REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS APPLICATION NO. 113 OF 2016

IN THE MATTER OF THE ADVOCATES ACT, CAP 16 LAWS OF KENYA

IN THE MATTER OF THE LAW REFORM ACT CAP 26 OF THE LAWS OF KENYA

IN THE MATTER OF THE CIVIL PROCEDURE ACT CAP 21 OF THE LAWS OF KENYA

IN THE MATTER OF AN APPLICATION BY THE APPLICANT, WANGUI KATHRYN KIMANI, FOR LEAVE TO APPLY FOR ORDERS OF CERTIORARI AND PROHIBITION DIRECTED TO THE DISCIPLINARY TRIBUNAL OF THE LAW SOCIETY OF KENYA (LSK)

IN THE MATTER OF DISCIPLINARY TRIBUNAL CAUSE NO. 137 OF 2014

AND IN THE MATTER OF THE JUDGMENT OF THE DISCIPLINARY TRIBUNAL DATED 15TH FEBRUARY, 2016

BETWEEN

WANGUI KATHRYN KIMANI……..…….APPLICANT

VERSUS

THE DISCIPLINARY TRIBUNAL OF

THE LAW SOCIETY OF KENYA……..…….RESPONDENT

AND

ROSEMARY JAJA MBOGO…….……INTERESTED PARTY

RULING

1. On 15th September, 2016 I delivered a judgement in this matter in which I declined to grant the orders sought in this application and dismissed the same with costs.

2. The said decision arose from the Notice of Motion dated 18th March, 2016, the *ex parte* applicant herein, **Wangui Kathryn Kimani,** was seeking the following orders:

(a) AN ORDER OF CERTIORARI to remove from this Honourable Court to quash the

decision of the Law Society of Kenya Disciplinary Tribunal issued on 15th February, 2016 in cause no. 137 of 2014 which

(i) Found the Applicant herein guilty of professional misconduct

(ii) Ordered the Applicant to pay within 30 days of the Judgment Kshs. 1,568,970/= together with interest thereon at the rate of 25% per annum from 1st September, 2011 to the interested party herein.

(iii) Ordered the Applicant herein to deposit with the Law Society of Kenya Kshs. 1,312,500/= together with interest thereon at the rate of 25% per annum with effect from 1st September, 2016.

(iv) That the Applicant herein files a Bill of Costs upon complying with numbers ii and iii above.

(b) AN ORDER OF PROHIBITION prohibiting the Law Society of Kenya Disciplinary Tribunal from sentencing, deliberating, hearing or proceeding further with sentencing scheduled for 18th April,2016 in Disciplinary Cause No. 137 of 2014 pending the Hearing and Determination of the proceedings herein.

(c) Costs.

3. In dismissing the said application this Court found that whereas the issues raised therein may well be grounds for appeal under section 62 of the ***Advocates Act***, they did not meet the threshold for the grant of judicial review reliefs.

4. Aggrieved by the said decision, the applicant intends, as she is entitled to, to appeal against the said decision to the Court of Appeal. In the meantime the applicant has moved this Court vide a Motion on Notice dated 2nd November, 2016 seeking the following orders:

1. That service of this application be dispensed with in the first instance in view of its urgency

2. That this honourable court be pleased to stay the execution of the decree that has been issued in respect of the judgment entered by the Law Society Disciplinary Tribunal on 24/2/2016 and any other that may be issued pursuant thereto, pending appeal from the judgment of this court issued on 15/9/2016.

3. That the costs of this application be provided for.

5. According to the applicant, the Law Society Disciplinary Tribunal delivered judgment on 15th February, 2016 in favour of the Interests Party in the sum of Kshs 1,568,970/ with interests at the rate of 25% with effect from 1st September 2012 and being dissatisfied with the process at the Law Society Disciplinary Tribunal the applicant filed a judicial review application before this court which application was dismissed on 15th September, 2016, necessitating the applicant to file an appeal against the judgment delivered by this Court. Subsequently the matter was mentioned before the Law Society Disciplinary Tribunal on 24th October, 2016 and it was ordered that the Interested Party be paid within the next fourteen days despite the applicant having asked for stay under Order 22 Rule 22 of the ***Civil Procedure Rules***.

6. The applicant deposed that she had filed and served Notice of Appeal on 29th September, 2016 and applied for proceedings.

