REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 1 OF 2016

BETWEEN

OKIYA OMTATAH OKOITI.....PETITIONER/APPLICANT

AND

KENYA REVENUE AUTHORITY.....1ST RESPONDENT

KENYA BUREAU OF STANDARDS.....2ND RESPONDENT

THE HON. ATTORNEY GENERAL.....3RD RESPONDENT

RULING

Introduction

1. The 1st Respondent, the Kenya Revenue Authority, published an advertisement in *The East African Standard* newspaper of Tuesday, 29, December, 2015 titled "**Notice to Sea and Air Cargo Carriers**" in which it introduced certain requirements in regard to the importation of goods into Kenya. In that regard, the Petitioner filed the present Notice of Motion Application dated 4th January, 2016 together with a Petition in which he challenges the introduction of the said restrictions, which he argues are in contravention of the Constitution. In the present Application he is seeking the following orders:

a. **…**

b. ***That pending the hearing and determination of this Application and/or Petition herein inter-partes, the Honourable Court be pleased to grant a stay order staying the execution of the 1st and 2nd Respondents' directives which were issued on various dates and in various formats, ordering cargo carriers not to ferry to Kenya cargo which does not have a certificate of conformity thereby effectively abolishing destination inspection of goods imported into Kenya by some importers, including the following:***

- ***The press advert titled 'Notice to Sea and Air Cargo Carriers' published by the 1st Respondent in the Standard newspaper of Tuesday, December 29, 2015;***

- ***The press advert titled 'Notice to the Public and Importers' published by the 1st and 2nd Respondents in The Standard newspaper of Monday, November 2, 2015;***

- ***The undated documents issued jointly by the 1st and 2nd Respondents and titled 'Inspection of Cargo for Issuance of Certificates of Conformity'.***

c. ***That pending the hearing and determination of this Application and/or the Petition herein inter-partes, the Honourable Court be pleased to issue a temporary order of prohibition prohibiting the 1st Respondent, whether by itself, or any of its employees or agents or any person claiming to act under its authority from proceeding to give effect, in any way in various formats, ordering cargo carriers not to ferry to Kenya cargo which does not have a certificate of conformity thereby effectively abolishing destination inspections of goods imported into Kenya by some importers.***

d. ***That consequent to the grant of the prayers above, the Honourable Court be pleased to issue such further directions and orders as may be necessary to give effect to the foregoing orders, and/or favour the cause of justice.***

e. ***That costs be in the cause***.

The Applicant's Case

2. The Applicant's case is contained in his Affidavit in support, two sets of Written Submissions dated 7th January, 2016 and 16th January, 2016, respectively, and two Replying Affidavits, one sworn by the Applicant on 16th January, 2016 and the other by one, Joseph Wairegi Ngugi, on 21st January, 2016.

3. The Applicant's case in summary was that **Legal Notice No. 78 of 2005** (hereafter "the Legal Notice"), titled the **Verification of Conformity to Kenya Standards of Imports Order, 2005**, was made on 29th June, 2005 by the then Minister for Trade and Industry for the purpose specified in the **Standards Act, Chapter 496** of the **Laws of Kenya**. He contended in that regard that the **Statutory Instruments Act, 2013** provides for the staged repeal of statutory rules and that it is to the effect that a statutory instrument is to come into operation on the date of its publication in the Kenya Gazette and thereafter, it stands revoked ten years after its making unless it is sooner repealed or it expires, or a Regulation, with the approval of Parliament, is made exempting it from expiry for a period not exceeding 12 months.

4. The Applicant stated that since the impugned Legal Notice was gazetted on 15th July, 2005, it stood repealed on 14th July, 2015 and thereafter, it is of no consequence in law. His further argument was that since the Legal Notice stood repealed by operation of the law, the impugned directives by the Respondents are *ultra vires* and unconstitutional.

