

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

Misc. Appli. 1046 of 2006

REPUBLIC

VERSUS

THE PRINCIPAL IMMIGRATION OFFICER.....RESPONDENT

EX-PARTE

REHAN RIAZ MALIKAPPLICANT

RULING

Pursuant to the provisions of Order LIII Rule 1 of the Civil Procedure Rules, Rehan Riaz Malik applied for leave to apply for judicial review orders in the nature of Certiorari, prohibition and mandamus to be directed at the Principal Immigration Officer for interalia failing to renew the applicant's entry permit. The applicant also sought for an order directing leave to operate as a stay.

When the exparte application came up for hearing Mr. Ambwere who appeared for the applicant informed this court that he was entirely relying on the pleadings and dispositions filed in support of the application. I have considered the grounds set out in the Chamber summons and the facts set out in the statutory statement. I have also perused the verifying and supporting affidavits sworn by Rehan Riaz Malik

The facts leading to the filing of this application appear to be short and straightforward. It is evident that the applicant is a director and shareholder to Bolpak Motors Limited, a Limited Liability incorporated in Kenya dealing with reconditioned Japanese Motor Vehicles in Kenya. The applicant is a Pakistan Citizen doing such business in Kenya. The pleadings shows that he was issued with class H Entry Permit for a period of 2 years on 1st March 2001. It is the submission of the applicant that upon the lapse of the aforesaid entry permit he has made several applications for renewal of the same but the Respondent has not made any decision on his application. The last application he presented to the Principal Immigration Officer is dated 29.4.2006. The Respondent has yet to respond to that. The applicant now complains that Police Officers and Officers from the Immigration Department have made several visits to his business premises with threats to deport him. It is his argument that he would be able to convince this court that the Respondent has unreasonably withheld his decision on the matter. The applicant now seeks for a preservative order of stay of any deportation decision pending the hearing and determination of the intended application.

I have considered the application and I am satisfied that the applicant has shown he has a prima facie case in that he is likely to prove in the main application that the Respondent has inordinately and unreasonably withheld his decision on the application to renew the Entry permit as required under Section 5 of the Immigration Act chapter 172 Laws of Kenya. I am further satisfied that an order Preserving the Status Quo pending the hearing and determination of the intended substantive application is necessary.

In the end the applicant is given leave of 21 days to file the substantive application for judicial review orders as proposed in the exparte chamber summons. I also direct that leave do operate as a stay to the extent that the applicant should not be removed or deported from Kenya pending the hearing and

determination of the substantive application.

Dated and delivered at Mombasa this 11th day of December 2006.

J.K. SERGON

J U D G E