



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MALINDI**

**JUDICIAL REVIEW NO. 6 OF 2017**

**REPUBLIC.....APPLICANT**

**AND**

**NURU OMAR MAHENDAN**

**MARIAM OMAR MAHENDAN**

**ANZUN OMAR MAHENDAN**

**MALKIA OMAR MAHENDAN.....EX PARTE APPLICANTS/RESPONDENTS**

**VERSUS**

**MALINDI KADHI.....RESPONDENT**

**AND**

**AHMED MOHAMED HONEY alias**

**AHMED MOHAMED THANI.....1<sup>ST</sup> INTERESTED PARTY/APPLICANT**

**FARIDA OMAR MAHENDAN.....2<sup>ND</sup> INTERESTED PARTY/APPLICANT**

**FERRUZ OMAR MAGHRAM.....3<sup>RD</sup> INTERESTED PARTY/APPLICANT**

**RULING**

1. Through the Application dated 17<sup>th</sup> July, 2018 the 1<sup>st</sup> Interested Party, Ahmed Mohamed Honey alias Ahmed Mohamed Thani, asks this Court to set aside the leave granted on 11<sup>th</sup> May, 2017 to the ex-parte applicants Nuru Omar Mahendan, Mariam Omar Mahendan, Anzun Omar Mahendan and Malkia Omar Mahendan to commence judicial review proceedings in respect of a decision made by the Respondent, the Kadhi's Court at Malindi. The application also seeks to set aside the stay granted with the said leave and the dismissal of the ex-parte applicants' Notice of Motion filed on 30<sup>th</sup> May, 2017 in pursuance of the said leave. Farida Omar Mahendan and Ferruz Omar Mghram are the respective 2<sup>nd</sup> and 3<sup>rd</sup> interested parties.
2. The ex-parte applicants opposed the application through a Replying Affidavit sworn on 1<sup>st</sup> August, 2018 by the 1<sup>st</sup> ex-parte Applicant Nuru Omar Mahamed.
3. There are two files touching on this matter. One of the files is the one in which this ruling is being delivered being Malindi H.C. JR No. 6 of 2017. There is also Malindi Judicial Review Case No. 2 of 2017. The parties are the same in both matters. The cause of action is also the same in both matters.
4. The instant application is targeted at the Orders issued on 11<sup>th</sup> May, 2017 by Olola, J, in Malindi H. C. JR case No. 6 of 2017. Those orders allowed Prayers 2 and 3 of the application. The prayers granted leave to the ex-parte applicants to commence judicial review proceedings and the said leave was ordered to operate as stay.

5. In determining this application, I need not advert to the pleadings of the parties for the court files speak for themselves. In Malindi JR No. 2 of 2017, the ex parte applicants' application dated 10<sup>th</sup> February, 2017 was directed to be served for inter-partes hearing. On 16<sup>th</sup> February, 2017 a clerk from the office of Otara Advocates who are on record for the ex-parte applicants listed the matter for hearing on 29<sup>th</sup> March, 2017.

6. When the application came up for hearing inter-partes on 29<sup>th</sup> March, 2017 Counsel for the ex-parte applicants did not turn up in court. The interested parties were represented by Mr Mwadzogo. At 12.30p.m. the Court dismissed the application observing that there was JR No. 3 of 2017 involving the same parties pending before the court.

7. Following the dismissal, the ex-parte applicants filed an application dated 3<sup>rd</sup> April, 2017 seeking to reinstate the application for leave dated 10<sup>th</sup> February, 2017. The said application was withdrawn through a notice of withdrawal dated 11<sup>th</sup> May, 2017. On the same date a fresh application for leave and stay was filed vide Malindi H.C. JR No. 6 of 2017 and the orders which the instant application seeks to set aside issued. On 30<sup>th</sup> May, 2017 the ex-arte applicants filed their substantive notice of motion pursuant to the leave granted to them on 11<sup>th</sup> May, 2017

8. A perusal of the files clearly disclose an abuse of the court process by the ex-parte applicants. Once their application for leave dated 10<sup>th</sup> February, 2017 in Malindi HC JR No. 2 of 2017 was dismissed by Chitembwe, J, the only way they could go was to seek a review of the order by asking for reinstatement of the application. The other route available to the ex-parte applicants was to appeal the decision dismissing their application. Their first application having already been dismissed, it was erroneous for the ex-parte applicants to introduce another application for leave and stay.

9. For the reasons stated above, I find the 1<sup>st</sup> Interested Party's application dated 17<sup>th</sup> July, 2018 merited. Consequently, the leave granted to the ex-parte applicants on 11<sup>th</sup> May, 2017 to commence judicial review proceedings and the stay accompanying the said leave are set aside.

10. The ex-parte applicants' notice of motion filed on the strength of the said leave is dismissed. For avoidance of doubt the application is allowed in its entirety with costs to the Applicant/1<sup>st</sup> Interested Party.

**Dated and Signed at Nairobi this 4<sup>th</sup> day of April, 2019**

**W. KORIR,**

**JUDGE OF THE HIGH COURT**

**Dated, signed and delivered at Malindi this 9<sup>th</sup> day of May, 2019**

**R. NYAKUNDI,**

**JUDGE OF THE HIGH COURT**