7. The Applicant deposed that during the mention of 24th October, 2016 the Law Society Disciplinary Tribunal was to deliberate on her bill of costs and denied that she applied for fourteen (14) days to comply with the orders issued on 15th February, 2016 and 18th April, 2016. To her this was suggested by The Law Society Disciplinary Tribunal as an ambush.

8. The applicant averred that she stood to suffer irreparable loss and damage as her bill of costs had not been taxed and the interested party herein would refuse to pay her legal fees once she paid her the decretal amount. In the applicant's view, this court has inherent jurisdiction to hear this application for stay for the following reasons, which reasons validate the application:

a. Article 165 of the Constitution of Kenya 2010 empowers this court to hear this application.

b. In the determination in judicial review case No. 447 of 2014 in paragraph 60, it was stated that the court may in proper cases invoke its inherent jurisdiction to make such orders as may be necessary for the ends of justice or to prevent abuse of its process.

c. In the determination of the High Court in Misc. Application No. 153 of 2012, the court citing the case of Hui Chi-Ming vs. R [1992] 1 AC 34, the Court stated that all courts have an overriding duty to promote justice and prevent injustice and from this duty there arises an inherent power to stay.

d. In the determination of the Supreme Court in Civil Application No. 12 of 2015 in paragraph 58 to 63, it was stated that…. "the court has jurisdiction, not as to the merits but the purpose of correcting the injustice occasioned by a contravention of the constitution. 'Further, the supreme court quoted the cases of M. Mwenesi vs. Shirley Lockhurst & Another whereby it was stated that 'a court of justice has no jurisdiction to do with injustice and where injustice on a party to a judicial proceeding is apparent a stay of execution is irresistible.

e. Petition No. 6 and 7 of 2013 the Supreme Court in paragraph 33 determined that if interlocutory applications are excluded as a necessary step to preserve the subject matter of the appeal, then the court's capability to arrive at a just decision on the merits of the appeal would be substantially diminished.

f. The possible success of the substantive judgment appealed against is destined to be lost unless stay is granted.

9. The applicant denied that she was in contempt of Court and asserted that she has the highest regard for the judicial system though she averred that she has every right to exercise her rights as provided for by the Laws of Kenya as a Kenyan Citizen.

10. In her view, if the decretal amount is paid over to the Interested Party, the intended appeal will be rendered nugatory and the applicant will suffer irreparable loss and damage. It was therefore contended that unless the application for stay is heard urgently on a priority basis, the plaintiff threatens to levy execution and attachment.

11. The application was opposed by the Respondent who filed the following grounds of opposition:

1. That the said application is misconceived and an abuse of this honourable court's process

2. That the prayers sought in the application are not capable of being granted under judicial review

3. That the applicant has not offered any security as contemplated by law.

4. That the application is otherwise misconceived, unfounded, has no merit and an abuse of the due process of this honourable court.

12. On her part, the interested party herein, **Rosemary Jaja Mbogo**, disputed the ex parte applicant's averments and stated that the orders that were granted by the disciplinary Tribunal on 15th February, 2016 were as follows:

> a. The advocate shall within 30 days from the date of this judgment remit to the complainant the said undisputed sum of Kshs. 1,568,970/= together with interest thereon at the rate of 25% per annum with effect from 1st September 2012.
>
> b. The advocate shall within 30 days from the date of this judgment deposit the said disputed sum of Kshs 1,312,500/= with the Law Society of Kenya to be held by the society pending the assessment by the tribunal of the legal fees payable to the advocate. In the event that the advocate shall be found entitled to the said sum or any part thereof by way of her legal fees then the same entitled to the said sum or any part thereof by way of her legal fees then the same shall be released to the advocate subject to deductions of any costs and fines that this tribunal may order to be paid by the advocate pursuant to these proceedings. Similarly, in the event that the complainant shall be found to be entitled to the said sum or any part thereof then the same shall be released to the complainant free of any deduction. For the avoidance of doubt, it is hereby ordered that whatever sum shall be found payable to the complainant out of the said sum of Kshs. 1,312,500/= shall attract an interest of 25% per annum with effect from 1/9/2012 which interest the advocate shall pay to the complainant.
>
> c. Upon compliance with order (a) and (b) above, the advocate shall file her formal and itemized bill(s) of cost with this tribunal for assessment.

