



**REPUBLIC OF KENYA**

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

**Misc Civil Appli 639 of 2009**

**IN THE MATTER OF AN APPLICATION BY JOHN MURIITHI WAIGANJO TO APPLY FOR  
LEAVE FOR JUDICIAL REVIEW ORDERS OF PROHIBITION AND CERTIORARI**

**AND**

**IN THE MATTER OF THE LAW SOCIETY OF KENYA DISCIPLINARY COMMITTEE  
CAUSE NO. 2 OF 2008**

**AND**

**IN THE MATTER OF JOHN MURIITHI WAIGANJO ADVOCATE**

**AND**

**IN THE MATTER OF JUDICIAL REVIEW FOR ORDERS OF MANDAMUS, PROHIBITION  
AND CERTIORARI**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**DISCIPLINARY COMMITTEE OF THE LAW**

**SOCIETY OF KENYA..... RESPONDENT**

**AND**

**JOHN MURIITHI WAIGANJO..... EX-PARTE**

**RULING**

This is an application dated 29<sup>th</sup> May, 2009 by way of Notice of Motion said to have been brought under Section 3A of the Civil Procedure Act (**Cap. 21**) of the Civil Procedure Act (**Cap. 21**). The application was filed on 29<sup>th</sup> May, 2009.

Mr. John Muriithi Waiganjo is described as the applicant and the respondent is the Disciplinary Committees Law Society of Kenya. The orders sought in the application are that-

1. ***The application herein be certified urgent and service thereof be dispensed with in the first instance.***
2. ***This Honourable Court be pleased to extend the stay orders issued herein on 23<sup>rd</sup> October, 2008.***
3. ***The costs of the application be in the cause.***

The application has grounds on the face of the Notice of Motion. It was filed with a supporting affidavit sworn by the applicant **JOHN MURIITHI WAIGANJO** on 29<sup>th</sup> May, 2009.

The grounds of the application are, inter alia, that on 23<sup>rd</sup> October, 2008 the court granted leave to institute judicial review proceedings and a stay for 45 days; that the stay orders had been extended by court on several occasions culminating in the extension granted on 9<sup>th</sup> February, 2009 for 90 days which lapsed on 9<sup>th</sup> May, 2009; that the respondent proceeded to read the judgment and convict the applicant in Disciplinary Committee cause No. 2 of 2008 on 16<sup>th</sup> April, 2009 notwithstanding having been served with the stay orders which were still in force; and that the disciplinary cause was now scheduled for mitigation and sentencing on 8<sup>th</sup> June, 2009, and that unless stay orders were extended the Disciplinary Committee will proceed with the same and thus render the application nugatory.

I ordered that the application be served. That was on 3<sup>rd</sup> June, 2009, and fixed the hearing for 5<sup>th</sup> June, 2009. On the hearing date the applicant addressed me in person. He asked that the application be amended in prayer 2 to read “***to reinstate and extend***” the stay orders.

I have considered the application, documents filed and the submissions of the applicant.

I will not grant the requested orders. Firstly, no explanation has been given to me as to why from 25<sup>th</sup> February, 2009, (***when I am told the matter did not feature in the cause list***) no action seems to have been taken in this matter knowing fully well that the matter was coming for judgment/mitigation and sentence on 16<sup>th</sup> April, 2009. The date for that judgment was fixed on 5<sup>th</sup> February, 2009 in the presence of Kariuki Gachau for the applicant. On the day of the judgment Mr. Kariuki for the applicant is recorded as having stated-

***We have extended the order of stay and served the Law Society of Kenya.”***

Surely, If there was seriousness on the default by the respondent to obey court orders, the matter should have been brought to court almost immediately after the incident. On the contrary an application dated 7<sup>th</sup> May, 2009 to restrain proceedings and setting aside judgment of the Respondent was filed, which application was dismissed on 18<sup>th</sup> May, 2009. Even up to today, the failure to follow up the matter herein from 25<sup>th</sup> February, 2009 when it was to come for mention has not been explained. The applicant cannot benefit from his indolence or that of his advocate.

Secondly, I have been told that the stay orders lapsed on 9<sup>th</sup> May, 2009. The application I have referred to above dated 7<sup>th</sup> May, 2009 was actually filed on 8<sup>th</sup> May, 2009. There could, in my view, be nothing as easy as the applicant, who filed that application under certificate of urgency to request for extension of stay orders. They did not request for an extension either in the application dated 7<sup>th</sup> May, 2009 or verbally. I note that the 9<sup>th</sup> of May, 2009 was a Saturday, which the applicant and his advocate must have known. They could have on 8<sup>th</sup> May, 2008 requested for a mention to extend stay orders. They did not. I find that the ominous silence of the applicant and his counsel means that they have never been serious about extension of the stay.

In my view, the application dated 29<sup>th</sup> May, 2009 lacks merits and I will have to dismiss the same. Perhaps the applicant should move fast and fix the Notice of Motion herein for hearing.

Consequently, and for the above reasons I dismiss the application.

Dated and delivered at Nairobi this 8<sup>th</sup> day of June, 2009.

**George Dulu**

Judge.

**In the presence of-**

Applicant in person

Kevin Court Clerk