5. He also contended that the directives by the Respondents have effectively but arbitrarily and unlawfully abolished, for one set of importers, the regime of destination inspection of goods imported into Kenya, by banning the importation of goods that do not have a Certificate of Conformity issued by agents appointed by the Kenya Bureau of Standards to conduct pre-export verification of conformity to standards. That the directives have in addition outlawed consolidation and break bulk shipments for one category of importers especially those operating from popular export destinations in emerging markets such as China, Dubai and India among others, where small packages of cargo belonging to different importers are consolidated at origin by shipping agents, sent from an export point as one consignment to Kenya, cleared as a single entry on arrival at the destination facility, then deconsolidated at destination before delivery to different addresses within the country.

6. Further, in the Applicant's view, the directives are discriminatory to the extent that they irregularly exempt the likes of DHL, Federal Express, EMS, and UPS from compulsory pre-shipment investigation yet such companies also collect small quantities of goods from many customers, consolidate, import, clear them as a single entry, and then break the bulk for door to door deliveries. In addition, he argued that the directives contain contradictions and inconsistencies which render them vague and not sufficiently clear and as such, void under the doctrine of "void for vagueness". Furthermore, that the inconsistencies have been selectively explained and clarified to select parties and not all importers in a discriminatory manner

and therefore, in violation of **Article 27** of the **Constitution**.

7. The Applicant has also contended that while some of those to be affected by the directives were informed in advance, the time was too short for them to act and there were no consultations with stakeholders, nor was there any public participation before the formulation thereof. That therefore, the same amounts to contravention of **Articles 10 (2), 47** and **232 (1) (d)** of the **Constitution** and that the directives are also in contravention of the **Fair Administrative Action Act, 2015, the Leadership and Integrity Act, 2012** and the **Statutory Instruments Act, 2013**.

8. He also argued that going by the justifications given that the measures are required to address cases of cargo mis-declaration and under-valuation, the directives are unnecessary as they are not based on any scientific study and are simply reactive and aimed at addressing ethical and not administrative challenges faced by the 1st and 2nd Respondents.

9. The Applicant in addition expressed the view that the directives are unnecessary since adequate remedies already exist in law for punishing offenders who commit crimes related to cargo mis-declaration and/or under-valuation. That the directives are therefore in contravention of **Articles 19, 24, 25 (c), 47** and **73 (1) (b)** of the **Constitution** and the Respondents have failed to act within the law and must therefore be stopped immediately to prevent the further erosion of rights and fundamental freedoms of the members of the public and that they must be further stopped from ignoring the Rule of Law.

10. In his Written Submissions, the Applicant added that he has established a *prima facie,* public interest case, with a very high probability of success. That he has in that regard made out a strong case that the impugned directives will cause irreparable injury to the public interest since the affected members of the public cannot be compensated or indemnified through an award of damages in the event that his Petition succeeds and that in such an eventuality, the taxpayers risk being exposed to further losses as the 1st and 2nd Respondents will be under the obligation to compensate or indemnify affected shipping agents, traders, and any such other member of the public who will have suffered losses as a result of the directives.

11. According to the Applicant, if the stay orders sought herein are not granted, the substantive issues raised in the Petition will be rendered nugatory because stay orders are granted in circumstances such as the one in the instant case, where the Applicant, whose Application is neither vexatious nor frivolous, shows that if the orders are not granted, the Petition will be rendered nugatory and that, the balance of convenience also favours the granting of the orders sought. That the converse situation is that whereas his case would be prejudiced by the failure to grant the stay orders, the Respondents will suffer no prejudice as there are existing mechanisms for them to execute their mandate, including the destination inspection of import cargo by the 2nd Respondent.

12. That for the above reasons, the Applicant urged the Court to allow his Application and grant the orders sought therein.

The 1st Respondent's Case

13. The Kenya Revenue Authority opposed the present Application and Learned Counsel, Mr. Ochieng, who appeared on its behalf, associated himself with the submissions by Counsel for the 2nd Respondent.

14. Mr. Ochieng submitted further that the Applicant claims that the Petition herein is one filed in the public interest and yet he in fact seeks to deny the public taxes and the need to have quality goods. In that context, it was his argument that the orders sought in the present Application ought not to be granted as they seek to deny the public its rights.

The 2nd Respondent's Case

15. In its Written Submissions dated 8th February, 2016, the 2nd Respondent, the Kenya Bureau of

Standards, opposed the present Application.

