



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Constitutional Petition 85 of 2007

**IN THE MATTER OF SECTIONS 60,63,65,67,77(9) AND 84 OF THE CONSTITUTION OF
KENYA**

AND

**IN THE MATTER OF ALLEGED CONTRVENTION OF FUNDAMENTAL RIGHTS AND
FREEDOMS UNDER SECTIONS 77(9) OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION
AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL)
HIGH COURT PRACTICE RULES, 2006**

AND

IN THE MATTER OF THE KENYA GAZETTE NOTICE OF 19TH JANUARY 2007

BETWEEN

THE LAW SOCIETY OF KENYA.....PETITIONER

AND

THE HON. CHIEF JUSTICE OF THE REPUBLIC OF KENYA.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL

OF THE REPUBLIC OF KENYA.....2ND RESPONDENT

RULING

In this matter the office of the Honourable the Chief Justice has been sued as the 1st Respondent. One of the prayers in the Chamber Summons annexed to the Petition is that this Court should certify the matter as urgent. The second prayer is that because of the nature of the prayers sought (this Court) I

should not refer the matter to the Chief Justice. The third prayer is that as the Presiding Judge of the Constitutional and Judicial Review Division I should refer the matter for determination by any other judge not already a member of the division.

The further prayer which is for determination by any other Judge is that pending the inter-partes hearing of this application the Honourable Court be pleased to stay the effect, implementation and operationalisation of all the directions issued by the 1st Respondent herein through Kenya Gazette of 19th January 2007 notice No 300 and 301.

I have considered the nature of the orders sought and since my impartiality in handling the application as the current presiding judge is impliedly challenged I consider this to be the starting point. If the applicants are in the first place unhappy in my handling the application it follows that it would not be proper or prudent for me to handle any substantive aspects of this matter, as therefore I cannot give any of the interim reliefs as sought. I find and hold that the only aspect I am competent to handle (and here only with the consent of the applicant is that that of certification of urgency) and I shall therefore deal with this aspect shortly.

Concerning the applicant's prayer that the matter should not be referred to the Honourable the Chief Justice I find no merit in this prayer.

- (1) Firstly because it is not the first time he has been sued in this court and wherever sued he appoints another Bench
- (2) Secondly he is the only one who has the competence to appoint any other judge outside the Division to hear the matter and to have it fast tracked if he deems fit.
- (3) It is a cardinal principle of justice that a litigant ought not choose the Judge to hear his/her matter especially in a situation such as this where there is no specific application for any of the three Judges in the Division to disqualify themselves. No system of justice worth the name should countenance or condone forum shopping
- (4) Fourthly the wider interests of justice – such as its smooth administration demand that the organs of the court system including the Divisions adhere to some hierarchy of authority without which we shall all be encouraging a state of judicial anarchy.

In the result, and taking into all the above considerations including the wider need of smooth administration of justice, lead me to the inescapable conclusion that I certify the application as urgent for the reasons indicated in the application. The prayer for certificate of urgency is granted.

For the reasons indicated in this ruling the matter is forthwith referred to the Honourable the Chief Justice for further orders.

Perhaps I should mention that even when the establishment of this Division was challenged with the Hon the Chief Justice as the 1st Respondent he had tremendous respect for the rule of law – he delayed its operations until the verdict was delivered by a single judge of the High Court in Kisumu and he adhered to the ruling.

By analogy this court has no reason to doubt that the Hon the Chief Justice will not rise to the occasion and handle the matter as he deems fit – with the needs and demands of the rule of law in view.

It is so ordered.

DATED and delivered at Nairobi this 12th day of February 2007.

J.G. NYAMU

JUDGE