



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW NO. 478 OF 2016

**IN THE MATTER OF ARTICLES 2.10,185,194,201 AND 220 OF THE CONSTITUTION OF
KENYA, 2010**

AND

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

AND

**IN THE MATTER OF SECTIONS 7, 8, AND 9 OF THE FAIR ADMINISTRATIVE ACTION
ACT, 2015**

AND

IN THE MATTER OF THE COUNTY GOVERNMENT ACT NO. 17 OF 2012

AND

**IN THE MATTER OF THE PUBLIC FINANCE MANAGEMENT ACT CAP 412 OF THE LAWS
OF KENYA**

AND

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

AND

**IN THE MATTER OF AN APPLICATION BY ISIOLO COUNTY GOVERNMENT FOR
JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION.**

BETWEEN

REPUBLICAPPLICANT

VERSUS

ISIOLO COUNTY PUBLIC SERVICES BOARDRESPONDENT

EX-PARTE: ISIOLO COUNTY GOVERNMENT

RULING (2)

1. On 10th October 2016 this court considered the ex parte applicant's chamber summons dated 7th October 2016 ex parte under certificate of urgency and granted the ex parte applicant who is the Isiolo County Government leave to institute Judicial Review proceedings seeking for Judicial Review orders of Certiorari, prohibition, and declaration against the respondent Isiolo County Public Service Board and the interested parties herein Abdinasir Ali, Roba Abduba Qanchora, Halima Ibrahim, Salad Kikuyu Sarite and Hussein Wako Gedo.

2. The court further granted orders that the leave granted do operate as stay of deployment of the appointed staff in terms of prayer Nos. 7 of 8 of the chamber summons.

3. The court further ordered that the substantive motion be filed and served within 21 days, with costs in the course.

4. On 27th October 2016, vide notice of motion dated 25th October 2016, the ex parte applicant filed the substantive Notice of Motion pursuant to the leave granted on 10th October 2016.

5. However, on 19th October 2016, the interested parties, herein filed a notice of motion dated 18th October 2016 seeking the following orders:

a. Spent

b. That this court do issue an order of stay or suspension of its ex parte order made on 10th October 2016 and in particular, to suspend or stay its order which provides that the leave granted to the ex parte applicants (Isiolo County Government) operate as stay of the decision of the Respondent Isiolo County Public Service pending the hearing and determination of this application inter partes and thereafter as the court shall order;

c. That the court be pleased to set aside, discharge or vacate its ex parte order made on 10th October 2016 and particularly to set aside, discharge or vacate the order that provides for leave which was granted to the ex parte applicant to operate as stay of the decision of the respondent to appoint and deploy the newly recruited officers of the respondent.

d. That the court be pleased to make an order directing for the transfer of this matter to the High Court of Kenya at Meru for its hearing and final disposal.

e. The costs be borne by the ex parte applicant in any event.

6. The application is predicated on the grounds that:

a) The applicant obtained the said order fraudulently by concealment of material facts and/or information vital to the determination of their application and the proceedings herein.

b) That the ex parte applicant failed to disclose in its application before court that the process of recruitment, appointment and deployment of the newly recruited officers had been completed and the court could not stay an event which had already occurred.

c) The ex parte applicant also concealed and or failed to disclose to the court that they filed two previous proceedings on similar issues being Nairobi HCC JR No. 468/2016 and Meru HCC JR No. 31/2016 both of which involve the same parties and a similar cause of action and that in both two previous matters, the two courts considered their applications and declined to grant the orders ex parte.

d) That the ex parte applicant is therefore guilty of non disclosure of material facts vital to the proceedings herein and the entire application or proceedings as presented before this court are irregular, unprocedural, improper and should have been dismissed, and shall also so seek the interested parties herein.

e) That the ex parte applicant has approached this court with unpurified hands and that even though the interested parties may not challenge the leave granted to the ex parte applicant at this stage, the same should not operate as stay of the decision of the respondent to appoint and deploy the interested parties.

f) That the ex parte applicant is clearly abusing the due process and the court by filing a multiplicity of proceedings in various courts over the same cause of action and involving the same parties.

g) That the decision, conduct and actions and behavior of the ex parte applicant in this matter has been agitated by the bad faith and driven by malice and or personal vendetta against the respondent and the interested parties who are innocent civil servants who have been caught up in the cross fire and supremacy wars between the ex parte applicant and the respondent.

