



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

MISCELLANEOUS CIVIL APPLICATION 40 OF 2010

KIRINYAGA WATER AND SANITATION COMPANY LIMITED....1ST APPLICANT
ENG. BERNARD WANJOHI MURIUKI.....2ND APPLICANT
JOHN MBURU NGANGA.....3RD APPLICANT
SAMUEL MWAURA KIBANDI.....4TH APPLICANT

VERSUS

TANA WATER SERVICES BOARD.....RESPONDENT

RULING

KIRINYAGA WATER AND SANITATION COMPANY LIMITED, BERNARD WANJOHI MURIUKI, JOHN MBURU NGANGA and SAMUEL MWAURA KIBANDI, being the 1st, 2nd, 3rd and 4th Applicants herein, took out the *Ex parte* Chamber Summons dated 25th May 2010 pursuant to *Order LIII rule 1* of the Civil Procedure Rules in which they sought for the following orders *inter alia* against **TANA WATER SERVICES BOARD**, the respondent herein:

1. ***THAT leave be granted to the Applicants to apply for the following orders.***

A. An order of certiorari to remove into this court and quash the following decisions:

- (i) ***The decision of the Respondent contained in a letter dated 17th May, 2010 canceling all the 1st Applicant's Board Meetings.***
- (ii) ***The decision of the Respondent contained in a letter dated 17th May, 2010 to send the 2nd Applicant on compulsory leave.***
- (iii) ***The decision of the Respondent contained in a joint letter dated 17th May, 2010 to suspend the 3rd and 4th Applicants as bank signatories for the 1st Applicant and as the Acting Commercial Manager and Acting Technical Manager respectively of the 1st applicant.***
- (iv) ***The decision of the Respondent contained in a letter dated 18th May, 2010 freezing the 1st Applicant's Account No. 0100291489991 with Equity Bank - Kerugoya Branch and Accounts Nos. 0110035120700 and 0112035120700 with Co-operative bank - Kerugoya Branch.***
- (v) ***The decision of the Respondent contained in letters dated 14th May,***

2010 appointing its officers Mr. Peter K. Igecha, Vincent Kachi and Simon Munene as the 1st Applicant's Acting Managing Director, Acting commercial Manager and Acting Technical Manager respectively.

- B. An order of prohibition to prohibit the Respondent, its officers, employees, servants or agents from interfering with the running, management and operations of the 1st Applicant.**
- C. An order of prohibition to prohibit the Respondent, its officers, employees, servants or agents from receiving and continuing to demand and receive payments from consumers for the water supplied by the 1st Applicant.**
- D. An order of prohibition to prohibit the Respondent's officers and/or employees Mr. Peter K. Igecha, Mr. Vincent Kachi and Simon Munene or any other of its officers and/or employees from carrying on the duties and functions of the 2nd, 3rd and 4th applicants or of any other officers and/or employee of the 1st Applicant.**
- E. An order of mandamus to compel the Respondent to render a true account of all the monies it has collected from the 1st Applicant's consumers and refund the same to the 1st Applicant.**

2. THAT the grant of leave herein do operate as stay of;

- (i) The Respondent's decision to cancel the 1st Applicant's Board Meetings.**
- (ii) The Respondent's decision to send the 2nd Applicant on compulsory leave.**
- (iii) The Respondent's decision to suspend the 3rd and 4th Applicants as bank signatories for the 1st applicant and as the Acting Commercial Manager and Acting technical Manager respectively of the 1st Applicant.**
- (iv) The Respondent's decision to freeze the Applicant's bank account No. 0100291489991 at Equity Bank - Kerugoya branch and accounts**
- (v) Nos. 0110035120700 and 01120351220700 at Co-operative Bank - Kerugoya Branch.**
- (vi) The running of the affairs of the 1st applicant by the Respondent's officers and/or employees Mr. Peter K. Igecha, Mr. Vincent Kachi and Mr. Simon Munene or any other officers, employees, servants or agents of the Respondent.**
- (vii) The demand, receipt and collection of monies from the 1st Applicant's consumers by the Respondent, its officers, employees, servants or agents.**

3. Such further and other reliefs that the Honourable Court may deem just and expedient

to grant.

Accompanying the aforesaid summons is the statutory statement of facts and the verifying affidavit of **GERALD MUNENE MUGO**.

When the Summons came up for hearing before this court, Mr Wambugu, learned advocate for the Applicants, beseeched this court to grant the orders sought. It is Mr. Wambugu's argument that the Applicants will be able to show at the substantive stage that the Respondent acted without authority, arbitrarily, unreasonably and oppressively. It is further argued that the Applicants are likely to show that the 1st Applicant being a limited liability company, it was entitled to run, manage and control its own independent board of directors without the interference of the Respondent. The Applicants have also urged this court to direct that the order of leave be made to operate as a stay to restrain the Respondent from implementing the decisions which are being sought to be impugned in these proceedings.

I have carefully considered the material placed before me and the oral submissions of learned counsel. At this leave stage this Court is required to satisfy itself that the Applicants have shown a *prima facie* arguable case. Upon a careful consideration of the issues in dispute, I am convinced that the Applicants have shown that they have a *prima facie* arguable case. There is need to interrogate by a substantive application the allegations leveled against the Respondent to determine whether or not the Respondent acted without authority, unreasonably, oppressively and or arbitrary. Consequently, I grant the Applicants leave of 15 days to institute judicial review proceedings in the nature of certiorari, prohibition and mandamus as prayed in this Summons.

The remaining issue is whether or not I should direct the order of leave to operate as a stay. I have been urged to give the order to stay the following:

- (i) ***The Respondent's decision to cancel the 1st Applicant's board meetings.***
- (ii) ***The Respondent's decision to send the 2nd Applicant on compulsory leave.***
- (iii) ***The Respondent's decision to suspend the 3rd and 4th Applicants as bank signatories for the 1st Applicant.***
- (iv) ***The freezing of the 1st Applicant's bank accounts.***
- (v) ***The running of the affairs of the 1st Applicant by the Respondent's employees.***

After a careful consideration of the application, I am convinced that if the order for stay is not given the activities of the 1st Applicant are likely to grind to a halt. I direct that the order of leave shall operate as a stay.

Dated and delivered at Nyeri this 2nd day of June 2010.

J. K. SERGON
JUDGE