16. While relying on **Gatirau Peter Munya vs Dickson Mwenda Kithinji and 2 Others, Application No. 5 of 2015**, it submitted that the principles governing the grant of interim stay orders are that an applicant must establish a prima facie case with a high probability of success; he must prove that irreparable loss which cannot be compensated in damages will result if the orders of interim stay are not granted and that he must prove that the balance of convenience is in favour of the grant of such stay orders. In that regard, it was its contention that the present Application does not meet the aforesaid requirements and as such, the orders sought herein ought not to be granted.

17. It maintained that the present Application together with the Petition do not raise any *prima facie* case with high chances of success as all the arguments raised by the Petitioner lack merit because, the contention that the Legal Notice was revoked in July, 2015 because of the ten year rule of validity is without merit as the said ten year period starts running from 2013 when the **Statutory Instruments Act** was enacted and that in any event, there is no provision in the Act to the effect that the said Act is to have a retrospective effect.

18. It argued further that, the Petitioner has not demonstrated that any loss or damage which cannot be compensated by an award of damages will be suffered by any identifiable person if the orders sought are not granted. That instead, the arguments advanced by the Applicant are based on pure conjecture and the orders sought herein are too adverse in terms of their effect to be granted on the basis of pure conjecture. Additionally, that the Applicant is not claiming to be suffering any loss or damage as a result of the said directives and that no person has come forth to make such a claim.

19. The 2nd Respondent also made the argument that the orders of stay sought herein cannot be granted because the circumstances of this Petition are such that the grant of such orders would be imprudent since, suspension of the said notices cannot take effect immediately because such a suspension will necessitate fresh agreements and/or consultations with manufacturers, businessmen, the Kenya Association of Manufacturers (KAM), shipping lines, logistic service providers and standards monitoring agencies worldwide and that such negotiations and agreements, even if they were to be successfully consummated, which is not guaranteed, will entail far reaching changes in business operations, trade relations and regulatory practices and policies, and laws, not only among the State parties to the **Technical Barriers to Trade Agreement** but worldwide.

20. Further, that to move any particular class of goods from local inspection and vice versa, takes between six months to two years and therefore, it is impossible for the implementation of the notices to be stopped immediately and for the stoppage to take effect immediately. Furthermore, that it is similarly impossible, where an interim stay is granted but subsequently lifted, to immediately revive them.

21. It was its other argument that since it has appointed pre-shipment agents worldwide and entered into long term contracts with them, it is impossible to temporarily suspend all such contracts during the period when the interim stay orders are in force and thereafter revive them when such orders are lifted. Accordingly, that it will have to incur huge losses to overseas agents as a result of the grant of any such stay order because either the aforesaid overseas agents will be paid for doing absolutely nothing, or the importers will be incurring additional costs on local inspection for goods that have already been inspected abroad.

22. Lastly, it contended that because destination inspection leads to higher prices for imported goods, it is imprudent to grant the orders sought on an interim basis due to the effect such orders will have, not just upon the consumers, but the entire Kenyan economy. That such orders can only be granted after hearing the Petition and after a final determination has been made by this Court on all the issues raised in the Petition. Additionally, it was its submission that the implementation of such an order even on an interim basis is likely to be interpreted as a breach by Kenya, of its obligations under the **Technical Barriers to Trade Agreement** and as an indication of its intention to introduce technical barriers to trade which may trigger adverse economic back clash.

23. Based on the foregoing therefore, the 2nd Respondent maintained that the present Application lacks merit and ought to be dismissed.

The 3rd Respondent's Case

24. Learned State Counsel, Mr. Kuria, appeared on behalf of the 3rd Respondent and opposed this Application. Counsel argued that the criteria for the grant of interim orders have not been met in the present Petition and that the impugned directives were made to protect the health of Kenyans from contraband goods pursuant to **Article 46** of the **Constitution**. He therefore urged the Court to dismiss the Application.

The Applicant's Rejoinder

25. The Applicant relied on the decisions in **Christopher Ndarathi Murugaru vs Kenya Anti-Corruption Commission and Another [2006] eKLR, Njoya and 6 Others vs Attorney General and 3 Others (No. 3) [2008] 2 KLR (E.P) 658** and **Republic vs Cabinet Secretary For Education Science & Technology Ex-Parte Highlands State College Ltd, Judicial Review Application No. 138 of 2015**, in reiterating his earlier contentions and further submitted that the present Petition is primarily about the mostly ignored issue of abuse by the Executive of subsidiary legislation in Kenya and the more reason why the Application should be granted.