h) That these proceedings also offend the provisions of Rule 22 of the High Court (Organization and Administration) Rules, 2016, Section 12(3) of the High Court Organization and Administration) Act, 2015, as all the parties involved herein come from Isiolo County and this matter should therefore have been filed at the High Court of Kenya, Meru station and Not in Nairobi as done by the ex parte applicant

i) That it is for proper administration of justice herein and just for this matter to be ordered transferred to the High Court of Kenya at Meru station for hearing and final disposal

j) That this application is made in utmost good faith and the events, facts nature and circumstances hereof, are in favour of granting of prayers being sought for herein.

7. The application is further supported by the affidavit sworn by Salad Kikuyu Sarite sworn on 18th October, 2016 on his own behalf and on behalf of his co interested parties hereto deposing among others, that the ex parte applicant herein did through the respondent place a newspaper advertisement on 22nd August 2016 inviting members of the public to make applications for various positions that were vacant in the ex parte applicant's public service and that the interested parties herein, among other persons, applied for the said various positions, were shortlisted, interviewed and appointed to the various positions of Chief Finance Officer, Head of Treasury, Head of Revenue, Head of Supply Chain Management and Director of Lands and Physical Planning respectively.

8. That the various appointments were granted vide letters of appointment dated 30th September 2016 upon which they were each issued with deployment letters on 3th October 2016 to report to work on 10th October 2016. That thereafter, the Deputy Governor Acting on behalf of the Governor wrote to the respondent thanking it for the successful interviews and also to the National Treasury asking for access to IFMIS by the deponent .

9. In addition, that those persons who were holding acting positions filled by the interested parties herein were terminated. That therefore the recruitment process was procedurally done in compliance with the law and appointments took effect on 10th October 2016 when the interested parties reported on duty. That in view of the above, the ex parte applicant is deceitful and is forum shopping having failed to obtain similar orders before Odunga J in JR 468/2016 and Wendoh J in JR 31/2016 in Nairobi HC and Meru HC respectively.

10. That it is therefore fair and just for the court to make orders suspending or staying the order of 10th October 2016 which stayed the decision of the respondent to appoint and deploy the newly

recruited staff who are the interested parties herein since an event that has occurred cannot be stayed. And that the orders sought if granted will in no way prejudice the *exparte* applicants.

11. The application by the interested parties was opposed by the *exparte* applicant who filed a replying affidavit sworn by Ibrahim Wako, on 3rd November 2016. The deponent is the County Secretary for the *exparte* applicant, deposing, among others that the recruitment process by the respondent was unprocedural and illegal since there was no request from the relevant County Chief Officers of the departments to which the appointment was made; or at the request of the Clerk of the County Assembly; or on the County Public Service Board's own motion on account of the best interest of the County and parity of treatment of public officers taking into account the circumstances of each case, and in accordance with Section 59 and 63 of the County Government Act, 2012.

12. That at the moment, the said recruitment is against the interests of the County due to budgetary, fiscal and organizational issues within the *exparte* applicant which must be resolved first.

13. That the letters of the Deputy Governor were not authorized by the Governor hence they were written *ultra vires* and irrationally in that it has not been demonstrated that the Governor was absent to warrant the Deputy Governor to write letters to the National Treasury.

14. That there is no justifiable need for the recruitment of staff in view of the lack of budgetary allocation for such purpose for the 2016/2017 budget for recruitment of new staff in the relevant departments and that such recruitment would be in violation of the principles of Public Finance and Article 201 of the Constitution and would greatly affect the running and affairs of the County.

15. That termination of acting appointments does not legitimize unlawful appointments and that the salary and the recurrent expenditure of the respondent had ballooned and has adversely affected the applicant's development expenditure hence it was illogical and irrational for the respondent to unilaterally initiate the recruitment process.

16. That the *exparte* applicant disclosed to the court all material facts and that although there was JR Nairobi 468/2016, the same was ordered to be transferred to Meru High Court by Honourable Odunga J and that due to misunderstanding of the direction, the applicant's Advocates Kithi & Company filed a fresh Meru JR 31/2016, and that upon realization of the mistake, the two matters were consolidated and later withdrawn hence there is no other matter pending before the same court of competent jurisdiction.

