



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISCELLANEOUS CIVIL APPLICATION NO.190 OF 2002

IN THE MATTER OF: AN APPLICATION TO APPLY FOR ORDERS OF

CERTIORARI AND PROHIBITION BY ALPHONSE

KAHINDI NGOWA

=VS=

1. SENIOR RESIDENT MAGISTRATE,
VOI

2. THE HON. ATTORNEY-GENERAL.....
RESPONDENTS

A N D

ESTHER MKAIWAWI MWANG'OMBE.....INTERESTED
PARTY

RULING

The Applicant seeks for leave to file an application for Orders of Certiorari and Prohibition to remove the Voi SRM Cr. Case No.70 of 2002 from that court to this court with a view of quashing same and also prohibiting that court or any other similar court from prosecuting or trying the case for the offences thereunder charged or to be charged. He also seeks for the leave to operate as stay until the intended application if granted to be filed, are determined. The Applicant has properly complied with the requirements of Order 53 of the Civil Procedure Rules. The Registrar was served with the Statement of Facts together with documents required to be so served. Under these circumstances this court sees no impediments to granting the leave sought.

The Applicant as shown above however seeks that the leave if granted, may be allowed to operate as stay. He has demonstrated under these brief circumstances that continuation of the prosecution of the said case will negatively affect his client. By references to the correspondences between the Attorney-General and FIDA, the Attorney-General is shown to be acting under the pressure of FIDA despite admitting that there is no evidence upon which a successful prosecution would be based.

I am aware that allowing the leave to operate as a stay is a matter of exercise of discretion of this court. I am aware also that such discretion must be exercised judicially. It is my view however that there are sufficient grounds in this case to grant the leave to operate as a stay. I accordingly make the following

orders.

ORDERS:

1. Leave to file and prosecute an application for Orders of Certiorari and prohibition is hereby granted as prayed.
2. The said application shall be filed within a period of 21 days from the date hereof.
3. Service of the application shall be done 15 days after the filing.
4. Prosecution of the said application intended to be done shall be so done on a priority basis and in any case not later than a period of 60 days from the date of service.
5. If the time schedules set above are by any lawful reason not met the Applicant shall seek further orders from this court. 6. The leave granted shall operate as stay until the intended applications are determined.
7. Costs in the cause.

Dated and delivered at Mombasa this 5th day of June, 2002.

D. A. ONYANCHA

J U D G E