



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

**Misc. Civ. Case 651 of 2008**

**JAMES KARANJA MWAURA.....**

**APPLICANT**

***V E R S U S***

**THE KABETE POLICE STATION DTO. .... 1<sup>ST</sup>**  
**RESPONDENT**

**THE KIKUYU POLICE STATION DTO..... 2<sup>ND</sup>**  
**RESPONDENT**

**THE CENTRAL POLICE STATION DTO..... 3<sup>RD</sup>**  
**RESPONDENT**

**THE PARKLANDS POLICE STATION DTO..... 4<sup>TH</sup>**  
**RESPONDENT**

**THE KILIMANI POLICE STATION DTO..... 5<sup>TH</sup>**  
**RESPONDENT**

**THE COMMISSIONER OF POLICE..... 6<sup>TH</sup>**  
**RESPONDENT**

**THE TRANSPORT LICENSING BOARD..... 7<sup>TH</sup>**  
**RESPONDENT**

**THE HONOURABLE ATTORNEY-GENERAL..... 8<sup>TH</sup>**  
**RESPONDENT**

**AND**

**THE DIRECTOR OF MOTOR VEHICLE INSPECTION..... 1<sup>ST</sup> INTERESTED**  
**PARTY**

**R U L I N G**

Before me is a Chamber Summons dated 24<sup>th</sup> October, 2008 filed by M/s Mbijiwe Mugo & Company advocates on behalf of the applicant named as **JAMES KARANJA MWAURA**. The respondents are named as **THE KABETE POLICE STATION DTO, THE KIKUYU POLICE STATION DTO, THE CENTRAL POLICE STATION DTO, THE PARKLANDS POLICE STATION DTO, THE COMMISSIONER OF POLICE, THE TRANSPORT LICENSING BOARD, and THE HON. ATTORNEY-GENERAL**. In addition, two interested parties were named as **THE DIRECTOR OF MOTOR VEHICLES INSPECTION, and STANLEY NJUGUNA NG'ANG'A**.

The orders sought in the application are as follows-

1. ***This application be certified as urgent and be heard expeditiously owing to its extreme urgency.***
2. ***This Honourable Court be pleased to dispense with the service of the Notice to the Registrar, on the ground that the application will be rendered nugatory when the applicant may have suffered injury without intervention of the court.***
3. ***Leave be granted to the Applicant to seek by way of Judicial Review for an order of prohibition to issue, prohibiting the Respondents or any person acting under their behest from demanding, directing, insisting upon, or ordering that the Applicant comply with any aspect of Legal Notice 161 of 2003 in regard to his public service vehicle KBD 579T.***
4. ***Leave so granted do operate as a stay of the Respondent's demand that the Applicant comply with Legal Notice 161 of 2003 and Legal Notice 65 of 2005, until determination of the Notice of Motion application to be filed hereinafter, or as this Honourable Court may direct.***
5. ***Costs of the application to the Applicant in any event.***

The application was filed with a **STATEMENT OF FACTS**, and **VERIFYING AFFIDAVIT** as required by law.

At the hearing of the application, Mr. Ojienda appeared for the applicant. Counsel submitted that the President had decreed the suspension of Legal Notice No. 161 of 2003 before the 2007 general elections. Counsel contended that the President had directed that matatu drivers and conductors should not wear uniforms. Counsel submitted that prior to that, the said Legal Notice had been rendered ineffectual by the High Court in Miscellaneous Application No. 109/2004. Counsel also submitted that another Legal Notice No. 65 of 2005 was stayed by Emukule J. in Miscellaneous Application No. 114 of 2005.

The police have, however, been harassing the employees of the applicant to comply with the Legal Notices.

Having considered the application and submissions of counsel, I am of the view that the applicant has demonstrated a *prima facie* arguable case. He has also established a sufficient interest. I will grant leave to file Judicial Review Proceedings.

With respect to stay, I will not grant the same. First of all, the court will have to be persuaded whether indeed the President made a decree and interpret its legal effects. Secondly, the order of Emukule J. staying Legal Notice 65/2005 was issued on 28<sup>th</sup> July, 2005. I have not been shown any information as to what happened thereafter. Therefore, I do not know the current status of that stay and its impact. In fact, the Legal Notice being challenged herein, appears to be LN 161 of 2003, as evidenced by the prayer for leave to file judicial review proceedings.

Consequently, I order as follows-

1. ***I dispense with the requirement for service of notice on the Registrar.***
2. ***Leave is granted to the applicant to file Judicial Review proceedings for prohibition with respect to Legal Notice 161 of 2003 as prayed. The Notice of Motion will be filed within 10 days from today, in default leave granted will automatically lapse.***
3. ***I decline to grant stay.***
4. ***Costs will follow the decision in the Notice of Motion to be filed.***

Dated and delivered at Nairobi this 30<sup>th</sup> day of October, 2008.

**George Dulu**

**Judge.**

**In the presence of-**

Ms. Busienei for the applicant.