



REPUBLIC OF KENYA

High Court at Mombasa

Miscellaneous Civil Application 108 of 2010

IN THE MATTER OF: AN APPLICATION FOR LEAVE TO APPLY

FOR JUDICIAL REVIEW ORDERS OF PROHIBITION AND MANDAMUS

AND

IN THE MATTER OF: THE LAW REFORM ACT CAP 26 OF THE LAWS OF KENYA

AND

IN THE MATTER OF: DETENTION OF CONTAINER NUMBER

TTNU 9091144 AT THE POLICE PORT POLICE, MOMBASA

BETWEEN

REPUBLIC APPLICANT

V E R S U S

THE DISTRICT CRIMINAL INVESTIGATION OFFICER- KILINDINI

.....RESPONDENT

AND

INTERNATIONAL CRIMINAL POLICE ORGANIZATION-INTERPOLINTERESTED

PARTY

AND

JAMES W. KNIGHT 2ND INTERESTED

PARTY

EXPARTE APPLICANT: MUSAZI DENON

RULING

(1) The application dated 27th July 2012 is a request by the 2nd Interested Party for the following prayer-

“(a) That the Ruling delivered by this Honourable Court in High Court Miscellaneous Application No. 108 of 2010 be applied in High Court Miscellaneous Application No. 107 of 2010 and High Court Miscellaneous Application No. 109 of 2010 as directed by Justice J. B. Ojwang on 29th November, 2010.”

(2) It is the view of the 2nd Interested Party’s Counsel that the three matters (107/2010, 108/2010 & 109/2010) deal with a common issue which is the reshipment of some vehicles back to the United Kingdom.

(3) The application was served on both the Applicant and the office of The Director of Public Prosecution (DPP). The D.P.P did not oppose the application while the Ex-parte Applicant did not file any response.

(4) The basis of the application is that Judge Ojwang on 29th November 2011 directed that the three matters be consolidated and a decision on one file be applied to the others. A judgement was delivered by this Court on 5th June 2012 in 108 of 2010.

(5) From the Court record Ojwang, J (as he then was) made the following Orders on 29th November 2010 in No. 107 of 2010-

- “1. The Ex-parte Applicant to file and serve a further affidavit within 14 days of the date hereof.**
- 2. Corresponding leave granted to other parties to file and serve further affidavits within 14 days of being served.**
- 3. This matter shall be listed for hearing on 9th February 2011.**
- 4. Pending the date of hearing, the status quo shall be maintained.**
- 5. The Orders made herein (in File No. 107/2010) shall apply also to file Nos. 108 and 109 of 2010.”**

(6) Looking at that order by the Judge no substantive order on consolidation was made. But there seems to have been an intention by the parties that these three proceedings be dealt with together. See the orders of 9th February 2011 and that on 5th May 2011 reproduced below-

“9th February 2011

- 1. Given the fact that the Attorney General is a central party in this matter, and in view of the fact that that office is infact already represented by learned Counsel, Mr. Ondari, it is hereby formally recorded that the Attorney-General is a party to this cause.**
- 2. The Attorney-General shall file and serve any reply to the applications within seven days of the date hereof.**
- 3. The two applications (dated 7th October 2010 and 8th November 2010) shall be listed for hearing together on 23rd February 2011.**
- 4. These Orders apply equally to files No. 108 and 109.**

5th May 2011

- 1. The orders herein apply to the three files simultaneously – No. 107, 108 and 109.**
- 2. Ex-parte Applicant’s written submissions to be filed and served within 14 days of the date hereof.**
- 3. Other Counsel to file and serve writtensubmissions within 14 days of being served.**
- 4. Highlighting of submissions on 9th June 2011.”**

(7) That intention was made manifestly clear in the opening lines of the Exparte Applicants written submissions filed on 19th March 2012 in which Counsel stated-

“Your Honour,

We wish to inform the Court that previously, the orders made in this matter applied in Misc. Application 107, 108 and 109 and we shall be requesting the Court to apply the submissions herein to all the other matters.”

(8) The Court applied those submissions to 108 of 2010 and rendered its decision therein on 5th June 2012.

(9) I will allow the application now before Court because-

- **The issues in the three proceedings are common issues of law.**
- **The facts in the three proceedings resemble.**
- **There was a clear intention by parties that the matters be consolidated for purposes of hearing and determination hence the joint directions on how the matters would proceed and the joint submissions.**
- **Counsel representing the various parties were the same in the three matters.**
- **Consolidating and applying the judgement in No. 108 of 2010 to 107 of 2010 and 109 of 2010 is an efficient use of judicial time and an expeditious and efficient disposal of the cases. That would be consistent with the overriding objective principle in the exercise of judicial authority.**

(10) No order on costs.

Dated and delivered at Mombasa this 12th day of October, 2012.

**F. TUIYOTT
JUDGE**

**Dated and delivered in open court in the presence of:-
No appearance for the Applicant
No appearance for the Respondent
Wafula for the Interested Party
Court clerk - Moriasi**

**F. TUIYOTT
JUDGE**