Determination

26. The key issue for determination in the present Application is whether the Applicant has met the threshold for grant of orders of stay therein.

27. In that regard, **Article 23** of the **Constitution** grants this Court the jurisdiction, in accordance with **Article 165**, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.

28. Is a stay order the same as a Conservatory Order and what are the grounds for grant thereof? While one of the remedies to be granted under **Article 23 (3) (c)** of the **Constitution** is a Conservatory Order, there is no mention of a stay order which is however well known to civil procedure – See **Order 42 Rule 6** of the **Civil Procedure Rules**. The effect of a Conservatory Order as I understand it is that it preserves the status *quo ante* of a particular matter or situation obtaining. In the present case, the Applicant has sought for orders of stay whose effect is to preserve the status quo of the matter herein, that is, a stay of the implementation of the directive ordering cargo carriers not to ferry to Kenya, cargo which does not have a certificate of conformity. It is my understanding therefore that the question that I must answer is whether the Applicant has established that he is entitled to the orders of stay of implementation of the directives aforesaid. In stating so, it is also my understanding that the said orders are only sought pending hearing of the Petition on its merit. If that be so, what is the law applicable thereto?

29. On conservatory orders generally, in **Gatirau Peter Munya vs Dickson Mwenda Kithinji and 2 Others, Application No. 5 of 2014 it was noted that:**

> **"[86]** *"Conservatory orders" bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as "the prospects of irreparable harm" occurring during the pendency of a case; or "high probability of success" in the supplicant's case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values,* **and** *the proportionate magnitudes, and priority levels attributable to the relevant causes."*

30. In that context the principles to guide the Court in granting Conservatory Orders were outlined in **Martin Nyaga Wambora vs Speaker of The County Assembly of Embu and 3 Others, Petition No. 7**

of 2014, in the following terms:

> **"[59]** ***In determining whether or not to grant conservancy orders, several principles have been established by the courts. The first is that: '… [an applicant] must 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.'***
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> **[60]** ***To those erudite words I would only highlight the importance of demonstration of "real danger". The danger must be imminent and evident, true and actual and not fictitious; so much so that it deserves immediate remedial attention or redress by the court. Thus, an allegedly threatened violation that is remote and unlikely will not attract the court's attention.***
>
> **[61]** ***The second principle, which naturally follows the first, is whether if a conservancy order is not granted, the matter will be rendered nugatory.***
>
> **[62]** ***The third principle is one recently enunciated by the Supreme Court in the election petition case of Gatirau Peter Munya v Dickson Mwenda Githinji & 2 Others SCK Petition No 2 of 2013. The principle is that the public interest must be considered before grant of a conservatory order. Ojwang and Wanjala JJSC stated that: "*** **[86]** ***'conservancy orders' bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within the public agencies, as well as to uphold the adjudicatory authority of the court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private party issues as 'the prospects of irreparable harm' occurring during the pendency of a case; or 'high probability of success' in the supplicant's case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values and the proportionate magnitudes, and priority levels attributable to the relevant causes"***
>
> **[63]** ***Thus, where a conservancy order is sought against a public agency like a legislative assembly that is mandated to carry out certain functions in the normal course of its business, it is only to be granted with due caution. The interruption of the lawful functions of the legislative body should take into account the need to allow for their ordered functioning in the public interest."*** (Emphasis added)
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> (See also **Board of Management of Uhuru Secondary School vs City County Director of Education and 2 Others [2015] eKLR**.)

31. It is therefore my further understanding based on the above expositions of the law and noting the meaning of a stay order as known to law that for stay orders to be granted, an applicant must show that he has an arguable case with inherent merit when balanced with the public interest as well as constitutional values and that proportionately, the discretion of the Court must tilt in his favour.

32. In addition, such an Applicant must show that unless the stay orders are granted, the whole Petition would be rendered nugatory and the Applicant will be prejudiced thereby.

