



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT HOMA BAY**

**JUDICIAL REVIEW NO.2 OF 2018**

**IN THE MATTER OF AN APPLICATION BY THE HOMA BAY COUNTY ASSEMBLY FOR ORDERS OF PROHIBITION AND CERTIORARI**

**AND**

**IN THE MATTER OF THE COUNTY GOVERNMENTS ACT**

**IN THE MATTER OF THE COUNTY ASSEMBLIES POWERS AND PRIVILEGES ACT AND IN THE MATTER OF AND/OR THE VIOLATION OF ARTICLES 10, 25, 47, 50, 175, 178, 183, 185 AND 236 OF THE CONSTITUTION, 2010**

**AND**

**IN THE MATTER OF AND/OR BREACH OF SECTIONS OF THE COUNTY GOVERNMENTS ACT**

**AND**

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORMS ACT, CHAPTER 26, LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE NATIONAL ASSEMBLY (POWERS AND PRIVILEGES) ACT**

**AND**

**IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES, 2010**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**AND**

**THE ETHICS AND**

**ANTI CORRUPTION COMMISSION.....RESPONDENT**

**COUNTY ASSEMBLY**

**OF HOMA BAY COUNTY.....EX-PARTE APPLICANT**

**RULING**

1. This matter came up yesterday 05/03/18 under certificate of urgency and the court declined to grant ex-parte stay orders, preferring that both parties present arguments on the issue just before the court makes orders on that particular prayer.

2. I acknowledge that the orders were issued late in the afternoon and the respondent would not have had sufficient time to prepare a response. However fixing the matter for this morning was borne out of the fact that counsel who appeared yesterday was insistent that unless stay was issued, her client would be prejudiced as they were required to report to the EACC Offices starting 8.00 a.m. for interviews as part

of the investigations process as per annexed schedule. That is why the matter was fixed for 8.00 a.m. so as to avoid a situation where orders are issued after the horse has bolted.

3. Miss Amojong has given an undertaking that between today and the date she files an appropriate response on the issue, her office will not require the ex-parte applicant's members to report to the EACC Offices for the scheduled interviews – that in effect takes care of the concerns the ex-parte applicant's members had – so whether it is termed a stay or an undertaking – the difference is the same.

4. I am however reluctant to issue stay orders *suo moto* because that would remain in force until the main motion is heard – I find it more prudent to direct as follows:-

(i) The ex-parte applicant do file and serve the motion within 7 (seven) days as offered by Mr. Willis Otieno – this varies the earlier order requiring that the motion be filed within 21 days. The respondents do file their response within 7 days of that service (which response should also address the issue regarding stay orders.

(ii) The ex-parte applicant's members shall not report to the EACC Offices for the scheduled interviews, following an undertaking by the respondent's counsel, until this court gives further orders on 21/03/18.

(iii) Main motion and issue of stay be canvassed simultaneously on 21/03/18.

**H.A. OMONDI**

**JUDGE**

**06.03.2018**