



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**MISC. APPL. NO. 241 OF 2011**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**COMMISSIONER OF POLICE ..... RESPONDENT**

**AND**

**LAWRENCE MURIITHI MBABU.....EX –PARTE  
APPLICANT**

**ISHA TRADING COMPANY.....INTERESTED  
PARTY**

**R U L I N G**

- 1).** The application dated 26-7-2012 seeks orders that the proceedings herein be stayed pending the hearing and determination of **Millimani Commercial Court HCCC No. 102 of 201 Isha Trading Co. Ltd –VS- Lawrence Muriithi Mbabu Advocates, Trading as Larewnce Muriithi Mbabu & Associates Advocates.**
- 2).** The application is expressed to be brought under section 1 A and 1 B Civil Procedure Act and Order 51 Rule 1 civil Procedure Rules and all the other enabling provisions of the law.
- 3).** The application is based on the grounds stated therein and is supported by the affidavit of the ex parte applicant (hereinafter applicant), Lawrence Mbabu sworn on 25-7-2012. It is stated in the said affidavit that the nature of the dispute between the applicant and the interested party is a civil dispute which ought to be determined within the civil jurisdiction. That the interested parties complaint ought to have been dealt with under section 80 and section 61 of the Advocates Act. It is further stated that subsequent to the proceedings herein, the applicant filed a civil suit and the substance of the same is similar to the complaint made to the police which triggered the filing of the proceedings herein.
- 4).** The applicant seeks a stay of the proceedings herein and has stated that the civil suit will fully and finally determine the dispute between the parties through a full hearing. It is further stated that concurrent proceedings might embarrass the administration of justice if the two courts arrive at different determinations.
- 5).** The application is opposed. The interested party filed a replying affidavit sworn on the 1<sup>st</sup> August 2012. It is deposed that the nature of the dispute between the appellant and the interested party can be

dealt with under both the civil and criminal jurisdictions as the facts and the circumstances justify the concurrent criminal and civil proceedings.

6). The application was argued by way of written submissions together with the Preliminary objection dated 31-7-2012. I have duly considered the said submissions.

7). The applicant commenced the proceedings herein on 28-10-2011 when he filed the chamber summons dated 28-10-2011 seeking leave to apply for Judicial Review orders of prohibition to stop the Commissioner of Police from arresting, charging or detaining, or instituting any criminal prosecution against the applicant arising out of a complaint to the police and/or Criminal Investigation Department by a company known as Isha Trading Company Limited. That the grant of leave do operate as a stay against the arrest, indictment, detention, criminal prosecution of the applicant or the institution of or any criminal proceedings against him arising out of a complaint by the firm of Isha Trading Company Limited or any director thereof arising from the proposed sale of land parcel No. 25799/1 Mavoko Municipality, Machakos County to the said Isha Trading Company Limited.

8). The said orders were allowed as prayed on 28-10-2011. The applicant subsequently filed the substantive notice of motion dated 16-11-2011. The interested party was later enjoined in these proceedings on 16-3-2012. The application at hand was subsequently filed.

9). It is apparent that the applicant seeks to stay his own proceedings. The applicant was granted temporary orders which have insulated him from criminal proceedings. The civil suit in question related to the same subject matter as the proceedings herein. Since the law does not bar concurrent civil and criminal proceedings, the proceedings herein ought to proceed so that the same can be determined on merits.

10). Section 193 of the Criminal Procedure Code (CPC) provides as follows:

**“193A. Notwithstanding the provisions of any other written law, the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings shall not be a ground for stay, prohibition or delay of the criminal proceedings”.**

11). With the foregoing, I find no merit in the application and dismiss the same with costs.

**Dated, signed and delivered at Machakos this 16<sup>th</sup> day of December, 2015.**

**B. THURANIRA JADEN**

**JUDGE**