



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**JR. MISC. CIVIL. APPLICATION NO.132 OF 2011**

**IN THE MATTER OF: AN APPLICATION 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: THE INDUSTRIAL CAUSE NO.448 (N) OF 2009, JAMES GITAHI – VS- SIMBA COLT MOTORS LIMITED**

***BETWEEN***

**REPUBLIC .....APPLICANT**

**AND**

**THE REGISTRAR OF THE INDUSTRIAL COURT OF KENYA.....1<sup>ST</sup>RESPONDENT**  
**THE HON. THE ATTORNEY GENERAL.....2<sup>ND</sup>RESPONDENT**  
**JAMES GITAHI MWANGI.....3<sup>RD</sup>RESPONDENT**  
**EX-PARTE .....SIMBA COLT MOTORS**

**RULING**

On 17<sup>th</sup> November, 2011 when this matter came up for hearing, counsel for the exparte applicant, Mr. Mohammed Nyaoga sought this

Court’s directions on whether the notice of motion dated 16<sup>th</sup> June, 2011 should proceed for hearing or whether it should be stayed indefinitely pending the outcome of a case allegedly being heard by a three Judge bench to determine whether or not the High Court has supervisory jurisdiction over the Industrial Court. The background against which these directions were being sought is that on 27<sup>th</sup> June, 2011 the 3<sup>rd</sup> respondent filed an application dated 24<sup>th</sup> June, 2011 praying *inter alia* that pleadings filed herein together with all the consequential orders issued on 30<sup>th</sup> May, 2011 be set aside mainly on grounds that pursuant to Article 162(2) and 165(5) of the Constitution of Kenya, the High Court has no jurisdiction over matters falling with the jurisdiction of the Industrial Court.

The application was argued before Musinga, J and in his ruling delivered on 29<sup>th</sup> July 2011, the Judge declined to make any specific finding on the issue of jurisdiction of the High Court over the Industrial Court though he made findings on other issues raised in the application.

On the issue of jurisdiction, the Judge chose to await the findings of a three Judge bench constituted by the Chief Justice to hear and determine the issue. He however did not specify the particulars of the case he may have had in mind and whether hearing in that case had proceeded or what was its status at the time of the ruling.

Having heard both Mr. Nyaoga for the applicant and Mr. Wamaasa for the 3<sup>rd</sup> respondent and having gone through the court record and aforesaid ruling by Musinga J, it is my view that though the issue of jurisdiction was not expressly determined, this in itself cannot be a bar to the substantive motion proceeding for hearing since the Judge did not stop further proceedings in the case pending outcome of the three Judge bench case. Instead he refused to strike out the pleadings as prayed finding that the applicant had an arguable case and proceeded to give directions on how the notice of motion would be disposed off. This in my view clearly demonstrates that the Judge never intended to have the proceedings stayed despite the fact that he had not made a clear finding on the issue of jurisdiction.

Secondly, given that the particulars of the three Judge bench case were not disclosed, it would be impractical to stay these proceedings pending its outcome since without knowing the case file number, it would be impossible for this court or parties herein to monitor the case's progress and know when a decision is reached in the matter so that depending on its outcome this court would be accordingly guided on how to proceed in this case. It is practically impossible to track down a case whose particulars are unknown and if proceedings are stayed pending outcome of such a case, this would in effect amount to granting an indefinite stay of proceedings which would not only be unfair to the parties but would be against the constitutional principle of expeditious dispensation of justice.

Under Article 159(2)(b) of the Constitution of Kenya 2010 the Court is enjoined to ensure that justice is not delayed. Staying these proceedings for the reasons cited by Mr. Nyaoga would in my view occasion unnecessary delay in the finalization of this case.

For all the foregoing reasons, I find that it would be in the interest of justice to have the notice of motion dated 16<sup>th</sup> June, 2011 proceed to full hearing on the merits.

I therefore direct that parties do comply with directions given by Musinga, J on 29<sup>th</sup> July, 2011 regarding filing of further affidavits and skeleton submissions if this has not already been done to facilitate hearing of the matter. I notice from the court record that only the ex parte applicant has filed its written submissions and list of authorities. Though the respondents have all filed their responses to the motion, they do not appear to have filed their written submissions as directed by Musinga, J. The respondents are now directed to file and serve their written submissions within 21 days from today and thereafter case should be fixed for mention to fix hearing date. It is so ordered.

**Dated, Signed and Delivered** by me at Nairobi this 9<sup>th</sup> day of December 2011.

C. W. GITHUA  
**JUDGE**

In the presence of:

Florence – Court Clerk  
Mr. Khaseke for Applicant  
Mr. Terer for 1<sup>st</sup> & 2<sup>nd</sup> Respondents  
Mr. Wamaasa for the 3<sup>rd</sup> Respondent