13. The matter, according to the interested party, proceeded to mitigation and sentencing on 18th April, 2016 when the disciplinary tribunal made orders against the ex parte applicant. She was:

> a. Admonished.
>
> b. ordered to comply with the orders issued on 15th February, 2016 within 30 days
>
> c. fined Kshs 150,000.00
>
> d. ordered to pay Kshs 10,000.00 to the Law Society and Kshs 10,000.00 to the complainant as costs.

14. The interested party however conceded that this Court by a judgment delivered on 15th September, 2016 dismissed the ex pare's application for judicial review with costs and that the applicant filed and served a notice of appeal against the judgment of this Court though no appeal had been filed. In the interested party's view, the purpose of the mention on 24th October, 2016 before the disciplinary tribunal was for the parties to inform the tribunal of the outcome of the judicial review application in these proceedings on which date the interested party's advocate informed the said tribunal that the judicial review application was dismissed with costs and gave the tribunal a certified copy of the judgment of this Court. The applicant then made an application for stay of execution pending the hearing of her intended appeal which was declined by the tribunal and she then applied for fourteen (14) days to comply with the orders issued on 15th February, 2016 and 18th April, 2016 which was allowed with the tribunal directing that the execution to proceeds within fourteen (14) days in default of compliance

15. According to the interested party therefore the sum of Kshs 1,568,970.00 is not the decretal amount but is the undisputed amount which the ex parte applicant was ordered to remit to her being proceeds of sale of her property. The ex parte applicant was however ordered to deposit Kshs 1,312,500.00 with the Law Society pending taxation of her bills of costs.

16. It was therefore the interested party's case that the ex parte applicant cannot suffer irreparable loss and her intended appeal cannot be rendered nugatory for paying the interested party money from the sale

of the property for which she has no claim to ownership and which she has refused to pay for several years.

17. It was the interested party's case that the application for stay of execution is incompetent and cannot lie since this court dismissed the judicial review application and did not make any positive order requiring compliance. It was therefore her case that the present application is a blatant abuse of this court's process hence the ex parte applicant has treated the Interested party, the disciplinary tribunal and this court with contempt in that she has refused and or failed to comply any of the orders enumerated herein above.

Determination

18. I have considered the foregoing.

19. In this application the applicant has not disclosed the nature of her intended appeal. Whereas under Order 42 rule 6 of the ***Civil Procedure Rules***, it is not a condition for grant of stay that the applicant satisfies the Court that her appeal or intended appeal has overwhelming chances of success, I appreciate that in such an application, it is permitted and desirable for the applicant to disclose the nature of her intended appeal so that the Court satisfies itself that in determining whether or not to exercise its discretion in favour of the applicant, it is not doing so on frivolous grounds. In my view the lack of the requirement to prove the existence of an appeal with overwhelming chances of success is for good cause. It is meant to insulate the Court from which an appeal is preferred from the embarrassment of holding a mini-appeal as it were. Accordingly whereas the Court of Appeal is in a better position to gauge the chances of success of an appeal or intended appeal, this Court in an application seeking stay of execution of its decision pending an appeal to the Court of Appeal is not enjoined to consider such condition. In fact it would be highly undesirable to do so, though it may superficially make reference to the grounds of the intended appeal. This was the position adopted in **Universal Petroleum Services Limited vs. B P Tanzania Limited [2006] 1 EA 486** where the Court held that:

> **"The granting or otherwise of an order of stay of execution under rule 9(2)(b) is at the discretion of the court and in the exercise of that judicial discretion the court as and where is relevant considers a number of factors, notably, whether the refusal to grant stay is likely to cause substantial and irreparable injury or loss to an applicant, whether the injury or loss cannot be atoned by damages, balance of convenience, and whether prima facie the intended appeal has likelihood of success. Above all, further to considering the above factors the court takes into account the individual circumstances and merits of the case in question…At this stage one has to be careful not to pre-empt the pending appeal and for that reason, the court has to discourage a detailed discussion of the weaknesses or otherwise of the decision intended to be impugned on appeal… There is also a danger in saying or making a finding that an appeal has an overwhelming chances of success."**

20. In Mangungu vs. National Bank Of Commerce Ltd [2007] 2 EA 285, the Court expressed itself on the issue as follows:

> **"Generally the merits of a party's case in a stay application is not a particularly relevant matter for consideration at this stage. Although it is true that the Court under rule 9(2)(b) has discretion to stay execution, but only on grounds which are relevant to a stay order. Whether or not the appeal has good chances of success is a matter, which should be raised in the appeal itself. The correctness of the judgement should not be impugned in an application for stay of execution save in very obvious cases such as lack of jurisdiction."**

21. Accordingly, I will avoid the temptation to embark on such a potentially perilous and embarrassing voyage.

22. It is therefore my view and I hold that the mere fact that an appeal is yet to be filed does not necessarily bar this Court from granting orders staying its decision pending an intended appeal once a notice of appeal is given.

