



No. 200/2014

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL MISC APPLICATION NO. 19 OF 2014

RUPA COTTON MILLS (EPZ) LTD.....APPLICANT

VERSUS

1. THE SENIOR PRINCIPAL MAGISTRATE'S COURT, MACHAKOS

2. INSPECTOR GENERAL OF POLICE.....RESPONDENTS

AND

1. GEORGE LEMEIN OLE MUSEI

2. THOMAS KILONZO MATHEKA

3. ALLY NASOOR.....INTERESTED PARTIES

RULING

1. In an Application dated **10th February, 2014** brought pursuant to the provisions of **Order 53** of the **Civil Procedure Rules**, the Applicant seeks orders as follows:-
 - i. **That** leave be granted to the Applicant to apply for orders of *certiorari* to quash the orders of the **Senior Principal Magistrate** of **6th February 2014** in **Machakos CM Cr. C. No. 1449/2013**.
 - ii. **That** leave be granted to the Applicant to apply for orders of *prohibition* against the **Inspector General of Police** and all officers under him from enforcing the orders of **Senior Principal Magistrate** of **6th February, 2014** in **Machakos** or in any way ordering the **Applicant Company** to release the subject cotton.
 - iii. **That** the grant of leave do operate as a stay of the **Machakos Senior Principal Magistrates** courts order of **6th February, 2014** in **CM Cr. C. No. 1449** of **2014** and/or any action by the police in seeking the release of the subject cotton bales.
2. It is premised on grounds that ;-
 - i. **That** the Applicant a Limited Liability Company operating a cotton mill designed for spinning ginned cotton and manufacture of finished cotton products did on **28th November, 2013** purchase cotton bales from the **1st** and **2nd** Interested Parties at a price of **Kshs. 8,478,400/=**.
 - ii. **That** **1st** and **2nd** Interested Parties were subsequently charged in **Machakos Senior Principal Magistrate Court** case **Number 1447** of **2013** for the offence of stealing the cotton.

- iii. **That on 6th February, 2014 the Honourable Senior Principal Magistrate** allowed withdrawal of the charges against the accused for no apparent reason and without jurisdiction ordered the release of the cotton to the **3rd Interested Party**.
- iv. **That** the release of the cotton would adversely affect the **Applicant Company** as enumerated in the supporting affidavit. The applicant was not a party to the criminal proceedings and claims a lien on the cotton.
3. The application is supported by an affidavit deponed by **Probobdh K. Shah** the **Managing Director** of the **Applicant Company**
4. The order the Applicant seeks to quash was granted by the **Senior Principal Magistrate, Machakos** on the **6th February, 2014** the application having been made today the **11th February, 2014**, it is within **6 months**. In the premises, leave should issue as sought.
5. I therefore grant **prayers 2 and 3** as prayed. Further, prayer **4** is granted until I order otherwise.

DATED, SIGNED and DELIVERED at MACHAKOS this 11TH day of FEBRUARY 2014

L.N. MUTENDE

JUDGE