

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Misc Civ Appli 480 of 2005

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

IN THE MATTER OF THE SOCIETIES ACT CAP 108 LAWS OF KENYA

IN THE MATTER OF ORDER LIII OF THE CIVIL PROCEDURE RULES,

CAP 21 LAWS OF KENYA

IN THE MATTER OF THE NATIONAL PROGRESSIVE PARTY

REPUBLIC.....APPLICANT

VERSUS

THE REGISTRAR OF SOCIETIESRESPONDENT

EX-PARTE

STEPHEN N. MULI.....APPLICANT

JAMES B. KIAMBA

FRANKLIN MAKOLA

JOSEPH M. MUSYOKI

MUMO WA KITUSA.....INTERESTED PARTIES

RULING

I have considered the application herein. In my view this is an unusual application. However, if the Order of Stay has been in force from 13th April 2005 and the parties served with the court orders then the ECK and Minister of Local Government ought not have received any proposals to denominate any councillor of the National Progressive Party or nominate a new one. It is not clear how and when the ECK RECEIVED the proposal to denominate the Councillor. But the Orders of Stay was granted on 14th April, 2005. It is also clear that a request to denominate the councillor was sent on 10th Feb. 2005 and by 14th March, 2005 it had been received and acted upon by the Electoral Commission of Kenya.

In the light of the foregoing, the issue of whether there is contempt of court is a matter of determination by this court. The Applicant will have to show the conduct and activities of the Interested Parties that took place after the Order of Stay was first granted and the consent Order of 11th October 2005 also granted. There can be no case of a prima facie case in contempt proceedings. I have also considered the Electoral Commission of Kenya and the Minister of Local Government have not themselves been accused of violating the court orders to the extent of any initiation of contempt proceedings. No orders are sought against them and they are not parties to these proceedings. The actions taken by the Minister of Local Government are under his. The powers under the Local Government Act. The Gazette Notice No. 3582 is and shall remain valid until revoked by the Minister or quashed by a court of law. There is no pending

challenge of the Gazette Notice and no proceedings against the Minister and the new councillor nominated. In the circumstances, I think that it would legally risky for this court to suspend the swearing in of the new Councillor ex parte. The effect would be to suspend the operation of Gazette Notice No. 8582 in proceedings where the Minister of Local Government and the new councillor are not parties. I therefore direct that the application be heard Inter Partes and on its merits.

If and when contempt is proven this court will know how to deal with the contemnors. The Applicant can set down the application for hearing.

Dated and delivered at Nairobi on this 8th day of November, 2005.

MOHAMMED K. IBRAHIM

JUDGE

ORDER

Application shall be Mentioned on 10th November 2005 at 2.30 p.m.

MOHAMMED K. IBRAHIM

JUDGE