23. It was further contended that this Court has no power to grant stay in judicial review proceedings. I take it that the implication here is that by virtue of sections 8 and 9 of the ***Law Reform Act***, Cap 26 Laws of Kenya, once the Court finally determines the application for judicial review, the only option available is that of appeal and the Court cannot revisit the said matter by way of a stay of the decision. With due respect, this position in my view is nolonger tenable. In **Nakumatt Holdings Limited vs. Commissioner of Value Added Tax [2011],** the Court held that the superior court in the matter before the court has the residual power to correct its own mistake. Accordingly, where a mistake is shown to have been committed which is remediable by the Court the same ought to be corrected by the Court in the exercise of its inherent jurisdiction and not necessarily under section 3A of the ***Civil Procedure Act*** which strictly speaking does not apply to judicial review proceedings. That section in any case does not confer inherent jurisdiction on the Court but only reserves the same. In **Ryan Investments Ltd & Another vs. The United States of America [1970] EA 675** it was held that section 3A of the ***Civil Procedure Act*** is not a provision that confers jurisdiction on the court but simply reserves the jurisdiction which inheres in every court. The court has inherent jurisdiction not created by legal provisions, but which only manifests the existence of such powers.

24. It is therefore my view that where the orders granted by the High Court, be it in judicial review proceedings or civil proceedings, are capable of being executed, the same are amenable to stay of execution. I gather support for this position from the decision of the Court of Appeal in **Republic vs. University of Nairobi Civil Application No. Nai. 73 of 2001 (CAK) [2002] 2 EA 572**, where the Court of Appeal granted a stay in respect of a matter that arose from a judicial review application. In that case the High Court ordered the University to "*convene the necessary Disciplinary Committees where the students concerned shall be tried, paying attention to the matters raised in this ruling*." The Court of Appeal noted that there was no prayer before the Court for an order of mandamus to warrant the grant of the said order. The Court recognised that whereas the High Court could properly quash the decision of the University whether it could direct the University in the manner of proceedings thereafter was an arguable point and unless the stay was granted the students risked being expelled or suspended at the hands of the University acting in obedience to the said order. It is therefore my view that where the order being appealed from is capable of being executed over and above the order for costs, stay of execution may be granted.

25. However it is clear that all that this Court did in the judgement against which the Applicant intends to appeal was to dismiss the Applicant's application for judicial review. There is a long line of authorities where the Court of Appeal has held that where the High Court has dismissed an application for judicial review, the superior court does not grant any positive order in favour of the Respondents which is capable of execution. See **Yagnesh Devani & Others vs. Joseph Ngindari & 3 Others Civil Application No. Nai. 136 of 2004**, **Mombasa Seaport Duty Free Limited vs. Kenya Ports Authority Civil Application No. Nai. 242 of 2006** and **William Wambugu Wahome vs. The Registrar of Trade Unions & Others Civil Application No. Nai. 308 of 2005.**

26. In this case the applicants are seeking to stay the execution of the decree that has been issued in respect of the judgment entered by the Law Society Disciplinary Tribunal on 24th February, 2016 and any other that may be issued pursuant thereto, pending appeal from the judgment of this court issued on 15th September, 2016. That decision clearly did not emanate from this Court and it is not the subject of the intended appeal for which a notice of appeal the subject of these proceedings has been given.

27. In **Raymond M Omboga vs. Austine Pyan Maranga Kisii HCCA No. 15 of 2010**, **Makhandia, J** (as he then was) held:

> **"The court cannot see how it can order stay of the decree that is not the subject of an appeal. Had the aforesaid order been the subject of this appeal then different considerations would have applied. The court would have looked at it alongside the settled principles aforesaid for granting stay of decree... It is trite law that stay of execution pending appeal can only be granted against the order being appealed against. Put differently, an order for stay of execution pending appeal cannot be granted if the intended appeal is not against the order sought to be stayed; yet this is what obtains in this application where the applicant's appeal**

is against the order of dismissal of his application, yet the stay sought is against the subordinate court's judgement or decree."

