



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CONSTITUTIONAL PETITION NO. 91 OF 2014

SIEVERS UDO PETITIONER

VERSUS

1. THE DIRECTOR OF PUBLIC PROSECUTIONS
2. THE DIRECTOR OF IMMIGRATION SERVICES
3. THE RESIDENT MAGISTRATE COURT AT NAIROBI..... RESPONDENTS

RULING

The Notice of Motion application dated 17th March, 2015 and which is expressed to be brought under article 159 of the Constitution and rules 3 and 19 of the Constitution of Kenya (Protection of rights and fundamental Freedoms) practice and procedure rules 2013) seeks the following orders

1. Spent
2. That the Court be pleased to enlarge the time within which the petitioner should regularize his stay in the Country by a period of 90 days from the date when the petitioner receives his passport.
1. That the status quo be maintained. That is the petitioner should not be arrested and or deported by the 1st and 2nd Respondents servants or agents on account of his current Immigration status in the Country.

The grounds are that on the 18th day of February, 2014, this Court delivered a Judgment whereby proceedings in Nairobi Chief magistrate's Court Criminal case No. 204 of 2014 were declared null and void and the petitioner was ordered to regularize his stay in the country within three months from 18th December, 2014.

That upon issuance of the said order the petitioner commenced the procedure of following up with the release of surety bond of Ksh. 400,000/= and cash bail of Ksh. 100,000/= which were deposited in Nairobi Chief Magistrate Criminal case No. 204 of 2014 and also the issue of the release of the passport.

The process was not completed within the stipulated time.

Counsels for the Respondents did seek instructions to contest this application but when none were forthcoming they did not put in any papers in opposition.

In my ruling dated the 18th day of December, 2014 I did order the petitioner to regularize his stay in the country within three months from the date of Judgment. This was after the Court found the proceedings in Nairobi Chief Magistrates criminal Case No 204 of 2014 to have been in violation of article 49(i) (f) of the Constitution and declared them to have been null and void.

Subsequent to my ruling the petitioner had to seek the release of surety documents, cash bail and the passport. It is quite apparent that the process of retrieval of the said items did take some substantial amount of time leading to the expiry of the stipulated period of 90 days.

The petitioner herein seeks for the enlargement of time so as to enable him comply with the orders of this Court.

A perusal of the proceedings shows that there have been numerous mentions at the behest of the petitioner and in which counsels for the Respondents participated in. There appears to be no serious objection to this application by dint of the Respondents' lack of instructions to their counsels to oppose it.

In conclusion therefore, there being no objection to the application for enlargement of time, and there being no strong public interest reasons to expel the petitioner who is a non-national parent I find the application has merit.

Time within which the petitioner is to regularize his stay in the Country is enlarged for a period of 90 days (ninety) from the date of this ruling. The status quo to be maintained as prayed in the application.

Ruling delivered, dated and signed this 20th day of November, 2015.

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M. MUYA

JUDGE

20TH NOVEMBER, 2015

In open Court in the presence of:

Counsel for the Petitioner Mr. Gikandi

Counsel for the Respondents absent

Court Assistant Musundi

M. MUYA – JUDGE

20/11/2015