



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MALINDI**  
**JUDICIAL REVIEW MISC. APPLICATION NO. 2 OF 2011**

**IN THE MATTER OF: APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW,  
ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION**

**AND**

**IN THE MATTER OF: THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF: THE NOTICE OF REVOCATION OF NOMINATION DATED 12<sup>TH</sup>  
JANUARY, 2011 ISSUED BY HON. MUSALIA MUDAVADI D.P.M. AND MINISTER FOR  
LOCAL GOVERNMENT**

**BETWEEN**

**REPUBLIC .....APPLICANT**

**VERSUS**

**HON. MUSALIA MUDAVADI .....1<sup>ST</sup> RESPONDENT**  
**TOWN CLERK, MALINDI ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**IBRAHIM ABDI ATHMAN .....EX-PARTE APPLICANT**

**RULING**

I appreciate the difficulty the Town clerk must be having regarding the order – is it deemed to take effect the moment the Hon. Judge issued it or did it only take effect once service was effected. This is what placed the Town clerk between the rock and a hard place, and of course depending on which camp benefits by the two interpretations, the Town Clerk is unable to move.

It then becomes difficult to first deal with the contempt proceedings because I detect from what is presented in this agreements that the clerk's defence is "I have not refused to effect the orders, but clarify when they take effect."

If they took effect only when service was effected then it would mean they were overtaken by events because the Minister had already published the notice of de-gazettement, if they took effect the moment the Honourable Judge's order was delivered, then it means he ought to act but before that matter is clarified then the contempt proceedings must halt.

Related to this is the other matter involving the interested party who is represented by Mr. Mrima and who has sought to be sworn in – still on account of the same gazette notice – my view is that the application filed by Mr. Kibaara's client on 16<sup>th</sup> March 2011 will take care of both interests. I direct that the same be served on Mr. Mrima, and since the matter had been set for mention on 24<sup>th</sup> March 2011 for parties to file written submissions, then the application dated 16<sup>th</sup> March 2011 be heard on that day. An interpretation by the court as to the effect of that order, once arguments by all Counsel involved have been made, will certainly take care of the issue regarding contempt and the issue regarding swearing in of the interested party.

**H. A. Omondi**  
**JUDGE**  
**17-03-11**

Mr. Kibaara- we are urging court to list it for 29<sup>th</sup> March 2011 when I had two other matters.

**H. A. Omondi**  
**JUDGE**  
**17-03-11**

Mr. Binyenye – I agree

**H. A. Omondi**  
**JUDGE**  
**17-03-11**

COURT – listed for mention on 29-3-11. Taken out of causelist from 23-3-11 and notice is that effect be served on Mr. Mrima so that he attends court on 29-3-11.

A typed copy of the ruling be made available to all counsel upon payment of relevant court fees.

Delivered and dated this 17<sup>th</sup> day of March 2011 at Malindi.

**H. A. Omondi**  
**JUDGE**