



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW MISC. CIVIL APPLICATION NO. 512 OF 2015

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO COMMENCE PROCEEDINGS IN
THE NATURE OF JUDICIAL REVIEW**

AND

**IN THE MATTER OF SECTION 8 AND 9 OF THE LAW REFORM ACT (CAP 26) LAWS OF
KENYA**

AND

**IN THE MATTER OF APPLICATION FOR LEAVE TO APPLY FOR ORDERS OF
CERTIORARI AND PROHIBITION**

AND

IN THE MATTER OF CAP 486 LAWS OF KENYA

AND

IN THE MATTER OF REGISTRAR OF COMPANIES

AND

**IN THE MATTER OF REGISTRATION OF DIRECTORS OF GITHUNGURI
CONSTITUENCY RANCHING COMPANY**

AND

**IN THE MATTER OF ARTICLES 22(1), (2),(a),(b),(c), 23(1), 27(1), (2) OF THE
CONSTITUTION OF KENYA (2010)**

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE REGISTRAR OF COMPANIES.....RESPONDENT

EX-PARTE APPLICANT AHMED CHEGE GIKERA

RULING

1. The application dated 5th July 2016 was certified as urgent by Honourable Odunga J and placed before me today for consideration inter-partes. All the parties to the dispute were present before me this morning after being served with the application by Professor Wangai counsel for the applicant.
2. The Notice of Motion seeks for “orders staying execution of the ‘decision’ contained in a purported CR 1245/69 concerning the directors of Githunguri Constituency Ranching Company, the 2nd respondent herein issued by the 1st respondent Registrar of Companies and dated 20th June 2016 pending the hearing of the application interpartes; and eventually, the hearing and determination of this suit. It also prays that the OCS Ruiru Police Station to ensure that the orders of this court are obeyed and that peace prevails.
3. Upon being served with the application, the 2nd respondent filed Notice of Preliminary Objection on a point of law whereas the 1st respondent only appeared through Mr Munene advocate and intimated to court that he needed sufficient time of 7 days to file grounds of opposition.
4. Professor Wangai counsel for the applicant prayed that pending interpartes hearing, the court should grant in the interim prayer No. 2. Mr Njenga counsel for the 2nd respondent vehemently resisted any attempt by this court to grant any interim order arguing that there are very serious issues in this matter which the court should consider including the fact that there is a valid judgment of this court therefore this court cannot grant stay of execution pending nothing as there is no such prayer; that there is an application for review of judgment which does not include a prayer for stay; that order 40 of the Civil Procedure Rules is inapplicable to Judicial Review matters save during the application for leave to apply for Judicial Review; that the letter of 20th June 2016 is not an order or decision capable of being stayed; and that there have been systematic attempts to frustrate the operations of the 2nd respondent company as noted by Honourable Justice Korir in his judgment in this matter.
4. In a rejoinder, Professor Wangai maintained that his clients would be prejudiced if stay of the document is not granted as they shall be harassed and intimidated by the respondents using the police.
5. I have carefully considered the prayer for interim stay of execution of the ‘decision’ contained in a purported CR 1245/69 concerning the directorship of Githunguri Constituency Ranching Company, the 2nd respondent as ‘issued’ by the 1st respondent on 20th June 2016 pending the hearing of the application interpartes.
6. At this stage, I shall not delve into the merits or demerits of the application dated 5th July 2016. However, as I must exercise my discretion in granting or declining to grant an interim order of stay, that discretion must be exercised on sound principles. I must therefore establish whether the applicant has established, prima facie, that he deserves the interim orders of stay.
7. Stay of execution or enforcement of a decision or order serves the purpose of preserving the subject matter so that whatever proceedings that are pending should not be rendered nugatory.
8. And in order for this court to grant stay, it must be satisfied that that stay will serve a useful purpose; and that there is a decision or order capable of being stayed.
9. What this court has been shown is a document dated 20th June 2016 issued to the 2nd respondent by the Registrar of Companies. It is Referenced CR 12 45/69 and which according to the applicant is a “decision ‘which is highly prejudicial to the applicant.
10. I have examined that document marked as exhibit JM1 signed by Nicholas Oduor, for Registrar of

Companies. The document is a letter addressed to the Directors of the 2nd respondent, responding to an inquiry dated 6th June 2016. The said letter (document) gives details as follows:-

Dear Sir/(s)

RE: Githunguri Constituency Ranching Company Limited

I refer to your letter dated 6th June 2016.

According to the company's last annual returns dated 17th December 2015, the names of directors of the above company with their particulars are as follows:.....

The nominal share capital of the company is kshs 200,000 divided into 15000 ordinary shares and 5000 preference shares of shs 10/- each.

Signed

For Registrar of Companies.

12. From the above stated letter, the question is, is it a decision capable of being stayed or enforced, even in the interim?

13. In answering the above question, this court must determine what a 'decision' is. **The Concise Oxford English Dictionary, 2011 Edition** defines decision as : ***“ a conclusion or resolution reached after consideration. The action of deciding. The quality of being decisive.”***

14. On the other hand, **Black's Law Dictionary Ninth Edition** defines 'decisions as ***“ A Judicial or Agency determination after consideration of the facts and the law: especially a ruling, order , or judgment pronounced by a court when considering or disposing of a case.”***

14. From the above definitions, a decision, no doubt, is a determination of an issue by some authority.

15. Re examining the letter dated 20th June 2016, in my humble view, it is not a decision or a determination. Rather, it is an extract of the records held by the Registrar of Companies on the status of the 2nd respondent company with regard to the directorship and shareholding. The letter, being a response to an inquiry cannot be construed to be a decision of the Registrar of Companies. The only decision that the Registrar of Companies could have taken, could have been that of [de] registering or receiving the annual returns. The applicant has not placed before this court any application staying or prohibiting the registration of the named persons as directors of the 2nd respondent. There is no pending proceedings for quashing the filed annual returns or confirming the director's/shareholding . That being the case, and the letter dated 20th June 2016 being merely informative and not a determination or decision of any sort, this court finds that to purport to stay the document is in essence making orders in vain. Courts of law are not expected to spew forth orders in vain.

16. It is for the above reasons that notwithstanding the merits or demerits of the application dated 5th July 2016, this court finds that the document dated 20th June 2016 is not a decision capable of being stayed in the interim and hence the issue of prejudice does not arise. Accordingly, I decline to grant any interim orders of stay pending interpartes hearing of the application dated 5th July 2016 and direct the parties to take a hearing date for interpartes hearing of the said application on priority basis.

17. Those are the orders of this court.

Dated, signed and delivered in open court at Nairobi this 6th day of July 2016.

R.E. ABURILI

JUDGE

6th July, 2016