33. Applying the above principles to the present matter, on the face of it, I am satisfied that the Petition raises important issues of law and fact. It is therefore not frivolous nor does it, at a *prima facie* level, look like it is an abuse of Court process. I say so because the legality of the Legal Notice leading to the issuance of the directives is not an idle question.

34. Having said so however, it is my view that the public interest does not tilt in favour of the Applicant. In holding so, I am alive to the fact that it is uncontroverted that the suspension of the impugned directives cannot take effect immediately because such a suspension will necessitate fresh agreements and/or consultations with manufacturers, businessmen, association of manufacturers, shipping lines, logistics services providers and standards monitoring agencies worldwide. Furthermore, as the 2nd

Respondent submitted, to move any particular class of goods from local inspection to pre-shipment inspection and vice-versa takes between six months to two years and hence, it is impossible for the implementation of the impugned directives to be stopped in the circumstances and for such halting to take effect immediately. In any event, the lifting of such stay orders later, if granted now, would aggravate the situation further since the conditions that prevailed prior to the granting of the stay orders cannot be reverted to.

35. For the foregoing reasons, I am not inclined to grant orders of stay as prayed and I must also add that granting the orders of stay in the present circumstances would also jeopardise Kenya's international obligations under the **Agreement on Technical Barriers to Trade** wherein **Article 5** provides that:

> ***(5.1) Members shall ensure that, in cases where a positive assurance of conformity with technical regulations or standards is required, their central government bodies apply the following provisions to products originating in the territories of other Members:***
>
> ***(5.1.1) conformity assessment procedures are prepared, adopted and applied so as to grant access for suppliers of like products originating in the territories of other Members under conditions no less favourable than those accorded to suppliers of like products of national origin or originating in any other country, in a comparable situation; access entails suppliers' right to an assessment of conformity under the rules of the procedure, including, when foreseen by this procedure, the possibility to have conformity assessment activities undertaken at the site of facilities and to receive the mark of the system;***
>
> ***(5.1.2) conformity assessment procedures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. This means, inter alia, that conformity assessment procedures shall not be more strict or be applied more strictly than is necessary to give the importing Member adequate confidence that products conform with the applicable technical regulations or standards, taking account of the risks non-conformity would create.***

36. It is thus apparent from a reading of the above provision that the 2nd Respondent is under an obligation to set standards so as to comply with the foregoing. Furthermore, *prima facie*, it seems to me, and the fact is uncontroverted, that the directives were issued for the good of the public health in order to ensure that consumers do not receive contraband goods.

37. Following the steps taken in issuing the said directives therefore, and the process undertaken in the formulation of the same, I am satisfied that it is in the greater public interest not to grant the orders of stay in the circumstances but to expeditiously go into the determination of the substantive issues raised in the Petition.

Conclusion

38. I note that apart from the prayer for orders of stay of implementation of the directives aforesaid, the Applicant has further sought for orders of Prohibition, prohibiting the 1st Respondent, whether by itself, or any of its employees or agents or any person claiming to act under its authority, from proceeding to give effect, in any way in various formats, any order directing cargo carriers not to ferry to Kenya cargo which does not have a certificate of conformity thereby effectively abolishing destination inspections of goods imported into Kenya by some importers.

39. In that regard, under **Article 23 (3)** of the **Constitution**, the remedy of prohibition is not explicitly recognized as a self-standing right but rather one under the general remedy of Judicial Review. If that be so, in **Kenya National Examinations Council vs Republic ex parte Geoffrey Githinji Njoroge and Others, Civil Appeal No. 266 of 1996 (1997) eKLR** as far as prohibition is concerned, the Court of Appeal stated that:

> ***"Prohibition looks to the future so that if a tribunal were to announce in advance that it would***

consider itself not bound by the rules of natural justice, the High Court would be obliged to prohibit it from acting contrary to the rules of natural justice. However, where a decision has been made, whether in excess or lack of jurisdiction or whether in violation of the rules of natural justice, an order of prohibition would not be efficacious against the decision so made. Prohibition cannot quash a decision which has already been made; it can only prevent the making of a contemplated decision… prohibition is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein against in excess of jurisdiction or in contravention of the laws of the land…It does not, however, lie to correct a course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings…"

