



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE

JUDICIAL REVIEW NO. 1 OF 2012

**IN THE MATTER OF: INFRINGEMENT AND VIOLATION OF RIGHTS AND FREEDOMS
ENSHRINED UNDER THE CONSTITUTION OF THE REPUBLIC OF KENYA**

AND

**IN THE MATTER OF : AN APPLCIATION FOR LEAVE OF THE COURT TO APPLY FOR
JUDICIAL REVIEW ORDERS OF MANDAMUS AND PROHIBITION**

BETWEEN

THE REPUBLIC OF KENYA.....APPLICANT

VERSUS

PERMANENT SECRETARY MINISTRY OF ENERGY & 5 OTHERSRESPODNENTS

AND

**TURKANA DRILLING CONSORTIUM(K) LTD & 14 OTHERSINTERESTED
PARTIES**

EXPARTE

1. INTESTATE PETROLEUM COMPANY LIMITED...THE 1ST SUBJECT

2. MAOSA KENGARA MANENATHE 2ND SUBJECT

3.. EDWARD KINGS ONYANCHA MAINATHE 3RD SUBJECT

RULING

The Applicants by their notice of motion dated 18/10/2016 pray for order that;

a) This court do order that the Security of costs of Kshs 5 million deposited on the 29th October 2014 in Chase Bank Account No. [particulars withheld] in a joint interest earning account be released to the applicant through their counsels on record and

b) The said Account at Chase Bank be closed.

The application is supported by the grounds on the face of the Application together with the supporting

affidavit of Austin L. Ayisi the applicant's counsel sworn on the even date.

From the said affidavit its clear that on 9/10/2014 this court granted a conditional stay pending the hearing and determination of an intended appeal. The said condition was for the applicant to deposit the sum of Kshs 5 million in a joint account which they did on 1/1/2015 in the name of Anjarwalla & Khanna Advocates and Kiarie & Co. Advocates. The same was confirmed to the court.

Subsequently the appeal was heard and determined on 29/7/2016 where the court allowed the appeal by setting aside the order of 5th May 2013 by this court as well as dismissing the entire judicial review application. This, thereafter paved the way for the applicant to seek the orders herein.

When this matter came up for hearing on 23/11/16 Mr Kiarie Advocate for the 1st subject told the court that he had no objection to the application and therefore the security could be released to the applicant.

The 3rd subject vide his grounds of apposition dated 22/11/16 has argued among others that there is no proof of the deposit of the sum of 5 million and that they failed to comply with the courts orders and are therefore in contempt.

I have perused the application together with the supporting annexures and in particular the decision by the court of Appeal.

I have also perused the submissions by both the applicant and the 3rd subject. I do not subscribe to the position by the 3rd subject that the applicant failed to comply with the court order, namely, depositing the Kshs 5 million in court as ordered. That is too late in the day. The paper trail on record speaks for itself.

The only question is whether the 3rd subject shall suffer any prejudice if the amount is released to the applicant. The answer is No. His cross appeal in any event was dismissed by the court of Appeal. Infact he has no interest in the money. The only critical party was the 2nd subject represented by M/s Kiarie & Co., who have no objection to the application.

In the premises the application dated 18/10/2016 is allowed as prayed with no orders as to costs.

Delivered this 14th day of February 2017.

H.K. CHEMITEI

JUDGE

In the presence of:

Analo for Applicant

Onyancha for 5th Contributor

Court Assistant - Kirong