



**IN THE HIGH COURT AT NAIROBI**

**MILIMANI LAW COURTS**

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**PETITION NO. 165 OF 2014**

**BETWEEN**

**JULIUS NYERERE OPIYO ..... PETITIONER**

**AND**

**THE REPUBLIC ..... 1<sup>ST</sup> RESPONDENT**

**COMMISSIONER GENERAL, KENYA REVENUE AUTHORITY ..... 2<sup>ND</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. In the petition dated 7<sup>th</sup> April 2014, the petitioner seeks, inter alia, the following relief, “*An order of certiorari to quash the Kenya Revenue Authority withdrawal of the Petitioners Automated Customs Declaration Password ...*”
2. According to the deposition of Aqulino Mwaithali, a Senior Revenue Officer in the Customs Department, the issue at hand is the licence of LAMBVAL LOGISTICS LIMITED which is a clearing and forwarding company licenced by the Kenya Revenue Authority. The company was informed by a letter written to the National Police Service dated 3<sup>rd</sup> March 2014 that it had been suspended from the Sumba System pending investigation by the National Police Service.
3. It is clear that the Company which is the holder of the licence is not a party to this suit and that as a corporate body, the director cannot sue on its behalf. Furthermore, the Company has recourse against the decision to suspend its licence under the *East Africa Community Customs Management Act* and the East Africa Community Management Regulations to appeal to the Commissioner against the decision to suspend its licence.
4. In my view therefore, there is no cause of action against the 2<sup>nd</sup> respondent and it is accordingly struck out from these proceedings.
5. As regards the issue of anticipatory bail, I direct the petitioner to serve a notice of Director to Prosecutions with the petition and application and the matter is fixed for directions on 19<sup>th</sup> May 2014.

**DATED and DELIVERED at NAIROBI this 7<sup>th</sup> day of May 2014.**

**D.S. MAJANJA**

**JUDGE**

Mr Mukoya instructed by Kasamani and Company Advocates for the petitioner.

Ms Sanga, Advocate, instructed by the Kenya Revenue Authority for the 2<sup>nd</sup> respondent.

Ms Irari, Litigation Counsel, instructed by the State Law Office for the 3<sup>rd</sup> respondent.