17. That if the orders of 10th October 2016 are suspended, the *exparte* applicant will suffer untold prejudice as there is no budgetary allocation for recruitment of new staff during the current financial year and neither is there any requests by the relevant departments as required by Section 63 of the County Government Act.

18. That the application for suspension of stay orders is made in bad faith, vexatious and meant to embarrass the court and that it is actuated by malice, ethnic and political reasons.

19. That the 1st-4th interested parties never sought to be enjoined to these proceedings hence they are improperly before this court in this matter. That the decisions stayed were to take effect on the same date as the date orders were issued on 10th October 2016 hence the decisions never took effect. That the *exparte* applicant is in the process of carrying out a human resource audit to weed out ghost workers, creating organizational structures and organograms for deliberation by the County Executive Committee pursuant to Section 46 of the County Government Act and that there is likelihood of reorganizing some of the positions for which the interested parties have been offered employment.

20. That pursuant to Article 185(3) of the Constitution, the County Assembly of Isiolo has deliberated in this matter of recruitment of staff and requested the respondent to stop the appointments and recruitments until the organizational structure and organograms of the various affected departments are

placed before it for consideration.

21. That this court should not allow the interested parties to benefit from unlawful and unprocedural exercise of power by the respondent which is in violation of Section 60(1) (g), 60(2) of the County Government Act.

22. That if orders of 10th October 2016 are suspended, the *ex parte* applicant will be plunged into spiral chaos, disorganization and disarray and that the effect of the orders sought would negatively affect the residents of Isiolo, thereby defeating the spirit of devolution enshrined in the Constitution hence it is in the interest of justice and fairness that the application by the interested parties be dismissed with costs.

23. The parties advocates argued the application dated 18th October 2016 orally before me on 7th November 2016 with Mr Kobia appearing for the interested parties and Mr Busaidy for the *ex parte* applicant.

24. Mr Kobia submitted that the interested parties had already taken office when the orders were made on 10th October 2016 and that as a result, they were evicted from their offices on the same day and that on the following day they were barred from entering their offices. Counsel submitted that the hiring was done procedurally and that therefore the interested parties should be allowed into office as their services are essential, to the people of Isiolo County.

25. Further, that in view of the various similar matters being filed in other courts and being rejected, the applicants should not be allowed to forum shop.

26. In response, Mr Busaidy for the *ex parte* applicant submitted in detail first, that there was no order to join the interested parties to these proceedings and that the court had not, as stipulated under Order 53 Rule 3 of the Civil Procedure Rules, given any directions as to service upon any affected parties. That the respondent had not yet entered a appearance when the interested parties jumped into these proceedings.

27. Mr Busaidy also submitted that leave once granted can only be set aside before the filing of the substantive motion unlike in the present proceedings where the substantive motion is already filed. He relied on **Republic V Land Disputes Tribunal Central Division & another Ex parte Nzioka [2006] 1 EA 231**.

28. Mr Busaidy further submitted that although this application for stay and setting aside of orders of 10th October 2016 was filed on 19th October 2016 before the substantive motion was filed on 27th October 2016, this application was only served on 28th October 2016 hence it is overtaken by events as the *ex parte* applicant had no means of knowing that there was an application to set aside the leave granted. That therefore it is in the interest of justice that the court hears the substantive notice of motion on its merits.

29. That grant of leave is not a mere formality but an exercise of judicial discretion and that in this case the court was satisfied that the *ex parte* applicant had met the conditions for grant of leave and stay. That even though leave granted *ex parte* can be vacated, that was a limited jurisdiction which has to be exercised sparingly. He relied on **CA 257/2003 Agha Khan Education Services (K) vs The Republic [2004] e KLR**.

30. It was submitted that it had not been argued that this court in granting leave acted superficially or that the claim is hopeless, phantom or frivolous.

31. That the JR 468/2016 was transferred to Meru and due to inadvertence, the applicant's advocates filed a separate JR 31/2016 in Meru but that upon discovery of the error, the two matters were consolidated and withdrawn although the extract order had not yet been signed by the Deputy

Registrar.

32. That to grant orders sought in the present motion is to shut the applicant from a hearing which is unjust.

33. Counsel also reiterated what is deposed in the replying affidavit on the alleged illegality of the recruitment process which was carried out without the need and or requests for budgetary allocation for the financial year. That to recruit without funds will subject the County Government to several law suits and chaos. He relied on **John Vs Rees [1970] ch D 345 at 402** where it was held that in the exercise of discretion, the court takes into account the exercise of good administration.

