



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 4 OF 2014

IN THE MATTER OF: ARTICLE 22 (1) OF THE CONSTITUTION OF

THE REPUBLIC OF KENYA

AND

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND
FREEDOMS UNDER ARTICLES 10, 47, 48, 50 AND 73 OF THE CONSTITUTION OF THE
REPUBLIC OF KENYA**

CIVICON LIMITED PETITIONER

VERSUS

KENYA REVENUE AUTHORITY 1ST RESPONDENT

KIVUWATT LIMITED 2ND RESPONDENT

RULING

1. I HAVE CONSIDERED submissions by Mr. Muthama for the petitioner and Mr. Biketi for the 2nd respondent on an application by the petitioner for status quo to be maintained pending the filing of an application for conservatory orders in the Court of Appeal. By its judgment delivered on 25th June 2014, the court dismissed the petition herein challenging the consent letter of 18.11.13 and the petitioner fears that the implementation of the consent letter will lead to the physical release of the Separator machine the subject of this proceedings rendering the intended appeal nugatory.

2. The 2nd Respondent's counsel emphasized the urgency of the matter in having the Separator release and delivered to Rwanda and contended that the grant of status quo order would wrongly bar the Court before which the consent is set for adoption (Kasango, J) from proceeding with the case.

3. In reaching a decision, I have considered the following matters as determinant:

- a. Under r 32 (3) of The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 a formal application for stay is required to be filed within 14 days of the decision appealed from or such time as the court may direct. In case of urgency, I consider that a shorter time may be directed.
- b. The court may not make an order that directs or injuncts a court of equal jurisdiction as to how to

proceed with a matter before it.

- c. However, a court may stay the execution of its own decision for sufficient cause shown. See *Madhupaper International Ltd v. Paddy Kerr* (1985) KLR 840. In staying its decision, the court will not be directing or making an order as to how the court in HCCC 117 of 2013 proceeds with the matter before it. It will only have stopped temporarily the implementation of its decision to dismiss the petition herein.
- d. The petitioner has a right of appeal against the judgment of the court pursuant to Article 164 (3) of the Constitution and in the exercise of the appeal this court should see that the appeal is not rendered nugatory. If the consent is adopted and the Separator machine released, the appeal if successful, may be rendered nugatory.

4. Accordingly, for the reasons set out above, I grant a stay of execution of the judgment of the Court herein dismissing the petitioner's petition for a period of **seven (7)** days only to allow the petitioner move the Court of Appeal for appropriate orders and the order for stay of execution by this court shall automatically lapse if the petitioner does not within **seven (7)** days from today obtain an order from the Court of Appeal. Costs in the cause.

5. Certified copies of the proceedings and judgment will be supplied to the petitioner as requested.

Dated and delivered this 26th day of June, 2014.

EDWARD M. MURIITHI

JUDGE

In the presence of:

Mr. Muthama for the Petitioner

No appearance for the 1st Respondent

Mr. Biketi for the 2nd Respondent

Miss Linda - Court Assistant