



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTION AND JUDICIAL REVIEW DIVISION
MISC. APPLICATION NO. 303 OF 2016

**IN THE MATTER OF AN APPLICATION BY TAJ MALL LIMITED FOR LEAVE TO APPLY
FOR ORDER OF PROHIBITION**

AND

**IN THE MATTER OF THE FIRST CLASS MAGISTRATE'S COURT AT CITY HALL
NAIROBI IN CASE NO. 109 OF 2015**

AND

**IN THE MATTER OF THE PHYSICAL PLANNING ACT CHAPTER 286 OF THE LAWS OF
KENYA**

AND

IN THE MATTER OF ARTICLES 48 & 50 OF THE CONSTITUTION OF KENYA

REPUBLIC.....APPLICANT

AND

NAIROBI CITY COUNTY.....1ST RESPONDENT

THE FIRST CLASS MAGISTRATE'S COURT

AT CITY HALL NAIROBI.....2ND RESPONDENT

EX PARTE: TAJ MALL LIMITED

RULING

Introduction

1. By a Chamber Summons dated 15th July, 2015, the applicant herein, **Taj Mall Limited**, seeks the following orders:

(1) That leave be granted to institute judicial review proceedings seeking;-

a. An order of Prohibition prohibiting the respondents from prosecuting and from proceeding any further or taking any further steps in any whatsoever in Case No. 109 of 2015 filed before the 2nd respondent by the 1st Respondent against one Hema Patel Kashyap.

b. That the costs of this application be provided for.

(2) That the grant of leave herein do operate as a stay of any proceedings or the taking of any further step whatsoever in Case No. 109 of 2015 filed before the 2nd respondent by the 1st respondent against one Hema Patel Kashyap pending the hearing and determination of the judicial review application.

Applicant's Case

2. The application was supported by an affidavit sworn by **Douglas Aswani**, who described himself as the General Manager of the Applicant herein.

3. According to the deponent, on 26th March, 2015, one **Hema Patel Kashyap** was charged by the 1st respondent before the 2nd respondent with the offence of advertising TAJ MALL on LR No. 209/13938 using a sky sign without lawful authority which case is still pending hearing and determination in the First Class Magistrate's Court at City Court, Nairobi, the 2nd Respondent herein.

4. It was deposed that the said accused, **Hema Patel Kashyap**, has allegedly been sued either as a Director, Shareholder or Employee of Taj Mall Limited which is a limited liability company having its own legal existence with the right to sue and be sued in its own capacity. Despite that the said accused in the said Case No. 109 of 2015 has been sued in her own capacity as an individual for the alleged wrongs done by the company hence the said proceedings are malicious and an abuse of due process.

Determination

5. I have considered the issues raised in this application.

6. Although at the hearing of the Chamber Summons, **Mr Mungai**, learned counsel for the applicant referred to a person other than the person mentioned as the accused herein, it is clear from the documents filed herein that the alleged accused in these proceedings is the same person as in Miscellaneous Application No. 305 of 2015 which this Court has dealt with. Accordingly, the grant of the orders sought herein in light of this Court's decision in JR 305 of 2016 would amount to an abuse of the Court process.

7. However even if the accused herein was a different person from the one in JR 305 of 2016, since the applicant herein is the company as opposed to the accused, these proceedings would likewise have been rendered still born and therefore frivolous, misconceived and incompetent.

8. In the premises the Chamber Summons dated 15th July, 2016 is struck out with no order as to costs.

Dated at Nairobi this 20th day of July, 2016

G V ODUNGA

JUDGE

Delivered in the presence of:

Mr Mungai for the exp applicant

Cc Mwangi