



REPUBLIC OF KENYA

High Court at Mombasa

Judicial Review 16 of 2013

**IN THE MATTER OF: AN APPLICATION BY STEPHEN ROCKTOK & 28 OTHERS FOR
LEAVE TO FILE AN**

APPLICATION FOR ORDERS OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF: THE POLICE SERVICE AND THE KENYA CONSTITUTION 2010

AND

IN THE MATTER OF: CIVIL PROCEDURE ACT

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

1. THE DEPUTY INSPECTOR GENERAL OF NATIONAL POLICE SERVICE

2. INSPECTOR GENERAL OF NATIONAL POLICE SERVICE

3. K. S. KITOO.....RESPONDENTS

RULING

By this Judicial Review application, the *ex-parte* applicant sought for various orders from the court. One of the prayers sought was:

“4. That the court be pleased to direct that the grant of leave herein do operate as a stay of execution and enforcement of directive given by the respondents on the 6th March, 2013.”

The court has heard oral submissions from **MR. MAGOLO** advocate for the *ex-parte* applicants and **MS. LUTTA** for the respondents on this point alone. The *ex-parte* applicants who are all serving police officers are seeking a stay of the respondents’ directive transferring them from their current station to other stations within the Republic of Kenya pending the hearing and determination of this petition.

I have considered the submissions made in this regard. The *ex-parte* applicants are all police officers and it is to be presumed that upon taking up this form of employment must have been fully alive to the fact

that they were subject to be transferred to perform duties in any corner of the country. It is of ingenious for them now to cry foul claiming domestic and other responsibilities. Secondly, policemen (and policewomen) are members of the disciplined forces whose duty is to provide security and to ensure the maintenance of law and order. Their services are required equally by the citizens in Mombasa as well as in any other part of this Republic. Transfer of officers is an administrative function. It goes against public policy and sets a dangerous precedent to allow police officers to pick and chose where they wish to serve in the Republic.

Finally, I have weighed the arguments of both sides and I am not persuaded that failure to grant a stay will cause irreparable or irredeemable harm to the *ex-parte* applicants. Neither am I persuaded that such failure to grant a stay will render their petition nugatory. The court found that the petition raised material issues which remain to be determined upon a full hearing thereof. Any inconvenience the *ex-parte* applicants may have suffered as a result of failure to grant a stay may be mitigated by way of reversal of the directive by the court after a full consideration of the merits of each side's arguments. As such I decline to allow a stay and I dismiss prayer (4) of this chambers summons dated 8th March, 2013.

Dated and delivered in Mombasa this 14th day of March, 2013.

M. ODERO

JUDGE

In the presence of:

Mr. Magolo for the Applicant

Ms. Lutta for the Respondents

Court Clerk Mutisya