



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**JUDICIAL REVIEW NO. 342 OF 2016**

**IN THE MATER OF AN APPLICATION BY MIMOSA VILE LIMITED FOR LEAVE TO  
APPLY FOR JUDICIAL REVIEW ORDERS OF PROHIBITION**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA 2010**

**BETWEEN**

**MIMOSA VILE LIMITED .....APPLICANT**

**AND**

**KENYA FOREST SERVICE .....1<sup>ST</sup> RESPONDENT**

**OCPD KAREN POLICE STATION .....2<sup>ND</sup> RESPONDENT**

**DEPUTY COUNTY COMMISSIONER LANGATA.....3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. On 2<sup>nd</sup> August 2016, Honourable Lenaola J did consider the exparte applicant's application dated 2<sup>nd</sup> August 2016 and granted prayer No. 2 which is the prayer for leave to apply for Judicial Review orders of prohibition to prohibit the respondents whether by themselves or any of its officers, agents from unlawfully interfering, arresting, harassing, intimidating and /or destroying property in relation to all that parcel of land known as LR No. 20842 situated in Karen.

2. As regards prayer No. 3 which sought that the leave granted does operate as a stay of any intended proceedings against the applicant with regard to the said LR 20842, the learned judge directed the applicant to reconsider it. Thereafter the applicant amended the chamber summons and on 3<sup>rd</sup> August the learned Judge gave interpartes hearing for 18<sup>th</sup> August 2016.

3. The parties appeared before me on 7<sup>th</sup> September 2016 and I directed the applicant to serve the 2<sup>nd</sup> and 3<sup>rd</sup> respondents for interpartes hearing of prayer No. 3 in the amended chamber summons.

4. Today, the 1<sup>st</sup> respondent and applicant's counsels have appeared and argued the said prayer No. 3 as per the amended chamber summons.

5. But before I delve into the arguments for and against that prayer seeking to restrain the respondents from interfering with the applicant's quiet possession of the suit premises LR 20842, I must settle the curious question as to whether that prayer as sought is available to the applicant at the moment. I say so for reasons that on 2<sup>nd</sup> August 2016, Honourable Lenaola J having granted prayer No. 1 which sought for leave to apply for Judicial Review Orders, it is expected that notwithstanding the pendency of the prayer for stay, the applicant should have proceeded to file the substantive motion within the period of 21 days as stipulated in Order 53 Rule 3(1) of the Civil Procedure Rules which stipulate that:

***“ 3(1) when leave has been granted to apply for an order for mandamus, prohibition or certiorari, the application shall be made within 21 days by notice of motion to the High Court, and there shall, unless the judge granting leave has otherwise directed, be at least eight clear days between the service of the notice of motion and the day named therein for the hearing.”***

6. Order 53 Rule (4) gives the judge considering the application for leave to either grant leave and also order that such leave to operate as stay or to grant leave and order that the prayer for stay be considered interpartes, and that is the position taken by Honourable Lenaola J when he granted leave on 2<sup>nd</sup> August 2016 and also directed on 3<sup>rd</sup> August 2016 that the prayer for stay be considered interpartes on 18<sup>th</sup> August 2016 before the Judicial Review Division.

7. The applicant, regrettably, has not filed the substantive motion and neither does the record show that such motion was ever filed within the 21 days provided for in Order 53 Rule 3(1) of the Civil Procedure Rules.

8. In my humble view, without the substantive motion being filed, and as the leave granted to apply made on 2<sup>nd</sup> August 2016 effectively lapsed on 24<sup>th</sup> August 2016, this court will be embarking on a frolic and on an unnecessary and vain venture if it was to consider the merits of the application for stay pending nothing, as there is not even an application for enlargement of time within which the substantive motion should have been filed.

9. Stay order cannot exist on their own without the substantive motion since leave granted did expire after the lapse of 21 days of issue.

10. Accordingly, I find the application herein for stay unwarranted and unsupported. I dismiss it without orders for costs.

Dated, signed and delivered at Nairobi in open court this 11th day of October, 2016.

**R.E. ABURILI**

**JUDGE**

In the presence of

Mr Simiyu for the applicant

Mr Kagema H/B for Keige for the 1<sup>st</sup> Respondent

CA: Adline