



REPUBLIC OF KENYA

High Court at Embu

Judicial Review 51 of 2009

REPUBLICAPPLICANT

VERSUS

CENTRAL PROVINCIAL AND APPEAL TRIBUNAL.....1ST RESPONDENT

KERUGOYA PRINCIPAL MAGISTRATE COURT.....2ND RESPONDENT

MILLICENT KAGURE.....3RD RESPONDENT

BEATRICE MUTHONI MUCHIRA.....4TH RESPONDENT

EUNICE WANJA MURIITHI.....5TH RESPONDENT

MARIAM KABABU NJUE.....6TH RESPONDENT

EX-PARTE

LEONARD MWAI GACHOKI.....INTERESTED PARTY

RULING

This is the Notice of Motion dated 21/7/2011 seeking orders that the order allowing the leave to operate as stay should be vacated. The application is supported by the affidavit of the 3rd Respondent/Applicant. Its opposed by the Applicant/Respondent, who has never filed an affidavit in spite of having been served.

The record that this Court on 5/11/2009 granted the Applicant/Respondent leave to file Judicial Review for order of prohibition and mandamus. The said leave was to operate as stay until the hearing and determination of the substantive application which was to be filed within 21 days.

Since 5/11/2009 the Applicant has never file the substantive motion. My finding is that the leave could only be operative if the substantive motion was filed within 21 days. Since it was not filed, then there is NO LEAVE. And if there is no leave then there is no stay. I don't even see what is to be vacated. The stay died with the leave after the expiry of 21 days with no substantive motion having been made.

I therefore allow the application dated 21/7/2011 with costs.

DELIVERED, DATED AND SIGNED AT EMBU THIS 6TH DAY OF NOVEMBER 2012.

H.I. ONG'UDI

J U D G E

In the presence of:-

Mr. Kagio for 3rd – 6th Respondents

Njue CC