



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL APPEAL 219 OF 2011

IN THE MATTER OF: AN APPLICATION BY AMAYA GAMING GROUP (KENYA) LIMITED FOR ORDERS OF MANDAMUS, CERTIORARI AND PROHIBITION AGAINST THE BETTING CONTROL AND LICENSING BOARD AND THE HONOURABLE ATTORNEY GENERAL

AND

IN THE MATTER OF: LOTTERY PERMIT NUMBER 1055 (RENEWED UNDER PERMIT NUMBER 1058) AND LOTTERY PERMIT NUMBER 2665

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE HON. ATTORNEY GENERAL.....1ST RESPONDENT

THE BETTING CONTROL AND LICENSING BOARD.....2ND RESPONDENT

AND

LIONS HEART SELF HELP GROUP.....1ST INTERESTED PARTY

INTERACTIVE MEDIA SERVICES LIMITED.....2ND INTERESTED PARTY

EX-PARTE:

AMAYA GAMING GROUP (KENYA) LIMITED

RULING

This is a Ruling on a Notice of Motion dated 7th November 2011 and filed in Court on the same day seeking that the Applicant **Hon. Kennedy Odhiambo Nyagudi** Were be enjoined in these proceedings as an Interested Party.

The application is supported by the supporting affidavit sworn by the Applicant on 4th November 2011 and is premised on the following grounds:

- (i) THAT the Applicant herein has been the Country Director of Amaya Gaming Group (K) Limited since its registration on 20th July 2010 but has since resigned.
- (ii) THAT Amaya Gaming Group (K) Ltd is a subsidiary of Amaya Gaming Inc. which is a Canadian Company.
- (iii) THAT the Applicant herein HON. KENNEDY ODHIAMBO NYAGUDI WERE is the holder of Lottery Permit No.2665 and 1055 having applied for the same on behalf of Amaya Gaming Group (K) Ltd on 21st September 2010.
- (iv) THAT the Applicant herein has legal obligation to ensure compliance of the conditions and requirement in the said permit/licence.
- (v) THAT Amaya Gaming Group (K) Ltd has filed an application in Court where the applicant herein has been adversely mentioned.

The application is not opposed by the Respondents and the 1st Interested Party but it is opposed by the Exparte Applicant. Though served with the application the 2nd Interested Party did not file any response thereto and did not therefore indicate whether it was supporting or opposing the Notice of Motion.

The proposed Interested Party seeks to be enjoined in these proceedings principally because in his view he has been adversely mentioned by the Applicant in the statutory statement supporting the Applicant's application for leave to commence Judicial Review proceedings and needs a forum to participate in the proceedings and also because he is the person who was allocated lottery permit No.2665 and 1055 having applied for the same in his capacity as a director of Amaya Gaming Group (K) Ltd. It is the Applicant's position that being the holder of the said lottery permits, he had a legal obligation to ensure compliance of the conditions set by the 2nd Respondent attendant to the grant of the lottery permits.

The Exparte Applicant is opposed to the application on grounds that the Applicant is not adversely mentioned in the Applicant's pleadings and secondly that he had been issued with the said lottery permits as a director of the Exparte Applicant not in his individual capacity. The Exparte Applicant claims that now that the applicant has resigned from his position as director of the Exparte Applicant, he does not need to be enjoined in these proceedings since he is personally not liable for anything done or omitted to be done under the aforesaid permits.

Having considered the rival submissions by the Applicant herein and the Exparte Applicant, I find that it is not disputed that the Applicant is the person who had applied for and was issued with the lottery permits which form the subject matter of these proceedings. Even though he had obtained the said permits as a director of the Exparte Applicant a position he does not hold todate, it is common ground that having applied for the lottery permits, he was a promoter of the same and has an interest in ensuring that the conditions attendant to the grant of the lottery permits are complied with.

This is particularly so in the light of Section 37(4) of the Betting, lotteries and Gaming Act which exposes the Applicant as a promoter of the lotteries concerned to criminal sanctions in the event that conditions in the lottery permits are not complied with.

In the circumstances, I find that the Applicant is a proper person to be heard in these proceedings and his application should be allowed. Leave is therefore granted for the Applicant to be enjoined in these

proceedings as an Interested Party.

Costs of the application to abide costs in the substantive motion.

DATED and DELIVERED at Nairobi this 19th day of March, 2012

C. W. GITHUA

JUDGE

In the presence of:

Court Clerk - Florence

Mr. Okumu for Applicant

Mr. Kamau for Respondents

Mr. Adonda for 1st Interested party

N/A for 2nd Interested Party