



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (NAIROBI LAW COURTS)**

**Judicial Review Appli 378 of 2009**

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

**AND**

**IN THE MATTER OF THE SOCIETIES ACT CAP. 108 LAWS OF KENYA**

**AND**

**IN THE MATTER OF PUMWANI RIYADHA MOSQUE COMMITTEE**

**AND**

**IN THE MATTER OF THE NOTICE REF. NO. SOC/13769 DATED 8<sup>TH</sup> JUNE, 2009 AND  
LETTER DATED 16<sup>TH</sup> JUNE, 2009 BY THE REGISTRAR OF SOCIETIES**

**B E T W E E N**

**REPUBLIC..... APPLICANT**

**V E R S U S**

**THE ATTORNEY GENERAL..... 1<sup>ST</sup> RESPONDENT**

**THE REGISTRAR OF SOCIETIES..... 2<sup>ND</sup> RESPONDENT**

- (1) HAMADI M. MUNYI**
- (2) ALI ABDULMAJID AHMED**
- (3) AHMAD IMAN ALI**
- (4) ABDUL KARURI MWANGI**
- (5) ABDULAH IDDI**
- (6) ISSA MOHAMED**

**ATHMAN MPONDA, RAMADHAN JAJAB RIITHO, HUSSEIN KAPLAGAT NENE Chairman,  
Treasurer and Trustee of Pumwani Riyadha Mosque Committee.**

**R U L I N G**

Before me is a Chamber Summons dated 19<sup>th</sup> June, 2009 filed by M/s Omboga & Company advocates for applicants. The application was filed under Order LIII, rules 1 (1), (2) (3) and (4) of the Civil Procedure Rules and Section 8 and 9 of the Law Reform Act (**Cap. 26**).

The application was filed under certificate of urgency and seeks for leave to file judicial review proceedings for certiorari, mandamus, and prohibition. It is also sought that leave, if granted, do operate as a stay of execution of the decision of the Registrar of Societies made on 16<sup>th</sup> June, 2009 recognising officials purportedly elected on 7<sup>th</sup> June, 2009 contrary to a court order.

The application was filed with a **STATEMENT OF FACTS IN SUPPORT OF THE EX PARTE APPLICATION** dated 18<sup>th</sup> June, 2009. It was also filed with a **VERIFYING AFFIDAVIT** sworn by **ATHMAN MPONDA**, one of the applicants. In the documents filed, especially the **VERIFYING AFFIDAVIT**, it is acknowledged that Wendoh J. made a ruling in HC Misc. Application No. 100 of 2009 on 22<sup>nd</sup> May, 2009. It is alleged that there was no compliance with the orders in that ruling.

Having considered the application, documents filed and submissions of Mr. Omboga who appeared before me, I wonder why the matter was not pursued in the cause in which Wendoh J. made a ruling, if the complaint is non-compliance with the court's orders. Be that as it may, at this threshold stage, I am not required to determine the merits of the case, but merely to consider whether the applicant's have demonstrated an arguable case. I will give the applicants the benefit of their day in court, so that the merits of the matter can be determined when all parties have had a chance to be heard. I find that the applicants have demonstrated an arguable case. I will grant them leave to file judicial review proceedings.

As for stay, I find no merits in granting the stay orders requested. I do not see any substantial detriment that will be suffered by the applicants if they are not granted the stay orders sought. Consequently, I order as follows-

- 1. Leave is granted to the applicant to file judicial review proceedings for certiorari, mandamus and prohibition. The Notice of Motion will be filed within 21 days from today.**
- 2. I decline to grant stay orders.**
- 3. Costs will follow the decision in the Notice of Motion.**

Dated and delivered at Nairobi this 1<sup>st</sup> day of July, 2009.

**George Dulu**

**Judge.**