



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI LAW COURTS)

MISC. APP. NO. 362 OF 1999

HON. DAVID MWENJE & 28 OTHERS.....
APPLICANTS

-VERSUS

1. THE SENIOR PRINCIPAL MAGISTRATE MAKADARA, NAIROBI

2. THE OFFICER COMMANDING POLICE DIVISION BURUBURU

3. THE DISTRICT OFFICER EMBAKASI DIVISION, NAIROBI.....
RESPONDENTS

RULING

On 6th April, 1999, this Court granted leave to the applicants to file an application for orders of Certiorari and Prohibition. It was further ordered that the leave granted do operate as a stay of all the cases against the applicants jointly and severally now pending before the lower courts.

In the same application, the applicants had sought an order that the 2nd Respondent (Officer Commanding Police Division, Buru Buru) and the 3rd Respondent (the District Officer, Embakasi, be restrained, by themselves or through officers under their command or any other person acting in such capacity as Police or Local Authority Officer or any other interested party, from harassing, evicting or arresting the applicants and/or other members of Embakasi Kayole squatters settlement scheme.

That order was not granted, and now the applicants have moved the court for an order that the order of 6th April, 1999 be reviewed in such a manner that the restraining order against the 2nd and 3rd Respondents be granted pending the determination of the substantive application.

The application is strenuously opposed; and I have the submissions of both counsels on record. I have noted that some of the matters canvassed during the arguments herein, especially by the learned counsel for the respondents, belong to the province of the merits or otherwise of the main application.

In an application of this nature, I believe it may be prejudicial to the parties if the court were to say more than is necessary to ensure that the parties move to the next stage. With that in mind, I have asked myself first, whether or not I have jurisdiction to grant the orders sought and secondly what may be the consequences of either granting or refusing to grant the same.

On the basis of Civil Appeal No. 159 of 1997, The Officer Commanding Wajir Police Station & Others V. Mohamed Abdi Ogle. I have no doubt that I have the jurisdiction to grant prayer 4 of the Chamber Summons herein.

I note that these proceedings under Judicial Review are intertwined with a matter now pending in the High Court, i.e. Misc. Civil Application No. 272 of 1999. The subject matter in both cases is land and whether or not the title references are correct is of no consequence at this stage as the hearing in both cases is yet to be reached.

Suffice is to say that, if the 2nd and 3rd Respondents are not restrained as sought by the applicants the remedies sought maybe rendered nugatory. To that extent I, with respect, agree with the learned counsel for the applicants.

One last observation; one would be right to observe that the respondents are overzealous in pursuing the applicants yet there is a civil matter under civil jurisdiction which is yet to be resolved.

Whatever the case, they the respondents, should not be seen to be taking sides in a matter that is still pending before the court.

Be that as it may, I am satisfied that prayer No. 4 of the Chamber Application filed by the applicant should be granted. It is accordingly ordered.

The costs shall be in the cause.

Orders accordingly.

Delivered and dated at Nairobi this 30th day of April, 1999.

A. MBOGHOLI MSAGHA

JUDGE

Mr. Maseki for the applicant

Mr. Bwononga for the Respondents

Ruling delivered.

A. MBOGHOLI MSAGHA

JUDGE