



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

**Misc. Appli. 457 of 2008**

**SILAS MAITHA SULUBU KENGA..... APPLICANT**

**V E R S U S**

**RESIDENT MAGISTRATE, NAIROBI CHILDRENS COURT..... RESPONDENT**

**(Under Order LIII rules 1 & 2 Cap 21 of the Laws of Kenya)**

**R U L I N G**

Before me is a an ex-parte Chamber Summons dated 28<sup>th</sup> July, 2008 filed by M/s Madzayo Mrima & Company advocates on behalf of the ex-parte applicant **SILAS MAITHA SULUBU KENGA**. The application was filed under Order LIII Rules 1, 2, and 3 of the Civil Procedure Rules (Cap. 21). It seeks for the following orders-

1. ***THAT the court be pleased to certify this application to be urgent and to dispense with service of notice upon the registrar in the first instance.***
2. ***THAT this court be pleased to grant leave to the applicant to apply for Judicial Review orders of Certiorari to remove to High Court and quash the ex-parte proceedings of 30<sup>th</sup> June, 2008 and the respondents ruling and order issued on 15<sup>th</sup> July, 2008 in Nairobi Children's Court Case Number 311 of 2008.***
3. ***THAT this Honourable Court be pleased to grant leave to the applicant to apply for Judicial Review orders of mandamus to compel the Respondent to hear the Applicant in Nairobi Children's Court Case Number 311 of 2008.***
4. ***THAT the said leave do operate as a stay of the said decision until the hearing and determination of the main motion.***
5. ***THAT costs of this application be provided for.***

The application has grounds on the face of the Chamber Summons. The application was filed with a **STATUTORY STATEMENT** and a **VERIFYING AFFIDAVIT**.

The grounds relied upon were that the respondent (**RESIDENT MAGISTRATE, NAIROBI CHILDRENS COURT**) delivered a ruling and issued orders on 15<sup>th</sup> July, 2008 in Nairobi Children's Court case No. 311 of 2008 which was biased and adverse as against the applicant; the ruling and order was irregular as it was arrived at in contravention of the rules of natural justice in particular the

applicant's right to be heard; the ruling is unreasonable and tainted with bias as it was arrived at by hearing presentations of only one party; that the said orders had been extracted and will be executed any time from now which would affect the welfare of a minor Rooney Vidzo; that if executed the minor child's life, interest and welfare will be put to great jeopardy; and that it is in the interest of justice that the orders sought be granted.

At the hearing of the application, Mr. Kithi appeared for the ex-parte applicant. Counsel submitted that the application was urgent and that the applicant was seeking for the orders sought as the same were justified in the circumstances of this case. Counsel submitted that the applicant relied on the **STATEMENT** and the **AFFIDAVIT** filed. Counsel contended that the learned magistrate in the Children's Court refused to hear the applicant or his Counsel before making his ruling on the excuse that the said minor child was not produced in court as directed by the court. Counsel contended that the minor could not be produced in court because he was in Kilifi and was schooling. Counsel also submitted that the reason given for not producing the child in court was an adequate reason, and that the applicant should have been heard.

I have considered the application, documents filed and the submissions of Counsel for the applicant. This matter relates to orders given by the Children's Court in a matter involving a minor child. The applicant appears to be the father of the minor. The plaintiff/applicant in the Chief Magistrate's case No. 311 of 2008 is **BEATIRCE CHEPKEMOI TANUI**, the mother of the minor child. The application herein is with respect to a challenge on the way the proceedings in the Children's Court were conducted, as well as the decision so reached therein. In my view, the applicant has demonstrated a *prima facie* arguable case. There is something that calls upon this court to investigate. I will also grant stay orders. I will therefore allow the application.

Consequently, I order as follows-

1. ***I certify the application as urgent, and dispense with the requirement for prior service on the Registrar***
2. ***I grant leave to the applicant to file Judicial Review Proceedings for certiorari and mandamus as prayed. The main application will be filed within 21 days from today, and on filing should also be served on the mother of the minor child.***
3. ***The leave above granted will operate as a stay of the decision in Nairobi Children's Court case Number 311 of 2008 until the hearing and determination of the substantive motion, provided that the substantive motion is filed within 21 days from today and in default, the stay orders hereby granted will automatically lapse.***
4. ***Costs in the cause.***

Dated and delivered at Nairobi this 4<sup>th</sup> day of August, 2008.

George Dulu

Judge.

**In the presence of-**

Mr. Kithi for ex-parte applicant.