

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA**

Misc Appli 22 & 23 of 2008

**IN THE MATTER OF: AN APPLICATION FOR LEAVE TO APPLY
FOR JUDICIAL REVIEW AND ORDERS OF
CERTIORARI AND PROHIBITION**

AND

**IN THE MATTER OF: LOCAL GOVERNMENT ACT CAP 265 LAWS
OF KENYA, THE LOCAL GOVERNMENT
(ADOPITVE BYLAWS) (BUILDING ORDER
1968) AND THE PHYSICAL PLANNING ACT CAP 286 LAWS OF KENYA**

BETWEEN

BHANGRA LIMITEDAPPLICANT

VERSUS

THE TOWN CLERK OF MOMBASA MUNICIPAL COUNCIL...RESPONDENT

R U L I N G

Pursuant to Order LIII of the Civil Procedure Rules and Sections 8 and 9 of the Law Reform Act, Bhangra Ltd took out a summons dated 19th September 2008 in which it prayed for leave to apply for judicial review by way of an order of certiorari to remove into this court for quashing the decision by the Town clerk of the Municipal council of Mombasa made on 9th September 2008 stopping the applicant from carrying out developments on Plot No. Mombasa Island/Block XI/936. The applicant also sought for leave to apply for an order of Prohibition to prohibit the aforesaid town clerk from interfering with the applicant's construction works and or developments on the suit premises.

The applicant further applied for an order directing leave to operate as a stay. The application is verified by the affidavit of Ashok Doshi. The application is accompanied by a statement of facts. The exparte applicant also applied to be excused from issuing the notice upon the Deputy Registrar of this court.

I have considered the oral arguments of Mr. Omulele, learned advocate for the exparte applicant. I have also taken into account the grounds set out on the face of the summons plus the facts deponed in the verifying affidavit of Ashok Doshi and the statement of facts. After a careful consideration I am convinced that the applicant has shown it has a prima facie case. I grant leave to the applicant to commence judicial review application as prayed in prayers 3 and 4 of the summons within 21 days from the date hereof. I also excuse the applicant from issuing the notice upon the Deputy Registrar of this court pursuant to Order LIII rule 1(3) of the Civil Procedure Rules. I am also convinced that the order for leave should operate as a stay. In short, I allow the summons dated 19th September 2008 as prayed in terms of prayers 2,3,4,5 and 6.

Dated and delivered at Mombasa this 6th day of October 2008.

J.K. SERGON

J U D G E

In open court in the presence of Mr. Mwakireti h/b Omulele for the applicant.