28. Where therefore the application for stay is directed to a decision against which the intended appeal is not directed, and cannot possibly be directed, a stay of execution pending that appeal, it has been held, is not available and the application is rendered incompetent on that score. See **Muhamed Yakub & another vs. Mrs Badur Nasa Civil Application No. Nai. 285 of 1999.**

29. That was the position which was adopted in **Republic vs. Director of Public Prosecutions & 4 Others Ex parte - Senator Johnson Nduya Muthama [2015] eKLR** where the Court held that:

"this case, if I understood the submissions made on behalf of the applicant correctly, he is seeking conservatory orders to restrain the Respondents from proceeding with the criminal proceedings before the trial court…This Court however can only grant conservatory orders in respect of the orders against which an appeal is directed. In other words conservatory orders would only have the effect of preserving the *status quo* rather than granting fresh orders which confer benefit on the applicant which the applicant was not enjoying before the decision intended to be appealed against was made."

30. The applicant however invites this Court to invoke its inherent jurisdiction to grant the orders sought herein. The Court's inherent jurisdiction, however, is not a substitute for the jurisdiction conferred upon the Court under the Constitution or by statute. The Court's inherent jurisdiction is a reserve upon which the Court draws to ensure the ends of justice are met and to prevent abuse of its process. As was held in **Industrial & Commercial Development Corporation vs. Otachi [1977] KLR 101; [1976-80] 1 KLR 529**, section 3A of the ***Civil Procedure Act*** (which reserves the Court's inherent jurisdiction under the civil procedure) is not a panacea for all ills. It was therefore held in **Elephant Soap Factory Ltd vs. Nahashon Mwangi & Sons Nairobi HCCC No. 913 of 1971** that the court will not invoke its inherent jurisdiction when there is an express provision dealing with the matter since the court may not nullify an express provision by invoking its inherent powers. Similarly, it is my view that where the Court has been deprived of jurisdiction it will not draw upon its reserve under the inherent jurisdiction to confer upon itself such non-existent jurisdiction. It is therefore my view that unless the Court grants a positive order a party may not invoke the provisions of Order 42 rule 6 of the ***Civil Procedure Rules***. Having so held I am of the view that this Court cannot invoke its inherent jurisdiction to grant orders of stay when the authorities hold otherwise.

31. That however is not the end of the matter. This Court no doubt has the power under Article 23 of the Constitution to grant conservatory orders. Whereas I agree that the provisions of Article 23 can only be invoked in situations where Article 22 applies, a determination of whether the issues in question fall under Article 22 cannot be determined simply on the basis of whether the proceedings are judicial review application or constitutional petition. The Court in determining such issue must look at the substance rather than the form of pleading. In this case the substance of the applicant's case was a challenge to the procedure that had been adopted by the Respondent. However, a strict interpretation of Article 23(3)(c) shows that the reliefs specified thereunder, one of which is conservatory order, are only available where a party is alleging that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened. The said allegation must come out clearly and expressly and not by mere implication. In this case, there was no such express averment.

32. On the circumstances in which a conservatory order will be granted, **Musinga, J** (as he then was) in Petition No. 16 of 2011, Nairobi – **Centre For Rights Education and Awareness (CREAW) & 7 Others** stated that:

"...It is important to point out that the arguments that were advanced by Counsel and that I will take into account in this ruling relate to the prayer for a Conservatory Order in terms of prayer 3 of the Petitioner's Application and not the Petition. I will therefore not delve into a detailed analysis of facts and law. At this stage, a party seeking a Conservatory Order only requires to demonstrate that he has a prima facie case with a likelihood of success and that

unless the court grants the Conservatory Order, there is real danger that he will suffer prejudice as a result of the violation or threatened violation of the Constitution."

