



- THAT, this application is time barred in view of order 53 Rule 2.

Parties agreed to put in written submissions for this matter to be determined.

The issues that need to be determined is whether leave to file judicial review that has been granted ought to act as a stay, the provisions of the civil procedure rules with regard to the immediate foregoing issue, Judicial Review as a remedy, what mode was this matter meant to have been brought before this court? Is this matter res judicata? Whether the application is merited and if therefore the applicant is entitled to the orders sought.

Order 53 rule 4 is to the effect that leave can operate as a stay if the court so directs. It has a proviso to the effect that

*'provided that where the circumstances so require, the judge may direct that the application be served for hearing interpartes before grant of leave. Provided further where the circumstances so require may direct the question of leave and whether grant of leave shall operate as stay may be heard and determined separately within 7 days'*

The reading of this is that neither leave nor leave operating as a stay is no longer automatic and the courts are given the discretion to make a finding . this provision has cured the mischief that was found in the previous civil provisions Rules where whenever a leave was granted, it acted as an *ad infinitum* stay.

Is the leave merited? Ought it to be allowed to act as a stay of proceedings?

It will be improper at this point to go into issues as to whether this is a matter merited for judicial review till all the issues are argued out.

The issue before the court at this point is whether the leave granted ought to act as a stay of execution.

So that at the end of the day the matter is heard and determined on the basis of its own merit and the fact that the application not being so frivolous as to merit summary dealing of the same on the part of the court, the court makes the following finding:

- That the leave will apply as a stay
- Given the fact that the issues raised are not complex they merely touch on a single issue of jurisdiction.
- Given the fact that rules including order 53 of the civil procedure under the overriding principle as outlined in section1A of the Civil Procedure Act are meant to facilitate the just and expeditious resolution of suits,

this court invoking section3A of the CPA orders that the main motion be set down for hearing within the next 90 days.

READ, DATED & SIGNED IN THE OPEN COURT THIS 28<sup>TH</sup> DAY OF OCTOBER 2011

S.M. MUKETI  
JUDGE