



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Misc Civ Appli 976 of 2006**

**IN THE MATTER OF: THE WILDLIFE (CONSERVATION MANAGEMENT) ACT (CAP
376 LAWS OF KENYA)**

AND

**IN THE MATTER OF: THE WILDLIFE (CONSERVATION AND MANAGEMENT
(NATIONAL PARKS AMENDMENT REGULATIONS, 2006**

AND

IN THE MATTER OF:

THE REPUBLIC.....APPLICANT

VERSUS

THE MINISTER FOR TOURISM AND WILDLIFE.....RESPONDENT

EXPARTE

1. ZUBERI HAMADI & 30 OTHERS.....APPLICANTS

AND

**THE DIRECTOR OF KENYA WILDLIFE CONSERVATION AND
MANAGEMENT SERVICES.....INTERESTED PARTY**

RULING

Zuberi Hamadi and 30 others, hereinafter referred to as the 'Applicants' sought for leave to institute judicial review proceedings in the nature of certiorari to bring into this court the Regulations made by the Minister for Tourism and Wildlife, hereinafter referred to as the 'Respondent,' and published in the special issue of the Kenya gazette supplement No. 31 of 12-5-2006 for purposes of quashing. The Applicants have also urged this court to direct leave to operate as a stay of the implementation of the regulations.

It is the argument of the Applicants that they would convince this court that it was necessary for the Respondent to consult the Applicants being the operators of boat excursions business at various marine parks along the Kenyan Coastline before making the regulations. After a careful consideration of the Applicants' ex parte arguments I am convinced that they have shown that they have a prima facie case. Consequently leave of 21 days is given to the Applicants to file the substantive application.

I have been urged to direct that leave should operate as a stay of the implementation of the regulations. I have perused a copy of the regulations which are annexed to the verifying affidavit of Bakari Masuo Bakari. It is evident that the regulations were published on 12th May 2006. The effect of which was to give notice of intention to increase park fees as from 1st July 2006. The regulations have now been in operation for about 3 ½ months. The question which lingers in my mind is why didn't the Applicants seek for such a remedy in time? The Respondent gave them and the rest of the world a period of about 2 months notice with effect from 12th May 2006 to 1st July 2006. Why wait until the regulations are in operation and then come to court to paralyze their operations? To grant the order directing leave to operate as a stay will create more confusion and inconvenience the Respondent and the other stakeholders. For the above reasons I decline to direct leave to operate as a stay.

Dated and delivered this 25th day of October 2006

J. K. SERGON

JUDGE

In open court in the presence of counsel for the ex parte applicant.