



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

**Misc. Civ. Appli. 472 of 2008**

**JOHN GAKUNYI.....1<sup>ST</sup> APPLICANT**

**JAMES NGANGA WAINAINA.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**THE COMMISSIONER OF POLICE.....1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**GEOFFREY NGUNJIRI WAINAINA.....AFFECTED PARTY**

**R U L I N G**

John Gakunyi and James Nganga Wainaina (thereinafter referred to as the *ex parte* applicants), seeks the following orders: -

(a) That leave be granted to the applicant to apply for orders that an order of prohibition do issue to prohibit the respondents, whether by themselves or through their subordinate officers including the District police officer, Kiambu and the Officer Commanding Kikuyu Police Station from harassing, intimidating or arresting the applicants on account of any of the matters, issues or assets that are the subject of Nairobi High Court Succession Cause No.367 of 2008 or any subsequent succession cause relating to the Estate of Benson Wainaina Wambura and from investigating such matters issues on assets until the succession cause is fully determined by the High Court.

(b) That the leave so granted do operate as a stay of any ongoing investigations and as a bar to any harassment or intimidation of the applicants by the respondents in respect of any of the matters, issues or assets that are the subject of Succession Cause No.367 of 2008 or any subsequent succession cause relating to the Estate of Benson Wainaina Wambura pending the hearing and determination of these proceedings.

The application is supported by a verifying affidavit sworn by John Gakui and a statutory statement filed under Order LIII Rule 1(2) of the Civil Procedure Rules. In a nutshell the *ex parte* applicants are beneficiaries of the Estate of their late father Benson Wainaina Wambura. They have been involved in a succession dispute over the Estate. This is subject of Succession Cause No.367 of 2008 and High Succession Cause No.744 of 2008. It is the *ex parte* applicants' contention that Geoffrey Ngunjiri Wainaina (hereinafter referred to as the affected party), who is also a beneficiary in the Estate, has been using the police to harass and intimidate the *ex parte* applicants. The *ex parte* applicants now fear that criminal procedure is being used as a collateral attack in the civil dispute and there is danger that they may be arrested. Counsel for the applicants has relied on ***Misc. App. No. 451 of 2006 Eleshkumar Chandrakant Gheewala vs the Commissioner of Police and Others***. Counsel for the applicant also relied on ***Misc. App. No.695 of 2007 Republic vs Kenya Anti-Corruption Commission***.

I have considered the application, the verifying affidavit, the statutory statements and the authorities which were cited. It is evident to me that there is a civil dispute involving the *ex parte* applicants and the affected party which is subject of High Court Succession No.367 of 2008 and High Court Succession No. 744 of 2008. I am satisfied that the *ex parte* applicants appear to have a genuine grievance regarding the

involvement of the police and the criminal process in a civil dispute.

I do therefore allow the application and issue leave to the applicants to apply for orders of prohibition in terms of prayer (b) of chamber summons dated 6<sup>th</sup> August 2008. I order that the leave shall operate as a stay in terms of prayer (c) of the chamber summons. The *ex parte* applicants shall file and serve the application within 21 days from the date hereof.

Those shall be the orders of this court.

**Dated and delivered this 13<sup>th</sup> day of August, 2008**

**H. M. OKWENGU**

**JUDGE**

In the presence of: -

Miss Mwangi for the applicants