



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI**

**MISC. CIVIL APPLICATION NO.1006 OF 2000**

**IN THE MATTER OF: AN APPLICATION TO FILE A JUDICIAL REVIEW  
APPLICATION FOR ORDERS OF PROHIBITION**

**IN THE MATTER OF: THE CONSTITUTION OF KENYA**

**IN THE MATTER OF: THE ADVOCATES ACT, CHAPTER 16 OF THE  
LAWS OF KENYA**

**IN THE MATTER OF: THE LAW REFORM ACT, CHAPTER 26 OF THE  
LAWS OF KENYA**

**IN THE MATTER OF: THE REPUBLIC**

**VERSUS**

**THE HONOURABLE ATTORNEY –  
GENERAL OF KENYA.....RESPONDENT**

**EX-PARTE**

**DAVID MUKII MEREKA**

**T/A MEREKA & COMPANY ADVOCATES.....APPLICANT**

**RULING**

The applicant is asking for the leave granted on 19-9-2000 for Judicial Review to operate as a Stay. Order 53 Rule 3 of the Civil Procedure allows the court to Order that the leave so granted operate as a Stay. Mr. Ogaya the Learned Counsel for the applicant in his submissions which were based on the facts as found in the supporting affidavit said that matters like the present one which affect client – advocate relationship are to be dealt with under the Advocates Act. In all what the applicant is saying is that:

- (1) The dispute if any between the City Council and the applicant is purely of Civil nature.
- (2) Similar investigation had been carried out
- (3) There is a pending suit on the matter subject of the investigation.
- (4) That the CID in their letter of 20.12.1995 annexed to the present proceedings concluded that these are matters of purely civil nature.

Mrs. Oduor for the State submitted that an injunction as requested would amount to interfering with the Powers of the Attorney General under Section 26 of the Constitution. In addition she stated categorically that there is no intention to carry out any investigations against the applicant on matters related to the City Council as alleged by the Applicant.

A challenge to the manner in which investigation upon an individual is carried out is not a challenge to the powers given to the Attorney General under Section 26 of the Constitution which gives Powers to the Attorney General to investigate and prosecute. What is being challenged is the manner of the investigation. In this application the applicant has expressed fears that he is likely to be put through what he experienced in 1995. He has in his affidavit given the source of his information which stand unchallenged. I find his fears are well founded when I read the statement he had made to the police in the earlier investigations.

Since the Office of the Attorney General says there is no such investigations, are intended, it follows that if the application is granted the State and in particular the Attorney General does not stand to suffer any prejudice. The CID finding in the earlier investigation that the dispute is a Civil Matter strengthens the applicant's case.

I shall allow the application and grant prayers one of the Notice of Motion filed on 6.10.2000.

Delivered and dated at Nairobi this 17th day of October, 2000.

KASANGA MULWA

JUDGE