



**IN THE MATTER OF AN APPLICATION BY ROSE MUENI, EDITH MUNJAKU JNKINS
ALIAS KERONGO BOSIRE FOR LEAVE TO APPLY FOR AN ORDER OF PROHIBITION**

AND

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW UNDER ORDER LIII
CIVIL PROCEDURE RULES**

AND

**IN THE MATTER OF THE PROCEEDINGS IN THE CHIEF MAGISTRATE'S COURT,
REGARDING THE REPUBLIC -VS- ROSE MUENI, EDITH MUNJAKU JENKINS ALIAS
EDITH MUNJAKU AND JARED KERONGO BOSIRE IN CRIMINAL CASE NO. 1545 OF 2006**

BETWEEN

ROSE MUENI MUNGUTI 1ST APPLICANT

EDITH MUNJAKU JENKINS ALIAS

EDITH MUNJAKU 2ND APPLICANT

JARED BOSIRE 3RD APPLICANT

V E R S U S

THE HON ATTORNEY-GENERAL..... 1ST RESPONDENT

THE COMMISSIONER OF POLICE..... 2ND RESPONDENT

KENYA RAILWAYS CORPORATION.....3RD RESPONDENT

RULING

Before me is a Chamber Summons filed on 10th July, 2008, seeking for leave to file judicial review proceedings for prohibition. It was filed under Order 53 Rule 3(1) of the Civil Procedure rules. The respondents are named as the **ATTORNEY-GENERAL (1st respondent)**, **THE COMMISSIONER OF POLICE (2nd respondent)**, and **KENYA RAILWAYS CORPORATION (3rd respondent)**.

I ordered that the application be served for inter-partes hearing. Consequent on service, documents in opposition to the application were filed. The application was also strongly opposed on the hearing date, through submissions by Mr. Obiri for the 1st and 2nd respondents and Mr. Agwara for the 3rd respondent.

Having considered this application, I find no basis for allowing the same. I agree that the applicants have a sufficient interest in the subject matter. They claim that they are already serving suspensions in Kenya Railways, and that action was being taken to investigate them and prosecute them.

However, in my view, the applicants have not demonstrated an arguable case. They do not appear to complain about unreasonableness, failure to comply with principles of natural justice, bias, or acting outside the law or in contravention of the law by any of the respondents. The applicants seem to be interested in obtaining leave to file proceedings for prohibition or preventing the respondents from doing or carrying out certain functions of an investigative nature. In fact, in my view, what the applicants want is for leave to be granted to the applicants to file proceedings to cover up what could legally be done by the respondents. In my view, this court should not be used as an instrument to prevent lawful actions by private persons or public officials or organization. I am not persuaded that the applicants have demonstrated an arguable case. I will not grant them leave to file judicial review proceedings for prohibitions as requested.

The applicants have also asked that the leave, if granted, do operate as a stay of Nairobi Criminal Case No. 1545 of 2006. Even if I had granted them leave, I would not have granted them the stay requested. The first reason is that the subordinate court has not been enjoined as a party. The second reason is that there does not appear to be any complaint raised with regard to the conduct of the proceedings in the subordinate court. Thirdly, the orders of prohibition for which leave is sought to be granted relate to investigations, rather than the proceedings in the subordinate court.

Consequently, and for the above reasons, I dismiss the application herein. I decline to grant leave, and decline to grant stay orders. Parties will however, bear their respective costs, as this application is ordinarily an ex-parte application.

Dated and delivered at Nairobi this 26th day of October, 2009.

George Dulu

Judge.