



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURT**  
**CONSTITUTIONAL & HUMAN RIGHTS DIVISION**  
**PETITION NO. 286 OF 2014**

**IN THE MATTER OF INTERPRETATION & ENFORCEMENT OF THE CONSTITUTION**

**AND**

**INT HE MATTER OF ARTICLE 2, 3, 19, 20, 22, 23, 25, 28, 47, 50 (1), 156, 165, 258, 259 OF THE  
 CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF CONTRAVENTION AND/OR EXPECTED VIOLATION OF  
 FUNDAMENTAL HUMAN RIGHTS OF THE OFFICE & PERSON OF THE ATTORNEY  
 GENERAL**

**AND**

**IN THE MATTER OF THE LAW SOCIETY OF KENYA ACT**

**THE HON. ATTORNEY GENERAL.....PETITIONER**

**-VERSUS-**

**THE LAW SOCIETY OF KENYA.....1<sup>ST</sup> RESPONDENT**

**THE COUNCIL FOR THE LAW SOCIETY OF KENYA.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. On 30<sup>th</sup> July, 2014 we directed the Respondents to furnish the Petitioner with the proceeding that took place before the 2<sup>nd</sup> Respondent within seven days and directed the Petitioner to file a further affidavit within 14 days of being supplied with the said proceedings and fixed the matter for hearing today.
2. When the matter was called out for hearing **Mr Ahmednasir** learned Senior Counsel for the Respondents informed the Court that he was ready to proceed.
3. **Mr Nyakundi**, learned counsel for the Petitioner, on his part applied for adjournment. His grounds for seeking the adjournment were firstly, that the Petitioner had been served with the aforesaid proceedings outside the time limited by the Court and on receipt thereof learned counsel

formed an opinion that the Petitioner needed to amend the Petition. However, the Petitioner was outside the Country and was unavailable to swear the affidavit in support of the application to amend the Petition though the application had been drawn. That was the second ground for seeking the adjournment. The third ground was that **Mr Waweru Gatonye** who is leading **Mr Nyakundi** in the matter had been served to appear before the Court of Appeal today hence was unavailable to appear and prosecute the matter. The fourth ground was that there were proceedings before Parliament whose result were relevant to the instant proceedings and the Petitioner wished to incorporate the same by way of a further affidavit.

4. On his part **Mr Ahmednasir** opposed the application. According to him this application for adjournment was once more an attempt to delay the hearing of the petition by the petitioner who is enjoying conservatory orders.
5. While admitting that the said proceedings were supplied out of time he explained that this was due to the fact that during the month of August the Council of the Law Society was engaged in the Annual Conference of the Law Society in Mombasa. He however contended that there was no indication that the Petitioner wished to amend his petition. He submitted that the issue of amendment of the Petition was immaterial. On the issue of **Mr Gatonye's** unavailability, learned counsel was of the view that since the Petition was drawn by **Mr Nyakundi's** firm, there was no reason why the matter could not be handled by **Mr Nyakundi**. On the issue of parliamentary proceedings, learned counsel was of the view that this was a basis being laid for further application for adjournment.
6. **Mr Ahmednasir** however urged the Court to vacate the conservatory orders granted herein if the Court was minded to grant the adjournment sought.
7. We have considered the submissions made by counsel. The principles guiding the grant of adjournment were stated in **Famous Cycle Agencies Ltd & 4 Others vs. Masukhalal Ramji Karia SCCA NO. 16 OF 1994** in which the Supreme Court of Uganda held as follows:

**“...the granting of an adjournment to the party to a suit is thus left to the discretion of the court and the discretion is not subject to any definite rules, but should be exercised in a judicial and reasonable manner, and upon proper material. It should be exercised after considering the party's conduct in the case, the opportunity he had of getting ready and the truth, and sufficiency of the reason alleged by him for not being ready. But the discretion will be exercised in favour of the party applying for adjournment only if sufficient cause is shown. Sufficient cause refers to the acts or omissions of the applicant for adjournment. What is sufficient cause depends upon the circumstances of each case and generally speaking, where the necessity for the adjournment is not due to anything for which the party applying for it is responsible, or where there has been little or no negligence on his part an adjournment would not normally be refused. But where the party has been wanting in due diligence or is guilty of negligence an adjournment may be refused.”**

8. In matters where the Court has granted conservatory orders, the practice is that the petition ought to be heard and disposed of as soon as possible. In the Privy Council Case of **Attorney General vs. Sumair Bansraj (1985) 38 WIR 286 Braithwaite J.A.** expressed himself follows:

**“Now to the formula. Both remedies of an interim injunction and an Interim declaration order are excluded by the State Liability and Proceedings Act, as applied by Section 14 (2) and (3) of the Constitution and also by high judicial authority. The only judicial remedy is that of what has become to be known as the “Conservatory Order” in the strictest sense of that term. The order would direct both parties to undertake that no action of any kind to enforce their respective right will be taken until the substantive originating motion has been determined; that the status quo of the subject matter will remain intact. The order would not then be in the nature of an injunction, ... but on the other hand it would be well within the competence and jurisdiction of the High Court to “give such directions as it may consider appropriate for the purpose of securing the enforcement of ... the provisions” of the Constitution...In the exercise of its discretion given under Section 14(2) of the Constitution the High Court would be required to deal expeditiously with the application, inter partes, and not ex parte and to set down the substantive motion for hearing within a week at most of the**

**interim Conservatory Order. The substantive motion must be heard forthwith and the rights of the parties determined. In the event of an appeal priority must be given to the hearing of the appeal. I have suggested this formula because in my opinion the interpretation of the word in Section 14 (2) “subject to subsection (3) and the enactment of Section 14(3) in the 1976 Constitution must have...the effect without a doubt of taking away from the individual the redress of injunction which was open to him under the 1962 Constitution..”**

9. We are tempted to agree with the submissions made by **Mr Ahmednasir** that the Petitioner seems to be dragging his feet in bringing this petition which was filed at his behest to a speedy determination. We, for example do not understand why todate the Petitioner has not attempted to file his submissions.
10. Whereas we deprecate the Petitioner’s conduct in this matter we do however note that the Respondents themselves contributed to the course adopted by the Petitioner in failing to strictly adhere to the timelines given by this Court. We are wholly convinced that the mere fact that the Respondents were involved in the preparation for the Annual Conference was not a satisfactory reason for not complying with the timelines in a case so dear to the parties and the Nation as has been submitted.
11. In deciding whether or not to grant an adjournment the most important consideration is the justice of the matter and the prejudice likely to be suffered by the parties.
12. We have considered the submissions and we hold, though reluctantly, that the interest of justice require that the Petitioner be given a last opportunity to put his house in order.
13. Accordingly we grant the adjournment sought.

**Ruling read, signed and delivered in court this 18<sup>th</sup> day of September, 2014**

**W. KORIR**

**JUDGE**

**M. NGUGI**

**JUDGE**

**G.V. ODUNGA**

**JUDGE**