



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAROK**

**JUDICIAL REVIEW CAUSE NO. 25 OF 2017**

**IN THE MATTER OF AN APPLICIAOTN BY AVENTURES ALOFT (K) FOR LEAVE TO  
APPLY FOR JUDICIAL REVIEW ORDERS OF CERTIORARI, PROHIBITION AND  
MANDAMUS**

**AND**

**IN THE MATTER OF THE COUNTY GOVERNMENTS ACT, 2012**

**AND**

**IN THE MATTER OF FARI ADMINISTRATION ACTIOSN, ACT 2015**

**AND**

**IN THE MATTER OF THE TERMINATE ACCESS TO THE PROPERTY KNOWN AS CIS  
MARA/TALEK/11**

**BETWEEN**

**MADA HOTELS LIMITED.....APPLICANT**

**VERSUS**

**COUNTY GOVERNMENT OF NAROK.....RESPONDENT**

**RULING**

The Applicant by Chamber Summons dated 31<sup>st</sup> October, 2017 sought to apply for an order of certiorari directed at the Respondent in quashing the decision of Respondent to deny the Applicant access and rights of ingress into the Maasai Mara Game Reserve and an order of Prohibition and mandamus.

The Applicant sought for the leave of the court to commence Judicial Review proceedings under the provisions of order 53 of the Civil Procedure Rules Section 8 of the Fair Administration Actions Act 2015.

When the Applicant first appeared before me on 9<sup>th</sup> November, 2017 I granted the Applicant leave to commence Judicial Review proceedings but declined that the said leave do operate as stay which the application sought be heard Interparties.

The Application for leave to operate as stay was supported by the Supplementary Affidavit of Valamani

Bhaskar which was filed in court on 16<sup>th</sup> November, 2017 and his Verifying Affidavit in support of the application for leave.

The Applicant avers that sometime in October, 2017 the Respondent destroyed a bridge at its hotel situated within the Maasai Mara Game Reserve and that said action by the Narok County Government has derived its client's access to the game reserve and hence incurring heavy losses and continues to loss guests to the hotel. The Applicant further avers that the said bridge has been in existence for about 30 years and that the same was constructed with the Approval and consent of the Respondent.

The Applicant contends that the Respondent's said actions amounts to an abuse of its powers and it had no jurisdiction to terminate the Applicant's access to the Game Reserve and contravened its constitutional rights under Article 10,24,25,26,27 and 35 of the constitution.

In opposition to the said Application the Respondent had filed a Replying Affidavit sworn by Benjamin Ole Tina who is the Deputy Director of security of the Respondent.

The Respondent avers that the facts as presented by the Applicant are not true. He proceeded and stated that the Game Reserve has 7 designated and gazetted entry points and that the said Gazetted entry points are equipped with point of Sales Equipment, CCTV facilities that monitor the entry into and exit from the Reserve which are meant to regulate, monitor and the collection of Revenue and visit to the game reserves.

The Respondent states that it is only through such gates that one can access the reserve, however, the Applicant has resisted the use of the same which has led to total disorder.

The Respondent also averred that it is not only Applicant's bridge that was closed but 12 other such bridges that were used to gain unauthorized entry to the park which all posed serious security breaches and threats to the reserve.

I have had the benefit to read the pleadings that were filed and submissions made by learned counsel for the parties in support of whether the leave that was granted should operate as stay pending the hearing and determination of the substantive application.

Having heard counsels in their submissions it is not contested that Respondent has the exclusive power to manage the Maasai Mara Game Reserve. The Applicants have complained about the demolition of a bridge to its hotel and not the demolition of a bridge to grant it access to the park. The Applicant in its affidavit have not manifested that the Respondent have completely locked them out of the park.

From the Affidavits on record it has not been demonstrated that the Respondent has acted in excess of its powers and unreasonably as the decision made will affect all the visitors to the park and hotels situated therein.

The Applicant seems to tactfully resist to abide by rules to govern the regulation and to manage the reserve which is a fragile ecosystems.

Further the Applicants have invited me to say an Act which I believe has already been undertaken. The court can only intervene in a situation where the act complained about is about to be implemented or is in the cause of implementation. The Applicant has also not exhibited any exceptional circumstances to warrant the reversal of the order that has been made.

The upshot of the above is that the Application for leave to operate as stay is hereby not allowed.

Costs in the cause.

**DATED, SIGNED and DELIVERED** in open court at **NAROK** on this **22<sup>ND</sup>** day of **NOVEMBER, 2017**

**Mohammed Noor Kullow**

**Judge**

In the presence of:

Mr Njenga for exparte/Applicant

Mr Kemboi with Ms Wainaina for the Respondent

**Mohamed Noor Kullow**

**Judge**