

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Misc Appli 353 of 2007

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

AND

IN THE MATTER OF THE HOUSING ACT

BETWEEN

MOSES NDERITU KIMARU & OTHERSAPPLICANTS

VERSUS

MINISTRY OF HOUSINGRESPONDENT

RULING

On 03.04.07 the applicants filed two chamber summons applications dated the same day. The essence of the main application is to seek the grant of leave to apply for leave for judicial review for orders of certiorari and prohibition and that if leave is granted, such leave to operate as stay against implementation of the Ministry of Housing decision contained in the respondent Ministry's circulars dated 24.01.07 and 02.03.07 pending *inter-partes* hearing of the application. The essence of the other chamber summons application is to seek certification of the main application as urgent and that it should be heard during the current court vacation. The main chamber summons application is stated to be brought under section 8 (2) of the Law Reform Act, Cap.26 and Order LIII rules 1 (3) 3 (1) of the Civil Procedure Rules.

At the *ex-parte* hearing of this matter on 04.04.07, the applicants were represented by learned counsel, Miss J.S. Aullo.

Applicants' counsel urged the court to certify the matter urgent on the basis that bids to sell the houses in question closed on 31.03.07; that the applicants who occupy concerned houses in Nyeri town applied to purchase the houses and paid the requisite 10 % deposits therefor; but that since the effect of the two circulars above-mentioned is to remove earlier assurance the applicants say they were given by the Government through the respondent Ministry that they would be accorded first priority in purchasing the houses, they are apprehensive that they may lose the opportunity to purchase and own the houses, hence the urge that implementation of the decision contained in the two circulars be stayed until the regularity or legality of the said decision is determined at *inter-partes* hearing.

Applicants' counsel submitted that if leave to apply for judicial review is granted, stay must also be granted.

I have duly considered the two twin chamber summons applications.

The main application raises weighty issues of public policy. I note that the decision to remove the assurance the applicants say they were earlier given that they would enjoy first priority to purchase the

houses was first announced vide the circular of 24.01.07, i.e. some three months ago and repeated vide the circular of 02.03.07, i.e., one month ago. The applicants did not file their application to challenge the decision during normal term time but chose to wait for the court vacation, which started only on 29.03.07, to file their applications under rules 3 (1) and 3 (2) of Part I, of the High Court (Practice and Procedure Rules. I am of the view that the respondent Ministry is entitled to be and should be heard on the application now before court. Accordingly, I direct:-

1. That the applicants serve their applications on the respondent to enable the respondent prepare for *inter-partes* hearing of the said applications.
2. That the matter be mentioned before the Presiding Judge of the Constitutional and Judicial Review Division of the High Court at Nairobi on 19.04.07 for directions as to when *inter-partes* hearing of the matter should take place before that Division.

Orders accordingly.

Delivered at Nairobi this 5th day of April, 2007.

B.P. KUBO

JUDGE