34. Mr Busaidy maintained that no prejudice will be suffered by the interested parties if the orders sought herein as sought herein are denied.

35. In a rejoinder, Mr Kobia submitted that the High Court Organization and Administration Act and Rules made thereunder gives jurisdiction to the Meru High court to hear and determine the dispute herein. That there is no evidence of instructions being given to 2 law firms. He maintained that the services of the 5 officers are critical to serve the people of Isiolo County.

36. That the respondent acted as an independent office not out of malice or disagreement but necessity. That the Hansard proceeding of the County Assembly is proof of the infighting between the applicants and respondent. That disagreement notwithstanding, due process had been followed prior to the recruitment of the interested parties.

37. Counsel submitted that the interested parties have no problem with the leave granted but the stay granted was overtaken by events as the applicants were in office on 10th October 2016. He urged this court to vacate its orders and order the file to be transferred to Meru High Court.

38. Mr Kobia also urged the court to invoke Article 159 of the Constitution and find that his clients were not enjoined to these proceedings because they were being harassed by the police. He nevertheless urged the court to dismiss the substantive notice of motion for want of jurisdiction.

Determination

39. I have carefully considered the interested parties' application seeking to set aside and vacate the orders made by this court on 10th October 2016 which orders granted the exparte applicant leave to institute judicial review proceedings against the respondent; and which order also directed that the leave so granted do operate as stay of enforcement of the decision of the respondent to appoint and deploy the purported newly recruited officers to the respondents with effect from 10th October 2016 and any consequential actions thereto or in any way however engaging in activities attendant thereto pending the hearing and determination of the appeal filed by the applicant to the PSC pursuant to Section 77 of the County Government Act, 2012. The applicants/ interested parties also seek for suspension of the order of stay.

40. I have also considered the grounds and depositions as well as the exhibits annexed; and the replying affidavit, exhibits and both parties' advocates oral submissions.

41. I have equally considered the statutory and case law relied on. In my humble view, the main issues for determination in this matter are:

1. Whether the applicant interested parties are properly suited in this matter
2. Whether the interested parties have made out a case for setting aside of the twin orders of 10th October 2016 for leave and stay.
3. What orders should this court make?

4. Who should bear the costs of this notice of motion?

42. On the first issue of whether the interested parties are properly suited, the respondent/exparte applicant contends that the interested parties herein were not parties to the chamber summons for leave and that although they have filed this application seeking to vacate the orders of this court made on 10th October 2016, granting leave and stay, they never made any prayer to be enjoined to these proceedings and that neither had this court given any directions for service upon affected parties as stipulated in Order 53 Rule 53 of the Civil Procedure Rules.

43. In response to the above contention, the interested parties counsel submitted that this court should invoke the provisions of Article 159 of the Constitution and determine this application on substantive justice and disregard procedural technicalities since the interested parties were not joined to these proceedings because they were being harassed by the police.

44. What the interested parties have conceded is that indeed, there is no application or order of this court enjoining them to these proceedings. Nonetheless, that they did not have such time to apply to be enjoined because they were being harassed by the police, and that therefore this court should ignore that issue of how the interested parties became parties to these proceedings and focus on substantive justice.

45. The question to be answered by this court is whether in the absence of any order sanctioning the joinder of the interested parties as parties to this matter, the interested parties can legally and technically bring the present application which has no prayer for joinder.

46. In my humble view, a proper party to proceedings is one who is impleaded in the suit or matter or cause and qualifies as either the applicant, exparte applicant, respondent or interested party or third party as the case may be; or whose presence before the court is necessary or relevant for the effective and effectual determination of the real matters in dispute. The court on the other hand has the discretion whether on its own motion or on application of either party to the proceeding or by the person so interested in the proceedings or who has a legitimate interest in the matter, to order that such party whose presence before the court is necessary, to be enjoined to the pleadings. It therefore follows that no suit or cause can be defeated for non-joinder or misjoinder of parties.

47. However, this court is confronted with an objection where no leave of court was sought or obtained for joinder of the interested parties who are seeking to upset the proceedings of this court held on 10th October 2016. neither did the court on its own motion order that the interested parties herein be served with the substantive motion.

