



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JR CASE NO. 190 OF 2013

LEAH NYAMUIRU MAGUAAPPLICANT

VERSUS

THE ATTORNEY GENERAL1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS2ND RESPONDENT

CHIEF MAGISTRATE, KIAMBU.....3RD RESPONDENT

AND

HENRY KAMAU MAGUA.....1ST INTERESTED PARTY

JOHN GACERU MAGUA.....2ND INTERESTED PARTY

MACHARIA MAGUA.....3RD INTERESTED PARTY

MBUTIA MAGUA.....4TH INTERESTED PARTY

RACHEAL MUKUHI MAGUA.....5TH INTERESTED PARTY

JOHN MUNGAI MAGUA.....6TH INTERESTED PARTY

DAVID NJUGUNA MAGUA.....7TH INTERESTED PARTY

VIOLET WAITHIRA MAGUA.....8TH INTERESTED PARTY

MOSES CHEGE MAGUA.....9TH INTERESTED PARTY

NYAMBURA NGOBE.....10TH INTERESTED PARTY

KABETU BACHU.....11TH INTERESTED PARTY

JACKLINE WANGUI NJUGUNA.....12TH INTERESTED PARTY

RULING

Through the amended chamber summons application dated 7th June, 2013 the Applicant, Leah Nyamuiru Magua, prays for leave to commence judicial review proceedings and seek orders as follows:-

1. **An of certiorari to remove into the Honourable Court and quash the order issued by the 3rd Respondent at Kiambu on the 29th day of May, 2013 in Chief Magistrate's Court at Kiambu Miscellaneous Application No. 29 of 2013.**
2. **An order of mandamus directed at the second Respondent to take over the conduct and prosecution of Kiambu Chief Magistrate Criminal Case No. 974 of 2012 between the Republic vs Henry Kamau Magua to its conclusion.**
3. **An order of prohibition prohibiting the 3rd Respondent from hearing the Kiambu Chief Magistrate Miscellaneous Civil Application No. 29 of 2013.**
4. **That the leave granted do operate as a stay.**
5. **Pending the filing, hearing and determination of the judicial review application a temporary order for injunction do issue restraining the interested parties from contacting and or doing anything or acts that may cause interference or annoyance to the applicant and her family and in particular from any attempts to enter into and or be anywhere near any of the applicant's family properties.**
6. **That costs be provided for.**

The application is supported by the Applicant's verifying affidavit and a statutory statement.

When the application came up for hearing on 24th July, 2013 Ms Chege for the Attorney General and the Chief Magistrate, Kiambu who are the 1st and 3rd respondents opposed the application. Mr. Njogu for the 2nd Respondent, the Director of Public Prosecutions, did not oppose the grant of leave and indicated that the said leave could operate as stay pending perusal of the police file and advice from the 2nd Respondent. The interested parties opposed the application through a replying affidavit sworn on 19th July, 2013 by the 1st Interested Party, Mr. Henry Kamau Magua.

When dealing with an application for leave, the court will only consider whether an arguable case has been established by an applicant. Once the court is satisfied that an applicant has an arguable case, leave to commence judicial review proceedings should be granted.

I have looked at the application before me and I am satisfied that the Applicant has established an arguable case. She has demonstrated that the magistrate at Kiambu may have acted unlawfully and exceeded his jurisdiction in issuing orders in Kiambu C. M. Misc. Application No. 29 of 2013. From the face of the application, it may also be necessary to issue an order of mandamus against the Director of Public Prosecutions (the 2nd Respondent) in respect of his constitutional and statutory duties. Leave is therefore granted to the Applicant to commence judicial review proceedings and seek orders of certiorari, mandamus and prohibition in the terms of the amended notice of motion. The prayer for an order of injunction is partly spent and I believe an order of stay, if granted, will take care of any other objective the Applicant intended to achieve by asking for injunction. The leave granted will therefore not extend to the prayer for an order of injunction.

The remaining question is whether the said leave should operate as stay. In granting stay the court will ask itself many questions among them: Will failure to grant stay result in irreparable loss to an applicant? What is the impact of the stay orders on the respondent and interested parties? Can the matter be disposed of expeditiously? Is an alternative solution available? I have read the order of the magistrate in Kiambu C.M. Misc. Application No. 29 of 2013 and it appears that he may have exceeded his jurisdiction in granting the said orders. In my view, it is necessary to stay the order so that the court can interrogate the magistrate's proceedings. The leave to commence judicial review proceedings will therefore operate as stay subject to the directions given hereunder:-

1. The Applicant to file and serve the substantive notice of motion together with submissions within 15 days from the date of this ruling;
2. The respondents and interested parties to file and serve replies and submissions within 15 days from the date of service;
3. The Applicant is at liberty to file response to the replying affidavits and submissions within 7 days from the date of service;
4. Considering the urgency of this matter, time will not stop running during the forthcoming vacation;
5. Since all the parties are agreed that Douglas Ngobe Magua is sick, I direct the Applicant and the interested parties, under the guidance of their advocates, to agree on a visitation timetable which will enable the interested parties see their sick relative. This should be done within 7 days from today's date. Mention on 8th August, 2013 to record an agreement on the issue of visitation rights; and
6. Costs in the cause.

Dated, signed and delivered at Nairobi this 30th day of July, 2013

W. K. KORIR,

JUDGE