33. Clearly therefore in an application for conservatory order as opposed to an application for stay pending an appeal, the existence of a *prima facie* case plays a central role in the Court's determination without which the order sought may not be granted. A conservatory order is meant to preserve the *status quo* since as was held by a majority **The Centre for Human Rights and Democracy & Others vs. The Judges and Magistrates Vetting Board & Others Eldoret Petition No. 11 of 2012**:

"In our view where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any Constitutional or legal right or any burden is imposed in the contravention of any Constitutional or legal provision or without the authority of the law or any such legal wrong or injury is threatened, the High Court has powers to grant appropriate reliefs so that the aggrieved party is not rendered, helpless or hapless in the eyes of the wrong visited or about to be visited upon him or her. This is meant to give an interim protection in order not to expose others to preventable perils or risks by inaction or omission."

34. In this case, it is clear that the orders sought are intended, if I understood the submissions made on behalf of the applicant correctly, to restrain the Respondent from proceeding with the execution of its decision. This Court, even had it been moved to grant conservatory orders as opposed to stay, could only properly issue such orders in respect of the orders against which an appeal is directed. In other words conservatory orders would only have the effect of preserving the *status quo* rather than granting fresh orders which confer benefit on the applicant which the applicant was not enjoying before the decision intended to be appealed against was made.

35. This being an application for stay, under Order 42 rule 6(2) of the ***Civil Procedure Rules,*** the applicant has to show that substantial loss may result to the applicant unless the order is made; that the application has been made without unreasonable delay; and such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant. Further being an exercise of discretion the applicant should show that his conduct does not disentitle him to the favourable exercise thereof.

36. In considering whether the applicant will suffer substantial loss, the financial position of the applicant and that of the respondent have to be considered. In **Machira T/A Machira & Co Advocates vs. East African Standard (No 2) [2002] KLR 63** it was held that:

"**to be obsessed with the protection of an appellant or intending appellant in total disregard or flitting mention of the so far successful opposite party is to flirt with one party as crocodile tears are shed for the other, contrary to sound principle for the exercise of a judicial discretion. The ordinary principle is that a successful party is entitled to the fruits of his judgement or of any decision of the court giving him success at any stage. That is trite knowledge and is one of the fundamental procedural values which is acknowledged and normally must be put into effect by the way applications for stay of further proceedings or execution, pending appeal are handled. In the application of that ordinary principle, the court must have its sight firmly fixed on upholding the overriding objective of the rules of procedure for handling civil cases in courts, which is to do justice in accordance with the law and to prevent abuse of the process of the court".**

37. It is the law that it is not sufficient to merely state that the decretal sum is a lot of money and the applicant would suffer loss if the money is paid. In an application of this nature, the applicant should show the damages she would suffer if the order for stay is not granted since by granting stay would mean that the *status quo* should remain as it were before the judgement and that would be denying a successful litigant of the fruits of her judgement which should not be done if the applicant has not given to the court sufficient cause to enable it to exercise its discretion in granting the order of stay. See **Kenya Shell Limited vs. Kibiru & Another [1986] KLR 410**.

38. In this case, there is no allegation at all that the interested party will be unable to repay the decretal sum if the same is paid over to her. In fact to the interested party the only amount that the applicant was directed to pay was the undisputed sum. In applications for stay the starting point is that a successful litigant ought not to be deprived of the fruits of his or her judgement without any compelling reasons. Therefore it is my view that the principle of proportionality plays a crucial role. As was stated by **Ojwang, AJ** (as he then was) in **Suleiman vs. Amboseli Resort Limited [2004] 2 KLR 589** the Court, in responding to prayers should always opt for the lower rather than the higher risk of injustice. The learned Judge expressed himself as follows:

> **"…Although the court is unable at this stage to say that the applicant has a prima facie case with a probability of success, the Court is quite convinced that it will cause the applicant irreparable harm if his prayers for injunctive relief are not granted; and in these circumstances, the balance of convenience lies in favour of the applicant rather than the respondent. There would be a much larger risk of injustice if the court found in favour of the defendant, than if it determined this application in favour of the applicant".**

39. Having considered this application, I am not satisfied that compelling reasons have been disclosed to warrant me granting the stay as sought.

40.Having considered the foregoing, I find no merit in the instant application.

Order

41. In the result the Notice of Motion dated 2nd November, 2016 fails and the same is dismissed with costs.

42. It is so ordered.

Dated at Nairobi this 17th day of January, 2017

G V ODUNGA

JUDGE

Delivered in the presence of:

Ms Kimani, the ex parte applicant

Mr Arnold Ochieng for Miss Mathenge for the Respondent

Mr Njeru for Mr Mbaka for the interested party

CA Mwangi