Further, that:

"Only an order of certiorari can quash a decision already made and an order of certiorari will issue if the decision is without jurisdiction or in excess of jurisdiction, or where the rules of natural justice are not complied with of for such like reasons…"

40. I also note that the Indian Supreme Court in **S.T. Adityan and Others vs The First Income-Tax Officer, City Circle IV, Madras. 10 (ILR 1964 Madras 700 - 1964 II MLJ 113)** pointed out that:

"The scope of a writ of prohibition is fairly clear. A writ of prohibition is an instrument of judicial control to prevent an excess or abuse of jurisdiction by inferior tribunals. Where a tribunal assumes or threatens to assume a jurisdiction which it does not possess prohibition may issue so long as the proceedings are not complete. Prohibition also lies for a departure from rules of natural justice. If the presiding officer of the inferior tribunal is interested in the lis, or is otherwise biased he can be restrained by prohibition from acting further in the matter. It is, however, well settled that prohibition will not lie to correct an error of law, or a mere irregularity of procedure, or a wrong decision on the merits of proceedings unless there is an excess of jurisdiction. Sometimes scope of writ of prohibition and certiorari, overlap. In one action the applicant may seek to quash an order and restrain an imminent transgression of jurisdiction. But, the scope of prohibition is narrower than that of certiorari. While certiorari may go to correct a manifest error of law on the face of the record even if the tribunal had acted within its jurisdiction, prohibition cannot prevent a threatened irregularity or illegality by the tribunal within its ostensible jurisdiction. "No jurisdictional fault, no prohibition", would not merely be a good working rule in the administration of writs, but would be a succinct and correct statement of the nature and function of a writ of prohibition."

The Court went on to cite Ferris in the following terms:

"Ferris in his Book on the Law of Extraordinary Legal Remedies observes thus:

"It is well settled that a writ of prohibition may not be used to usurp or perform the functions of an appeal, writ of error or certiorari, or to correct any mistakes, errors or irregularities in deciding any question of low or fact within its jurisdiction. The office of the writ.... is to prevent an unlawful assumption of jurisdiction, not to correct mere errors and irregularities in matters over which the Court has cognizance.... Where there is authority to do the act, but the manner of doing it, is improper, the writ will not lie. In other words, whatever power is conferred may be exercised, and, if it be exercised injudiciously, erroneously and irregularly, it amounts to error merely and not to a usurpation or excess of jurisdiction. In such a case, however gross the error, irregularity or mistake, the writ does not lie, not because, as is sometimes erroneously stated, there exist other adequate remedies, or such remedies are inhibited, but for the reason that there has been no usurpation or abuse of power (page 439)." (Emphasis added)

41. In that context, it should be clear to the Applicant that an order of prohibition as a judicial review remedy cannot be granted in an interlocutory application such as the present case. This position was affirmed by the Court in **Cascade Company Limited vs Kenya Association of Music Production**

(KAMP) and 3 Others, Petition No. 7 of 2014 where it was noted that:

> ***"And even if the first two respondents were public bodies and therefore amenable to judicial review orders, it would be out of order for judicial review orders to issue against them in the context of an interlocutory application; in appropriate cases judicial review orders will only issue at the final determination of a case and they are not available in any other shape or description whether as interim or as conservatory orders. For these reasons, I opine that the third prayer in the summons must fail."*** (Emphasis added)

42. I wholly agree and whereas prohibition to a layman may have the same meaning as an injunction, in law, the two terms have different meanings and the threshold for their grant is different. I am therefore inclined to hold that orders of prohibition cannot issue in the circumstances of the present application or in interlocutory proceedings at all.

Disposition

43. For the above reasons, the Notice of Motion Application dated 4th January, 2016 is hereby dismissed with the order that the Petition be set down for an expeditious hearing.

44. Let each Party bear their own costs.

45. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF MAY, 2016

ISAAC LENAOLA

JUDGE

In the presence of:

Muriuki – Court clerk

Petitioner present

No appearance for Respondent

Order

Ruling delivered.

Submissions to be filed for hearing on 5/7/2016.

Notice to issue.

ISAAC LENAOLA

JUDGE