



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Suit 1077 of 2004**

**THOMAS NJOROGE GITAU ..... 1<sup>ST</sup> APPELLANT**  
**LAWRENCE MURIUKI WAIREGI ..... 2<sup>ND</sup> APPELLANT**  
**RAHAB WAIRURI MAINA ..... 3<sup>RD</sup> APPELLANT**  
**JAMES KIMANI WACHIRA ..... 4<sup>TH</sup> APPELLANT**  
**JOHN MWANGI MUGO ..... 5<sup>TH</sup> APPELLANT**  
**JOHN N. GATHIGE ..... 6<sup>TH</sup> APPELLANT**  
**JOHN M. NJOGU ..... 7<sup>TH</sup> APPELLANT**

**VERSUS**

**ABDI WAFULA AMISI ..... 1<sup>ST</sup> RESPONDENT**  
**MUNICIPAL COUNCIL OF NAIVASHA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

In this application, dated 16<sup>th</sup> December, 2004, brought under Order 41 Rule 4, the Applicants are seeking a stay of the Order issued by the lower court restraining them from assuming offices as Mayor, Deputy Mayor and other elective positions to which they claim they were elected in the elections of the 2<sup>nd</sup> Respondent carried out in July, 2004. Following those elections, the 1<sup>st</sup> Respondent who was the Mayor of the 2<sup>nd</sup> Respondent, immediately prior to the elections, filed an application in the lower court, seeking restraining orders on grounds that essentially challenged the validity of those elections.

The lower court agreed with him and in effect reinstated him as Mayor pending the hearing and determination of the suit filed by him in the lower court.

The Applicants who claim to be the properly elected officials say that their removal has paralyzed the operations and service delivery of the 2<sup>nd</sup> Respondent, leading to a state of anarchy at its office. They have annexed clippings from a newspaper, the Daily Nation, showing that the Order of the lower court has created “chaos” within the 2<sup>nd</sup> Respondent’s offices.

This evidence is not controverted. There is no Replying Affidavit filed. Instead the Respondents chose to file grounds of opposition stating that the application was fatally defective, misconceived, mischievous and vexatious without telling this court how, and on what basis. Their Counsel simply argued that if this application were granted, there would be “chaos” and that the only purpose of the application was to delay the fair trial of the suit in the lower court. Clearly, Counsel attempted to give this Court “evidence”

from the Bar, without having filed a Replying Affidavit. This is not accepted, and the only evidence that the Court can rely upon is the one presented by the Applicants.

This Court accepts the submission of the Counsel for the Applicants that they will indeed suffer substantial loss if stay were not granted because they are the properly elected officials of the 2<sup>nd</sup> Respondent and are obliged to provide leadership, and deliver services, to its rate payers.

This Court also notes that the restraining Orders granted by the lower court were premature, and were not in conformity with the principles laid out in the case of ***Giella vs Cassman Brown (1973) E A 358*** and could not have been granted without the benefit of a full hearing at trial.

Accordingly, I am satisfied that the Applicants have satisfied the requirements of Order 41 Rule 4 as to substantial loss, and timeliness of the application. As for security, this is not the kind of case where security could or ought to be ordered.

I, therefore, grant the Order of stay, sought in prayer 2 of the application dated and filed on 16<sup>th</sup> December, 2004. Costs shall be in the cause.

**Dated and delivered at Nairobi this 15<sup>th</sup> day of March, 2005.**

**ALNASHIR VISRAM**

**JUDGE**