



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**MILIMANI COMMERCIAL AND ADMIRALTY DIVISION**  
**WINDING UP CAUSE NO. 29 OF 2010**  
**IN THE MATTER OF TATU CITY LIMITED**  
**AND**  
**IN THE MATTER OF THE COMPANIES ACT**  
**R U L I N G**

1. When this matter came before me on 17 November 2011 I noted that the Companies' 2 applications were by way of further steps in the proceedings in these matters. I also noted that on 21 October 2011, I had made an Order herein to stay the proceedings herein pending the hearing of the Petitioner's Application before the Court of Appeal. Thereafter, I referred the matter to the Presiding Judge of this Division for his directions.
2. From the record, Mr. Kemboy and 2 other counsel for the Companies appeared ex-parte before my learned brother Judge Musinga on 18 November 2011. The Judge ordered that the 2 applications be served upon Mr. Wamae's firm. Thereafter, both Mr. Kemboy and Mr. Wamae appeared before Musinga J on 23 November 2011. Again from the record, my learned brother explained to both counsel that I considered the 2 applications dated 17 November 2011 as a further step in the proceedings and thus, for me to consider the same would be going against my own Order of 21 October 2011. Judge Musinga directed the parties that in order for the applications to be heard, it would be necessary for my order for stay of 21 October 2011 to be vacated. He requested the parties to bring the matter back before me for that purpose which is, I understand, the purpose of the Mention before me today.
3. The 2 applications dated 17 November 2011 have in fact been made together in one document before Court. They came before Court under Certificate of Urgency. The first of the applications seeks an order for me to disqualify myself from further participation in these proceedings. The second application seeks to have set aside the orders for stay that I made on 21 October 2011. The heading of the Notice of Motion details that it is brought under the provisions of **Rule 203** of the *Companies Act* and **Sections 1A, 1B and 3A** of the *Civil Procedure Act*. The Notice of Motion is supported by an Affidavit sworn by one **JOSEPHAT KIBOGO KINYUA** dated 17 November 2011. As Mr. Kemboy says, Mr. Wamae is aware of these 2 applications for he has filed a Replying Affidavit sworn by one **STEPHEN MBUGWA MWAGIRU** dated 25 November 2011. Mr. Mwagiru, I understand, is one of the Petitioners in this matter, I have never met him personally.
4. It is perhaps unfortunate that the 2 applications are canvassed together in the one document and with

only the one Affidavit in support. That Affidavit lends little towards the application for stay but a lot towards making what I consider to be spurious comments as against me personally. I am mindful that the 2 applications are brought, *inter alia*, under the provisions of **Sections 1A** and **1B** of the *Civil Procedure Act*. Just what do those sections embody? **Section 1A (1)** reads:

**“The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditions, proportionate and affordable resolution of the civil disputes governed by the Act”.**

**Section 1B (1)** reads:

**“For the purposes of furthering the overriding objective specified in Section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims –**

**(a) The just determination of the proceedings .....** (underlining mine).

5. I have already indicated that I cannot entertain the 2 applications until the second of the two, that relating to the setting aside of my said Order of 21 October 2011 is heard and determined. I am afraid that I do not find that I can hear the same which is the reason that I have set out the provisions of **Sections 1A** and **1B** of the *Civil Procedure Act*, above. I find myself so offended by the contents of the Supporting Affidavit to the application that I do not think that I am going to be able to make a just and unprejudiced decision as regards the same.

6. Accordingly, I direct that the hearing of either or both the said applications will go before any other Judge of the Commercial Division of this Court. As neither Judge Musinga nor I certified the applications as urgent, I direct that the same be fixed for hearing on a date to be taken at the Registry as convenient to the parties.

As a result, the mention dated that I had directed on 21 October, 2011 for the 5 December 2011, is vacated. No order as to costs.

**DATED and DELIVERED at NAIROBI this 29<sup>th</sup> day of November, 2011.**

**J. B. HAVELOCK  
JUDGE**