48. In my humble view, unless the court makes a joinder of parties to proceedings suo motu, a party wishing to participate in the proceedings before the court must apply to be enjoined. In other words, there must be authority or order of the court enjoining such a party to the proceedings. One cannot jump into the proceedings in an arbitrary manner.

49. Even *amicus curie* will only join court proceedings on the order of the court. Admission into the judicial proceeding especially where one is not the primary party is an essential aspect in adjudication of cases which follow the principle that presence of proper parties before the court is *sine qua non* exercise of jurisdiction by the court. That principle will be defeated if parties were to enter into the existing proceedings as they wish without permission of the court.

50. In **Apex International Ltd & Anglo leasing and Finance International Ltd vs KACC[2012] e KLR** citing the **Nigeria Supreme Court in Goodwill and Trust Investment Ltd & Another V Will and Bush Ltd**, the court held that:

“ It is trite law that to be competent and have jurisdiction over a matter, proper parties must be identified before the action can succeed; the parties to it must be shown to be proper parties whom rights and obligation arising from the cause of action attach. The

question of proper parties is a very important issue which would affect the jurisdiction of the suit in limine. Where proper parties are not before the court the court lacks jurisdiction to hear the suit, and, where the court purports to exercise jurisdiction which it does not have, the proceedings before it, and its judgment will amount to a nullity no matter how well reasoned.”

51. It is not denied in this matter that the interested parties herein never sought leave of court to be enjoined to these proceedings as such interested parties. This is not to say that they have no identifiable interest in this matter; but that they have not even sought the authority of the court to participate in these proceedings before or on filing of their application herein which seeks very substantive order of setting aside the orders of this court made on 10th October 2016.

52. In addition, this court did not at the time of making the orders of 10th October 2010 order on its own motion, for the joinder of the interested parties herein to these proceedings.

53. Neither did the interested parties make any oral application to be enjoined to these proceedings before or during the hearing of this application subject of this ruling.

54. Their counsel only reacted to the serious objection as to their standing in this matter during rejoinder submission by submitting that the interested parties were not enjoined because they were being harassed by the police and that this court should invoke Article 159 of the Constitution.

55. In my humble view, the interested parties herein are not properly before this court and are without the authority of the court enjoining them to the proceedings since they were not primary parties hence they cannot invoke the jurisdiction of this court to determine their application to vacate orders of this court made on 10th October 2016.

56. The simplest thing for the interested parties would have been to seek leave of court to be enjoined to these proceedings, first, before moving on a spree for other far reaching orders. The 5 interested parties herein, I find, are total strangers to these proceedings and I would proceed without hesitation to strike them from the record which in effect renders their application seeking to vacate the orders of this court made on 10th October 2016 incompetent. The same is equally struck out of these proceedings as the application cannot stand on its own without a party(s) who brought the application.

57. I hasten to add that Article 159 of the Constitution was not intended to upset all other established principles of the law that a party who is not a primary party to the proceedings can only participate in the proceedings with leave of court or with authority of the court where the court on its own motion orders for such joinder.

58. In other words, a party cannot just jump into the arena of a dispute and seek for such substantive and far reaching orders without being enjoined to the proceedings and after it is caught up with an objection, it flags Article 159 of the Constitution saying *“I was in a hurry being chased so I just landed here please in the interest of justice, vacate all orders that you made in this matter because they adversely affect my interests.”*

59. Courts have in applying Article 159 of the Constitution not hesitated to hold that Article 159 of the Constitution which obliges the courts in their exercise of judicial authority be guided by the principles, inter alia, that justice shall be administered without undue regard to procedural technicalities, and therefore render substantive justice, is not a panacea for all ills and procedural pitfalls.

60. Assuming that I was to be found to have erred in my above holding, the next question would be whether the interested parties whom I have found are strangers to these proceedings would be entitled to the orders sought to vacate the orders of this court made on 10th October 2016 granting leave to apply for Judicial Review proceedings against the respondent and that leave granted do operate as

stay of the decision of the respondent until the substantive motion is filed, heard and determined.

61. According to the interested parties' pleadings, the leave granted was not deserved because the ex parte applicant withheld very material facts to this court which material facts are that it had been denied similar orders twice before Honourable Odunga J and by R.Wendo J in Meru High Court.

