hence stay is necessary to avoid the Applicant suffering more and that unless stay is granted, the motion if successful will be rendered nugatory.
4. I have considered the application for stay and in my view, it is now settled law that even where leave to apply is granted, stay is not a matter of right. The Applicant must demonstrate that unless stay is granted, the challenged proceedings/decision if successful then the application for Judicial Review shall be rendered nugatory and the applicant shall be rendered a mere pious explorer in the judicial process.
5. In this case, the applicant was interdicted on 30<sup>th</sup> August, 2017 on allegations among others that he created disturbance at the Supreme Court; and that he willfully resisted a police officer in the due execution of his duty on 28<sup>th</sup> August, 2017. On the same day, he was arrested and arraigned in court charged with the offence of creating a disturbance in a manner likely to cause a breach of the peace under Section 95(1) (b) of the penal code.
6. He is challenging both charges of interdiction and the criminal case before Milimani Chief Magistrate's Court. There are (8) eight witnesses listed to testify.
7. Orders seeking to prohibit the prosecution or the magistrate from hearing the case can be sought at any time of the commenced proceedings. However, the grant of stay is a judicial discretion. That discretion must be exercised judiciously. Judicial Review proceedings can be fast-tracked for hearing and determination unlike criminal cases which require summoning of witnesses to appear, testify, be cross-examined, re-examined, etc.
8. The applicant is under interdiction but the prayer is for stay of prosecution alone which in my view will not reverse the interdiction.
9. I therefore find that it has not been demonstrated that if stay is not granted at this stage, the main motion if successful will be rendered nugatory, if the applicant believes he is innocent.
10. The charges facing him are misdemeanors. He can mount a successful challenge to the evidence and shall be acquitted since it is not his duty to prove his innocence. That being the case, I decline to grant stay. I however, grant leave to apply as sought in the prayer No.s 2(a) b, c and d of the chamber summons. The main motion to be filed and served within 7 days from to date. The Respondents to file and serve their responses within 7 days from date of service.
11. Mention on 19<sup>th</sup> March, 2018 to confirm compliance and directions on the hearing.
12. Costs in the cause.

**Dated, Signed and Delivered at Nairobi this 20<sup>th</sup> day of February, 2018.**

**R.E. ABURILI**

**JUDGE**

In the Presence of:

Miss Kitui for Applicant

No appearance for Respondent

Court Assistant: Kombo