



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

**Misc. Civ. Appli. 580 of 2008**

**KARURI HOTELS LTD..... APPLICANT**

**(EX-PARTE)**

**V E R S U S**

**THE LIQUOR LICENCING COURT, MOMBASA..... RESPONDENT**

**R U L I N G**

Before me is an ex-parte Chamber Summons dated 19<sup>th</sup> September, 2008 filed by M/s Gikandi & Company advocates on behalf of the ex-parte applicant KARURI HOTELS LTD. It is an application for leave to file Judicial Review Proceedings. The application was filed with a verifying affidavit sworn by JOSEPH KARURI MAINA, described as the Managing Director of the applicant, on 19<sup>th</sup> September, 2008. The application was also filed with a statement as required by the law.

It is contended in the application that the respondent, the Liquor Licensing Court, Mombasa has failed to issue the ex-parte applicant with a Liquor Licence for the year 2008. Therefore the applicant asks for leave to file Judicial Review proceedings for mandamus and also stay orders.

At this stage of an application for leave, I am not required to go into the substantive merits of the application. I am however required to consider whether the applicant has a sufficient interest in the subject matter, and whether the applicant has a prima facie arguable case. In my view, on the facts before me, the applicant has demonstrated a sufficient interest in the subject matter. The applicant has also demonstrated an prima facie arguable case. I will grant the leave to file Judicial Review proceedings.

The applicant has also asked me to grant stay orders. Since the applicant has only asked this court to grant leave to file Judicial Review proceedings for mandamus, stay orders cannot be granted. Only in cases where leave is granted to file Judicial Review proceedings for orders of certiorari or prohibition can stay orders be granted. This is clearly demonstrated by the provisions of Order 53 rule 1(4) of the Civil Procedure Rules, which provides-

*1(4) The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise.”*

In our present case therefore, since the leave granted will merely be to apply for orders of mandamus, stay

orders are not available.

Consequently, and for the above reasons, I order as follows-

1. *The application is certified as urgent.*
2. *The requirement of service of Notice upon the Registrar is hereby dispensed with.*
3. *Leave is granted to the applicant to file Judicial Review proceedings for mandamus as requested in the Chamber Summons. The main motion will be filed within 21 days from today, and in default the leave hereby granted will automatically lapse.*
4. *I decline to grant stay orders, as the leave granted herein is for filing proceedings for mandamus.*
5. *The costs will follow the decision in the application to be filed.*

Dated and delivered at Nairobi this 26<sup>th</sup> day of September, 2008.

GEORGE DULU

JUDGE.

In the presence of-

Ms. Opondo holding brief for Mr. Gikandi