



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Petition 685 of 2008

IN THE MATTER OF SECTION 84 (1) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER SECTIONS 70, 75 AND 84 OF THE CONSTITUTION

BETWEEN

I & M BANK LIMITEDPETITIONER

VERSUS

THE KENYA REVENUE AUTHORITY 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

R U L I N G

A petition was filed on 7th November 2008 by Walker Kontos advocates on behalf of the petitioner I& M BANK LTD. The respondents were named as THE KENYA REVENUE AUTHORITY (1st respondent), and THE ATTORNEY GENERAL (2nd respondent). The petitioner claimed that their constitutional rights were violated. The said petition was brought under section 84 (1) of the Constitution alleging violations of section 70 of the Constitution.

On the same date, a Chamber Summons was filed under rules 20 to 22 of the Constitution of Kenya (*Protection of Fundamental Rights and Freedoms of the Individual*) Practice and Procedure Rules – Legal Notice No. 6 of 2006. The Chambers Summons was filed under certificate of urgency. This Chamber Summons is the application for my decision today. The orders sought in the application are as follows:-

1. *The application be heard ex parte and service be dispensed with.*
2. *The 1st respondent be ordered to immediately reimburse or cause to be credited into the petitioner's account with the Central Bank of Kenya the sum of Ksh.2,766,629/= upon service of the court order.*

3. *Any further relief that court deems necessary in the interest of justice.*

4. *Costs in the cause.*

Apparently, before the petition herein and the present Chamber Summons were filed, an application was filed as High Court Misc. Application No. 663 of 2008 for leave to file judicial review proceedings. In that application for judicial review proceedings Nyamu, J. on 30th October 2008 ordered, inter alia, that –

1. 2.....

3.

4 *The leave granted herein do operate as a stay for a limited period of 35 days.*

5. *The application for judicial review be filed within 21 days and served within 8 days failing which the order granted herein shall automatically lapse.*

6. *The limited stay for 35 days is reversible upon application by either party by way of a certificate of urgency.*

7. *The court herein reserves right to extend the period or not extend the period depending on the respondents response to the part of the order on the substantive application.*

When the Chamber Summons herein dated 7th November 2007 came up for hearing, I ordered that same be served for hearing inter partes. Responses were filed by counsel for the respondents, including a replying affidavit sworn by **JAYANT SHAH** on 15th December 2008 for an interested party known as **KENYA SYNTANS AND CHEMICALS LTD.**

At the hearing Mr. Ogunde for the applicant addressed me in support of the application dated 7th November 2008. Ms Mwangi addressed me on behalf of the 1st respondent. Mr. Wairi addressed me on behalf of the 2nd respondent. Ms. Mate, on the other hand, addressed me on behalf of the interested party.

I have considered the application, documents filed as well as the submissions of counsel who appeared before me.

During the hearing, counsel for the parties dwelt at length on disobedience of the court order of stay for 35 days granted by Nyamu J. in October 2008. In my view, those are other proceedings, and any consequential matters relating to that case, have to be sorted out in those proceedings, not in the present proceedings.

Having said so, I will not grant the orders sought in the application herein. Firstly, in my view if stay **(which was argued from the bar)** had been granted in the judicial review matter, then the matter should be pursued in that particular case where stay was granted. I observe however, that the stay granted was merely for 35 days, and I have not been told that that stay therein has been extended. I take it that the said stay has lapsed. The second reason why I will not grant the orders sought is that the orders sought herein in the Chamber Summons for refund will have the effect of determining the Constitutional case herein. In my view, it is preferable to hear the petition urgently and determine the same on merits, rather than granting the orders sought in the Chamber Summons herein.

Consequently, I dismiss the Chamber Summons dated 7th November 2008, and decline to grant the orders sought. I however, direct that the petition be fast tracked and heard as a matter of priority.

Dated and delivered at Nairobi this 11th day of May 2009.

GEORGE DULU

JUDGE

In the presence of

Mr. Gichuhi for applicant

Ms Mwangi for 1st respondent

Kevin Court Clerk