



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Misc Civil Case 363 of 2009

**IN THE MATTER OF AN APPLICATION BY ROY OCHIENG SAMO FOR LEAVE TO APPLY
FOR JUDICIAL REVIEW**

AND

**IN THE MATTER OF THE LOCAL GOVERNMENT ACT CHAPTER 265 AND THE
MINISTER FOR LOCAL GOVERNMENT**

R U L I N G

Before me is a Chamber Summons dated 16th June, 2009 filed by M/s Eboso & Wandago advocates for the applicant named as ROY OCHIENG SAMO. The respondent is named as the MINISTER FOR LOCAL GOVERNMENT. The application was brought under Order 53 rule 1(1) (2) and (4) of the Civil Procedure Rules, and the Law Reform Act (*Cap. 26*).

The orders sought are as follows-

1. ***The application be heard ex-parte.***
2. ***The applicant ROY OCHEING SAMO be granted leave to apply for an order of certiorari to remove into the High Court and quash the order made by the Minister for LOCAL GOVERNMENT under section 27(2) and 40(1) of the Local Government Act (Cap. 265) in the Notice of 29th April, 2009, and published in the Kenya Gazette on the 22nd May, 2009 revoking the nomination of the applicant.***
3. ***The grant of leave to operate as a stay of the said order, notice and gazettment made by the Minister until determination of the application for the order of certiorari.***
4. ***The costs of the application be costs in the cause.***

The application was filed with an affidavit sworn by the applicant on 12th June, 2009. Also filed was a statement dated 14th June, 2009. It was contended in the documents filed that the respondent was biased in denominating the applicant as a nominated councilor, since the applicant was duly nominated by the Orange Democratic Movement, a party with majority members in Parliament, and councilors in the entire country.

At the hearing, counsel for the applicant, Mr. Metto, addressed me in support of the application. Counsel emphasized that the applicant was not given a hearing before revocation of his nomination.

I have considered the application, documents filed and the submissions of counsel for the applicant. In my view the applicant has demonstrated an arguable case. I will grant leave to file judicial review proceedings.

I have been requested to grant stay orders. With the facts before me, I do not think that a stay at this juncture is appropriate. Certainly, this matter is urgent and has to be fast tracked. However, the decision complained of was made way back in April, 2009. I will not grant a stay.

Consequently, I order as follows-

- 1. Leave is granted to the applicant to file judicial review proceedings for certiorari as prayed. The Notice of Motion will be filed within 21 days from today.**
- 2. I decline to grant stay orders.**
- 3. Costs will follow the decision in the Notice of Motion to be filed.**
- 4. Mention on 27th July, 2009.**

Dated and delivered at Nairobi this 30th day of June, 2009.

George Dulu

Judge.