



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. CIVIL NO. 1365 OF 2004

JULIUS ODOL NOBERTS.....1ST APPLICANT
PETER JOSEPH KIMUNDI.....2ND APPLICANT
GEORGE OSEWE WANGA.....3RD APPLICANT
TOBIAS MICHAEL SENYELI.....4TH APPLICANT
STEPHEN K. ARAP SOI.....5TH APPLICANT
JOHNSON KORIR.....6TH APPLICANT
FREDRICK KIPKEMBOI ROTICH.....7TH APPLICANT
TITUS KARURI NDUNGU.....8TH APPLICANT
RONALD M. MBENGELI.....9TH APPLICANT
DAVID BETT.....10TH APPLICANT
JOHN MUEMA NZAU.....11TH APPLICANT
DUNCAN K. MUEKE.....12TH APPLICANT

VERSUS

PUBLIC SERVICE COMMISSION OF KENYA.....1ST RESPONDENT
THE COMMISSIONER OF POLICE.....2ND RESPONDENT
THE HON. ATTORNEY GENERAL.....3RD RESPONDENT

RULING

I have considered the Application dated 13th October, 2004 and counsel’s Submission. I am of the view that there is urgency in the Application considering the limitation period of 6 months with regard to applications relating to certiorari. Besides this the nature of the application and circumstances demand an expeditious resolutions of the matters raised. The Applications are senior and gazetted Officers in the

Police Force of Kenya. From the sample of letters of retirement, it would appear that they have been retired on grounds including reorganization of Government and abolition of office. These are not cases of expiry of contract, illness, retirement age or even public interest expressly stated. They have been discharged with recognition, distinction and accolades in respect of their service to the Nation.

The questions raised by this Application are serious and fundamental. They touch on the Due Process within the Public Service. It revolves around the services, Commissions Act regulations made thereunder and even the Constitution.

I hold without any hesitation that the issues herein on a prima facie basis raises an arguable case which ought to be heard on merit.

Therefore I will grant leave as prayed.

With regard to Stay and whether the application should operate as Stay, I am obliged to determine the question one way or the other following the Principles in the court of Appeal decision in **SHAH –vs- REPUBLIC**.

The Police Force and Institution is a very delicate, sensitive and important one. It provides essential services touching on security of the people of Kenya. As a result the court will take into consideration this factor and ensure that any interim orders given does not lead to any chaos, and disorganization of this constitution.

Mr. Killukumi recognizes this fact as an officer of this court and so do his clients as citizens. They have therefore restricted the extent to which they seek the Stay to operate.

I have read Section 16 A of the Pensions (Amendment) Act 2003 which states that:-

v “16A A person to whom a pension or other allowance is payable under the Act shall be entitled to be retained in the service until the payment in full of the gratuity payable to him consequent upon the exercise by him of his option to receive such gratuity under the Provision of this Act”

This law came into force on 1.1.2004. As a result of this and the submissions of counsel, this court is inclined to grant an order that the grant of leave do operate as a stay of the decision dated 5th May 2004 to ensure that pending the hearing of the substantive application on merit. The Applicants are given the benefit of doubt at this preliminary stage and allowed to enjoy the said right until the hearing. I therefore do hereby grant prayers:-

2, 3, 4 and 5 of the Chamber Summons.

I do also grant prayer 6 provided always it is **limited** to the temporary enforcement of Section 16 A of the Pensions (amendment) Act, 2003. For the avoidance of doubt this strictly means that the Applicants are deemed still to be in the service of the Public Service Commission and the Police. **BUT** they shall not report back on duty or resume office in any manner whatsoever pending the hearing of that intended Application.

The said Application shall be filed and served within the next 21 days.

Costs shall be in the said Applications.

Dated and delivered at Nairobi this 15th day of October, 2004.

MOHAMMED K. IBRAHIM

JUDGE

Order:

Typed copies of the Ruling to be supplied upon payment.