REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Misc Civ Suit 903 of 2005

REPUBLIC ……..……..APPLICANT
VERSUS
KADHI SHEIKH TWALIB ……...…….RESPONDENT
AND
ARIF RAMADHAN KARAMA…….INTERESTED PARTY

RULING

This is an application for leave to commence Judicial Review Proceedings for orders of certiorari and prohibition. It is alleged that Kadhi court has no jurisdiction to deal with custody of children. That jurisdiction, it is contended, is vested in the children's court. That is a moot point. I therefore grant leave to apply as prayed.

As to the leave operating as a stay I did ask Mr. Kenzi for the Applicant who has the custody of the child at present. He said it is the Applicant. At that stage Mr. Khatib who happened to be in court shot up and said that that is not correct. He said he acted for the interested party in the Kadhi's court and knows that the child is at present with his client.
He said his client had to enlist the help of the court Bailiff to get the child taken from the Applicant.

As I pointed out to counsel to me this appears a delicate issue. It is traumatizing to have children forcibly thrown from one parent to another. In the circumstances I decline to direct hat the leave granted should operate as a stay. In any case there was nothing to be stayed if the child has already been taken by the interested party. Instead I direct that the application be filed and served within 15 days and be heard on priority basis.

DATED and delivered this 18th day of November 2005

D. K. MARAGA
JUDGE