



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISCELLANEOUS CIVIL APPLICATION 976 OF 2006

**IN THE MATTER OF: THE WILDLIFE (CONSERVATION MANAGEMENT ACT (CAP 376)
LAWS OF**

KENYA

**IN THE MATTER OF: THE WILDLIFE (CONSERVATION & MANAGEMENT (NATIONAL
PARKS AMEMDMENT) REGULATIONS, 2006**

IN THE MATTER OF: THE REPUBLIC

VERUS

THE MINISTER FOR TOURISM & WILDLIFERESPONDENT

EXPARTE: ZUBERI HAMADI & 30 OTHERS.....APPLICANTS

AND

THE DIRECTOR OF KENYA WILDLIFE CONSERVATION

& MANAGEMENT SERVICESINTERESTED PARTY

R U L I N G

The exparte applicants herein namely: Bakari Masuo Bakari, Jaffer Kalama, Twalib Ali, Said Athman Mohamed Mahadali, Abdul Mjahid, Zuberi Hamadi, Ben Kiti, Moohamed Ali Rashid, Haji Waladi, Ibrahim Shekue, Jamal Lali, ahmed Waladi, Adhil Omar, Shebwana Dawame, Mohamed sheriff, Omar Abdi, James Tsuma, John Mtuku, Lali Sizi, Kassim Suo, Abdulrahmani Ramadhan, shahib Mohamed, Ali Abdulkarim, Sali ali, Twalib B. Abed, Jaffar A. Shalli, Issa Ahmed, Ali shee, Haroun Bwanidi, Jafar Famau and Aweso Changamwe, hereinafter referred to as the applicants took out the motion dated 10th November 2006 pursuant to the provisions of Order LIII rule 3 of the Civil Procedure rules whereupon they sought for the following orders:

(1) That this Honourable court be pleased to grant to the applicants herein an order of certiorari to remove the Regulations made by the respondent and published in the special issue of Kenya Gazette supplement No. 31 on 12th May 2006 The Wildlife (Conservation and Management) National Parks

(Amendment) Regulations 2006 to this Honourable Court for the purpose of quashing part III 1(a) in relation to category "C" parks.

(2) That the costs of this application be provided for.

The motion is accompanied by a statement of facts filed pursuant to sub-rule 2 of rule 1 order LIII. It is also verified by the affidavit of Bakari Masuo Bakari sworn on 10th November 2006. The Minister for Tourism & Wildlife was named as the Respondent whereas the Director of Kenya Wildlife Conservation and Management Services was named as the interested party. The Interested party opposed the motion by filing the replying affidavit of Julius Kipngetich sworn on 22nd July 2007.

Mr. Hamza, learned advocate for the applicants urged this court to grant the orders as prayed because the applicants right to be heard before the making of the regulations published in the special issue of the Kenya Gazette Supplement No. 31 of 12th May 2005. The applicants argued that they should have been heard before the park fees were increased since they were operators of boat excursions business at various Marine Parks along the Kenyan Coastline.

Miss Obura, learned advocate for the Interested Party urged this court to dismiss the motion because the Respondent and the Interested Party were not required under Section 16(1) (b) of The Wildlife (Conservation and Management) Act Chapter 376 Laws of Kenya to consult the applicants as to the fees payable.

Mr. Njoroge, learned litigation Counsel appeared to oppose the motion on behalf of the Respondent. It is his submission that the Minister had an unfettered discretion on the matter.

I have considered the material placed before this court. I have also taken into account the oral submissions and the authorities cited by learned counsels. The applicants are owners and operators of excursion business in various Marine National Parks and Reserves within the Kenyan coastline. They claimed to be dependent on entrants into Marine Parks which are under the control of the Interested Party. There is also no dispute that the interested party is in charge of collecting fees from visitors entering into the Marine Parks. What sparked the controversy now before this court is the publication by the respondent in the Kenya Gazette Special Supplement No. 31, of the Wildlife (Conservation and Management) National Parks (amendment) No. 1 regulations, 2006. In that publication fees charged on local and foreign tourist entering reserves increased from 5/- and 100/- to Kshs.10/- and 300/- respectively. It is said that those charges were published and effected by the Respondent without prior consultation of the applicants. The Respondent and the Interested Party contended that they were not bound to consult the applicants prior to the publication. I have carefully examined the provisions of Section 16(1) (b) of the Wildlife (Conservation and Management) Act and it is clear that the Respondent had the sole discretion to make regulations touching on the fees chargeable to enter or reside in a National Park, for the admission of vehicles or for the use of any amenities in the National Park. The Act does no place any duty upon the respondent to consult the applicants or anybody for that matter. In the circumstances I find that the Respondent did not breach the *audi alteram partem* rule. That being the only ground in which this motion was based the motion must crumble. It is dismissed with costs to the interested party and the Respondent.

Dated and delivered at Mombasa this 22nd day of July 2009.

J.K. SERGON

J U D G E

In open court in the presence of Mr. Wabwoto h/b for Mrs. Obura for Interested Party and Mr. Maliru h/b Njoroge for Resopndent