



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

Petition 845 of 2007

**IN THE MATTER OF SECTION 84 (1) OF THE CONSTITUTION OF THE REPUBLIC OF
KENYA**

AND

**IN THE MATTER OF RULES 11, 12 AND 13 OF THE CONSTITUTION OF KENYA
(SUPERVISORY JURISDICTION & PROTECTION OF FUNDAMENTAL RIGHTS AND
FREEDOMS OF THE INDIVIDUAL) HIGH COURT PRACTICE AND PROCEDURE RULES,
2006**

AND

**IN THE MATTERS OF ALLEGED CONTRAVENTION OF THE FUNDANMENTAL RIGHTS
AND FREEDOMS UNDER SECTION 75 OF THE CONSTITUTION**

BETWEEN

GITERE KAHURA INVESTMENT LIMITED.....PETITIONER

VERSUS

THE PERMANENT SECRETARY, MINISTRY OF LIVESTOCK

AND FISHERIES DEVELOPMENT..... 1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

Last time the matter went before court was on 15.08.07 when the parties by consent had the chamber summons dated 01.08.07 fixed for hearing today, 21.08.07.

When the application came up today, petitioner's counsel said he was ready to proceed but respondents' counsel said he was not. He acknowledged being served with the application on 06.08.07; that he sought instructions from the respondents but has received none; and that as a result he has not filed response to the application. In his view there is no urgency in the application and it should be heard

during normal term time.

Petitioner's counsel maintains the application as urgent, hence its having been allocated a hearing date during the vacation. Accordingly, he urged the court to grant the conservatory order sought vide prayer 2 in the chamber summons dated 01.08.07.

I note that service of the application on respondents was on 06.08.07. Rule 16 of the Constitution of Kenya (Supervisory Jurisdiction and Protection of Fundamental Rights and Freedoms of the Individual) High Court Practice and Procedure Rules, 2006 requires the respondents to have filed affidavit response to the application within 14 days of service, i.e. by 20.08.07. Today is 21.08.07 but no response has been filed.

Rule 19 of the same Rules provides that if no response is filed within the period stipulated by Rule 16, the petitioner may set the matter down for hearing and determination.

According to respondents' counsel, there is no urgency in the matter since according to him the purported threat alluded to in a newspaper article published in the Sunday Standard of 17.05.07 (Annexure "GK 4") ascribed to the Ministry of Livestock and Fisheries Development (1st Respondent) has not been followed up by a formal eviction notice.

Rule 16 aforesaid is clear. The respondents should have responded to the application within 14 days from 06.08.07, i.e. by 20.08.07. They have not. The issue of urgency of the application was determined by Aganyanya, J on 03.08.07 and is not for debate at today's hearing.

Since the respondents have not seen it fit to comply with Rule 16, they must face the natural consequences of their failure.

Accordingly, I grant the conservatory order sought vide prayer 2 in the chamber summons dated 01.08.07.

It is so ordered.

Dated at Nairobi this 21st day of August, 2007.

B.P. KUBO

JUDGE