



**REPUBLIC OF KENYA**

**High Court at Kisumu**

**Application 60 of 2012**

**IN THE MATTER OF: AN APPLICTAION FOR ORDERS BY ENGINEER MICHAEL OCHIENG FOR ORDERS OF CERTIORARI AND PROHIBITION**

**IN THE MATTER OF: THE WATER ACT NO. 8 OF 2002**

**ENGINEER MICHAEL OCHIENG .....  
APPLICANT**

**VERSUS**

**THE PERMANENT SECRETARY MINISTRY OF WATER AND IRRIGATION .....1<sup>ST</sup>  
RESPONDENT**

**THE LAKE VICTORIA SOUTH WATER SERVICES BOARD .....2<sup>ND</sup>  
RESPONDENT**

**RULING**

By a Notice of Motion dated 8<sup>th</sup> October 2012 the applicant prays that:-

- (1) Pending the hearing and determination of the application this court be pleased to grant a stay of execution of the Order made on the 28<sup>th</sup> September 2012.**
- (2) Pending the hearing and determination of the intended appeal from the Ruling and or Order made on the 28<sup>th</sup> September 2012 this court be pleased to Order a stay of proceedings herein or execution of the Order made on the 28<sup>th</sup> September 2012.**

The application is supported by the affidavit of Joseph Nyaumba Weya sworn on 8<sup>th</sup> October 2012. The gist of the said affidavit is that should stay not granted then the applicant shall suffer greatly from the impending contempt proceedings.

The Ruling of this court of 28<sup>th</sup> September 2012 according to **Mr. Odera** aggrieved his client and they have since filed a Notice of Appeal.

**Mr. Odera** further argued that what in effect they were appealing was not necessarily the entire Ruling but the portion that ordered the firm of Odera Obar & Co Advocates not to be properly on record.

They further argued that the applicants had a good and an arguable appeal and that should this application not be granted they shall greatly be prejudiced as they shall be unrepresented.

**Mr. Masese** on his part vehemently opposed the application. His argument was that since the Ruling had expunged the documents filed by the firm of Odera Obar & Co Advocates the said firm had no mandate to act for the applicants.

**Mr. Ojuro** essentially associated himself with Mr. Odera sentiments.

After carefully hearing the parties herein I am total agreement with Mr. Adera that Judicial Review proceedings are sui generis. However it would be in my opinion wrong to suggest that the other portions of the Civil Procedure do not apply entirely. In my considered opinion the question of representation does apply since it clearly brings into question whether a party is acting in person or not. Order 9 of the Civil Procedure Rules was meant to assist the courts and litigants in knowing how to address or whom to lay blame whenever need arises.

In my Ruling of 28<sup>th</sup> September 2012 I made it very clear that since Judgment had been delivered herein, any party wishing to bring himself before these proceedings ought to comply with Order 9 Rule 9 of the Civil Procedure Rules.

Joseph Nyaumba Weya clearly represented the 2nd respondent all through. What was difficult at that time in swearing affidavits or filling pleadings on his own behalf?.

I do not also agree that the applicant have got no representative. The firm of **Otieno Yogo, Ojuro & Co Advocate** are properly representing them and if anything the affidavits and other pleading filed by them shows that they were being represented.

What is the net effect therefore of this application? The same is meant to delay the contempt proceedings filed by the applicant/respondent.

The applicant shall have ample time to defend themselves if indeed they have failed or not to comply with this courts Judgment.

Mr. Adera submitted that one of his client had not been served with the Order or the contempt proceedings. This in my opinion should be raised during the substantive hearing of the contempt proceedings.

Consequently, I do not see any prejudice the applicant shall suffer. Order 42 Rule 6 (1) and (2) permits this court to grant the applicant the prayers sought in the event that they stand to suffer any loss or injury.

For now I do not respectfully see any loss they stand to suffer. They still have the representation by the firm of Otieno, Yogo and Ojuro Advocates and further that contempt proceedings are yet to be canvassed.

For the foregoing reasons I shall disallow the said application with costs to the respondent. The parties further permitted this court to make a finding on a similar application dated 5<sup>th</sup> October 2012 filed by the 2<sup>nd</sup> respondent.

Having rendered above earlier own conclusion I shall disallow the same for similar reasons. The respondent shall have the costs of the application.

**Dated, signed and delivered at Kisumu this 24<sup>th</sup> day of October 2012.**

**H.K. CHEMITEI  
JUDGE**

In the presence of:

Mabera for Masese for the applicant

Adera for P. J. Otieno Yogo for the respondent

*HKC/ao*