62. Secondly, that the respondent has already recruited and appointed the interested parties herein and that it has gone further and deployed them to their various offices for which they were recruited to render very essential services hence there is nothing to be stayed.

63. In the submissions, however, counsel for the interested party, submitted that his clients had no problem with the leave granted to remain but that they only have a serious problem with the stay which was granted on the day that they reported into offices on deployment and were chased away and barred from accessing their offices yet they were procedurally and legally recruited into office by the respondent; and that the residents of Isiolo who so desire the essential services of the interested parties will suffer irreparably as the operations of the County Government will be grounded since the persons who were appointed in those respective positions in acting capacities, their letters of appointment had been revoked.

64. With the interested parties counsel submitting that his clients had no issue with the leave granted, I need not delve into the issue of whether or not the leave granted was deserved. In other words, I will not disturb the order for leave since it is not denied that no substantive orders were made by Honourable Odunga J and Wendo J with the two files in Meru High Court having been consolidated and the applicant having withdrawn the matters as consolidated, there remained nothing to be heard except this matter which, it has not been demonstrated, was intended to abuse the court process or to vex the respondent and or any other interested parties.

65. What this court gathers from the interested parties pleadings and submissions, however, is a challenge to Judicial Review proceedings which this court is not seized of at this point in time to determine. On an ex parte application, leave to apply for Judicial Review can be refused, deferred to a substantive hearing or given. What a judge on an ex parte application is expected to do is no more than decide that there is an arguable case for judicial Review and not to determine any issues finally in favour of the applicant, unless it is shown that the leave was sought and granted outside the statutory period, or that leave was not deserved or at all.

66. Nonetheless, as the interested parties have relaxed their objection to the leave granted, that prayer for setting aside leave is hereby marked as withdrawn.

67. On whether the stay granted should be vacated to allow the interested parties occupy their various offices that they had been employed to occupy and allegedly deployed, both parties' advocates have submitted at length on the issue as to whether or not the respondent's recruitment of the interested parties was procedural, or legal. In my humble view, this court cannot delve into the depths of the legality or procedural propriety of the hiring of the interested parties by the respondent at this stage as that is the substantive issue that this court shall be called upon to determine in the substantive motion which is already filed. To determine that issue at this stage is to preempt the decision in the substantive motion which will be prejudicial to the parties.

68. However, at the time of making the order for stay, this court was satisfied on the material before it that there was a prima face arguable case and that if the stay sought was not granted, then the motion if successful, would be rendered nugatory.

69. Although the interested parties claim that they were already in office when the order for stay was made it was conceded by Mr Kobia that the order was served on the respondents the same day that the interested parties were to occupy their offices as deployed but that the interested parties were chased by the police and on the following day they were barred from accessing their offices.

70. In the *ex parte* applicant's prayers for leave, and substantive motion, *prayer No. 6 is clear that it seeks for prohibition directed at the respondent, prohibiting it from among others....and or deploying any new employees until budgetary allocations and requisitions by relevant departments due to vacancies are made, and the organizational structures of the departments of the applicant is approved by the applicant's County Assembly.*"

71. The applicant's prayers Nos 2,3, and 4 also seeks for Judicial Review orders of certiorari to quash the decisions of the respondent to recruit, and employ the interested parties herein on account of illegality and procedural impropriety; and further, that an appeal had been filed with the Public Service Commission pursuant to Section 77 of the County Government Act.

72. That being the case, in my humble view, to vacate the orders of stay when it is clear that the interested parties are not in office and when their recruitment, employment and deployment is being questioned on account of illegality is to prejudice the Judicial Review proceedings and the appeal pending before the Public Service Commission which, if successful would be rendered nugatory and the applicant will be a mere pious explorer in the judicial process. Court orders are never made in vain and as the matter herein can be fast tracked into an expeditious hearing, it is better be left to remain as it is and not to disturb the status quo so as to accord all the affected parties a hearing and not oust them from the seat of justice.

73. Accordingly, I find that it is not in the interest of justice to set aside the orders of stay issued on 10th October 2016. I dismiss the application for setting aside of the orders of 10th October, 2016 by the interested parties who are nonetheless non suited for they were never enjoined to these proceedings.

74. I order that each party shall bear their own costs of this application.

Dated, signed and delivered at Nairobi this 5th day of December, 2016.

R. E. ABURILI

JUDGE