



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 553 of 2012

HON. FERDINAND NDUNG’U WAITITU.....PETITIONER

HON. GIDEON KIOKO MBUVI SONKO.....2<sup>ND</sup> PETITIONER

MR. BRIAN MBUTHIA GAKERE.....3<sup>RD</sup> PETITIONER

VS.

THE HON. ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT

MINISTER OF TRANSPORT AND COMMUNICATIONS....2<sup>ND</sup> RESPONDENT

RULING

1. The Chamber Summons dated 30<sup>th</sup> November 2012 is seeking conservatory orders to restrain the respondents from implementing the *Traffic (Amendment) Act, 2012*. The Act has now come into force. The ground proffered by the petitioners, who include Members of Parliament, is that the Act, rules and regulations are punitive and draconian and have caused untold suffering to Kenyans and that they have caused pain, suffering and inherent security risks. It is also submitted that the regulations breach the Constitution of Kenya.

2. While I am prepared to certify the matter as urgent, the only issue for consideration is whether I should grant the ex-parte conservatory orders. Admittedly the conservatory orders seek to restrain the enforcement of a law passed by the National Assembly and assented to by His Excellency the President. Under the Constitution, the National Assembly and President exercise delegated sovereign authority of the people delegated to them in enacting laws (**See Article 1(3) of the Constitution**). It is for this reason that every statute that flows from the legislative process is presumed to be constitutional and valid and unless there are very clear reasons to stay enforcement of the statute, the court will not ordinarily grant conservatory orders.

3. I have perused the Supporting Affidavit of Hon. Ferdinand Ndung’u Waititu sworn on 30<sup>th</sup> November 2012 and it sets out matters in which I think point to inconvenience of those upon whom the law applies rather than constitutionality which is a matter the court will have the opportunity to take full arguments.

4. It is on the aforesaid grounds that I reject the prayers for ex-parte conservatory relief I direct that the petition and application be served and the same will be fixed for directions and further orders on 6<sup>th</sup> December 2012.

**DATED** and **DELIVERED** at **NAIROBI** this 3<sup>rd</sup> day of December 2012.

**D. S. MAJANJA**

JUDGE

Mr E. Ondieki with him Mr Irungu instructed by Ondieki and Ondieki Advocates for the petitioners *ex-parte*.