



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISCELLANEOUS APPLICATION 72 OF 2011

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR ORDER OF
PROBIBITION**

AND

**IN THE MATTER OF CONSTITUTION OF KENYA ,THE TREATIES AND CONVENTION
LAWS, LAW REFORM ACT AND CIVIL PROCEDURE RULES**

IN THE MATTER OF EVICTION BY THE IDSTRIC COMMISSIONER NJIRU

IN THE MATTER OF LAND PARCEL L.R. NO. 5908/8 NAIROBI

**IN THE MATTER OF APPLICATION BY NARIDAI MUOROTO SQUATTERS SELF HELP
GROUP**

BETWEEN

**MAURICE ODUOR.....1ST
APPLICANT**

**JOHN MAINA2ND
APPLICANT**

**HABAT B MUGANGAI.....3RD
APPLICANT**

**(Suing for and on behalf of NARIDAI MUOROTO SQUATTERS SELF HELP
GROUP EXPARTE**

VERSUS

**DISTRICT COMMISSIONER NJIRU.....1ST
RESPONDENT**

**HON. ATTORNEY GENERAL.....2ND
RESPONDENT**

AND

**MARIA KIRIMAINTERESTED
PARTY**

**TERESIA KIRIMAINTERESTED
PARTY**

**STEVE KIRIMAINTERESTED
PARTY**

**WANJAU KIRIMAINTERESTED
PARTY**

**JOHN KAMAU KIRIMAINTERESTED
PARTY**

RULING

The ex-parte applicants were on 22nd August, 2011 granted leave by Wanjiru, J to bring judicial review proceedings. The Judge directed at that time that the prayer for leave to operate as stay be served for inter-partes hearing. This particular prayer came up for argument before me on 15th November, 2011.

I have carefully considered the submissions made by each side and find that if I commit my thoughts on those argument in writing, I will end up prejudicing the substantive application which the applicants intend to file. I only want to address one issue namely that the applicants have failed to file the substantive notice of motion within 21 days from the date of granting leave. Looking at the court proceedings of 22nd August, 2011, I get the impression that the applicants were to await the outcome of the application for stay before taking any further action. It is my view therefore that the 21 days will start running from the date of the delivery of this ruling. I have made my stand on this issue at this stage so that it may not crop up in future.

After carefully considering the submissions made by the advocates for the applicants and interested parties, I find that this is not a proper case for allowing the leave granted to operate as stay. As such I decline to grant prayer No.3 of the applicants' chamber summons dated 17th August, 2011. The costs of this application will await the outcome of the substantive notice of motion. The applicants are directed to file and serve the substantive notice of motion within 15 days from the date of this ruling. Thereafter the respondents and third parties shall have 15 days from the date of service within which to file their responses. This matter will be mentioned on 30th January, 2012 for further directions.

Dated, signed and delivered at Nairobi this 1st day of December, 2011.

**W. K. KORIR
JUDGE**