



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

J.R. NO. 132 OF 2011

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR ORDERS OF
CERTIORARI AND PROHIBITION**

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE LABOUR INSTITUTIONS ACT (ACT NO. 12 OF 2007)

AND

**IN THE MATTER OF INDUSTRIAL CAUSE NO. 448(N) OF 2009, JAMES GITAHU V. SAMBA
COLT MOTORS LIMITED**

BETWEEN

**SAMBA COLT MOTORS LTD.....
APPLICANT**

AND

REGISTRAR OF THE INDUSTRIAL COURT.....1ST

	RESPONDENT	
THE HON. ATTORNEY GENERAL		2ND
	RESPONDENT	
JAMES GITAH MWANGI		3RD
	RESPONDENT	

RULING

On 27th May, 2011 this court made the following orders:

- “1. That the applicant herein be and is hereby granted leave to apply for an order of certiorari to remove and bring to the High Court for the purposes of quashing the execution proceedings, and warrant of attachment on 19th April indicating that decretal sum of Kshs.70,089,213.00 was awarded against the applicant in INDUSTRIAL CAUSE NO. 448 (N) OF 2009, JAMES GITAH MWANGI versus SIMBA COLT MOTORS LIMITED.**
- 2. That the applicant herein be and is hereby granted leave to apply for an order of prohibition directed against the respondents prohibiting them through their servants and/or agents from proceedings with the execution process of the warrant of attachment issued on 19th April, 2011 and the proclamation of attachment carried out on 6th May, 2011.**
- 3. That the leave granted do operate as a stay of execution proceedings and the warrant of attachment issued on 19th April, 2011 and subsequent proclamation of attachment done on 6th May, 2011 in INDUSTRIAL CAUSE NO. 448 (N) OF 2009, JAMES MWANGI GITAH MWANGI Versus SIMBA COLT MOTORS LIMITED on condition that the applicant deposits in court a sum of Kshs.6.5 million within the next 7 days from the date hereof.**
- 4. That the substantive motion be filed and served within 21 days from the date hereof.**
- 5. That costs in the cause.”**

On 27th June, 2011 the 3rd respondent filed an application seeking, *inter alia*, that the stay orders aforesaid be stayed pending hearing and determination of his application. He also sought an order to strike out all the pleadings filed by the applicant. The court directed that the 3rd respondent’s application be served for mention on 30th June, 2011.

Mr. Khaseke who held brief for Mr. Nyaoga for the applicant sought 14 days to file a replying affidavit. Mr. Wamaasa for the 3rd respondent was of the view that the period sought by the applicant is too long considering that the issues raised in the application are legal and counsel does not require to take instructions before filing a replying affidavit.

Secondly, he brought to the court’s attention that the sum of Kshs.6.5 million had not been deposited within the time stipulated by the court and therefore the interim orders ought not to be extended. The money was deposited on 6th June, 2011. Mr. Wamaasa cited the provisions of **Order 50 rule 2** of the **Civil Procedure Rules**.

Mr. Khaseke responded by saying the order for deposit of the money was made on the Friday of 27th May, 2011 and therefore time began to run on the Monday of 30th May, 2011. The sum was therefore

paid in time, he stated.

I have considered the rival arguments regarding computation of time. The time specified by the court of depositing the money was **“7 days from the date hereof”**. **Order 50 rule 2** applies only in instances where the time frame is less than six days. The rule states:

“2. Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceedings, Sunday, Christmas Day and Good Friday, and any other day appointed as a public holiday shall not be reckoned in the computation of such limited time.”

The applicable rule in this case is **Order 50 rule 8** which provides:

“8. In any case in which any particular number of days not expressed to be clear days is prescribed under these Rules or by an order or direction of the court, the same shall be reckoned exclusively of the first day and inclusively of the last day.”

I will therefore exclude 27th May in computation of time. Time began to run on 28th May. Excluding 1st June, 2011 which was a public holiday, seven days were to expire on 4th June, 2011 which was on a Saturday.

Under **Order 50 rule 3**, where the time for doing any act or taking any proceeding expires on a Sunday or other day on which offices are closed, the action required to be done is deemed to have been timeously done if done on the day on which the offices are next open. See also **Section 57** of the **Interpretation and General Provisions Act, Cap 2 Laws of Kenya**.

The court registry is closed on Saturdays and Sundays. That being the case, the sum of Kshs.6.5 million could not be deposited on 4th June, 2011 which was the last day. Since the money was deposited on 6th June, 2011 the action was done in time.

For these reasons, I decline to vacate the interim orders of stay as sought by the 3rd applicant’s counsel.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF JUNE, 2011.

D. MUSINGA

JUDGE

In the presence of:

Jane – Court Clerk

Mr. Khaseke for the Petitioner

Mr. Wamaasa for the 3rd Respondent