



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

JUDICIAL REVIEW NO. 14 OF 2017

BRUCE JOSEPH BOCKLE.....APPLICANT

VERSUS

1. COURT BALIFF, MOMBASA HIGH COURT

2. NATIONAL POLICE SERVICE.....RESPONDENTS

AND

COQUERO LIMITED.....INTERESTED PARTY

RULING

1. This matter first came before court on the 25/4/2018 under a Certificate of Urgency for the consideration of the *ex-parte* chamber summons dated the same day.
2. When the court perused the Application, it was apparent that the leave sought to file judicial review was geared and aimed toward to stoppage or prohibition of the Court Bailiff from executing a decree of eviction issued by the Environment and Land Court in the case No. 59 of 2006.
3. With that appreciations the court I declined to grant leave and dismissed the application at that very early stage. Soon the thereafter the *ex-parte* applicant filed an application dated 27/4/2017 seeking injunction pending Appeal and conservatory orders. That application was certified urgent and directed to be heard on a date taken at the Registry. When parties attend court on Monday 8/5/2018, the Respondent's had not been served but the interested party had been served the Friday before and had not filed my responses hence they sought time to file responses and vehemently opposed grant of any interim orders. The court having not changed its mind on its views on lack of jurisdiction declined to issue any orders stating that it would invite the parties to address the question of jurisdiction before it takes the next step. The matter was then referred to be placed before the presiding judge Ogola of the station.
4. It would appear that the parties appeared before the judge on the 16/5/2018 when after listening to the parties some interim orders of stay were granted and once again matter brought back before this court.
5. At some point Mr. Gikandi was prepared to withdraw the Application because the Applicant had obtained some orders in the High Court at Malindi which made the 'proceedings here unnecessary'. On that day the application dated 31/7/2017 and amended on 10/8/2017 was withdrawn with costs to the Respondents.
6. However even then Mr. Gikandi still sought time for parties he address the court on the issue whether or not the court had jurisdiction and such request was conceded by the other counsel. Now having read the record of the file, it is apparent to me that at that time there was no matter pending for determination to attract any

arguments by the parties. With a hand-sight the orders of 29.8.2017 were totally unnecessary and have resulted in undue employment of judicial time on the subsequent proceedings including this ruling. I say so because if the application for leave had been dismissed and the subsequent application for stay pending appeal were also withdrawn, there was essentially nothing pending court determination in this file.

7. However having proceeded on such false appreciation of the facts in the file, I will still deliver myself on why I held and still hold that this court has no jurisdiction to issue orders against the police and the court bailiff in their pursuit to enforce eviction order issued in **ELCC No. 59 of 2006** whether one cites the provisions of articles 47,48, 50, 159 and 165 of the constitution and add to them the overriding objectives of the court, the inherent powers of the court and Order 53 of the Act. The simple position is that the bailiff and the police are not acting suo motto. They are enforcing court orders issued by the Environment and Land Court in Mombasa. That court is a court of equal status with the High Court. The Kenyan people in creating that court to work for them clearly prohibited this court, under Article 165(6) from purporting to supervise that court.

8. The High Court has supervisor jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function but not over a superior court. The Environment and Land Court is a superior court. That alone was enough for any person keen to promote the rule of law and reluctant to abuse court process to stay away from bringing this matter to this court.

9. As submitted by the Respondent and interested party, this suit will one day be cited as a classicus example of gross abuse of court process. It should and cannot be countenanced or abetted. For those reasons, I now order that the *exparte* applicant shall meet the costs of these proceedings as incurred by the Respondent and the interested party. Such costs be taxed by the taxing officer if not agreed by consent.

Dated at Mombasa this 12th day of April 2018.

P.J.O. OTIENO

JUDGE

Read, delivered and signed this 13th day April 2018.

ERIC OGOLA

JUDGE

In the presence of:

.....for the *Exparte* Applicant

.....for the Respondent

.....for the Interested Party