



REPUBLIC OF KENYA

Industrial Court of Kenya

Miscellaneous Application 1 of 2012

PARBAT SIYANI CONSTRUCTION LTD}

PARBAT SIYANI

MUKESH HALAI

NITIN BASAIS VALJI APPLICANTS

VERSUS

DIRECTOR OF PUBLIC PROSECUTION 1ST RESPONDENT

ATTORNEY GENERAL..... 2ND RESPONDENT

AND

SAMSON WANJALA MATETE

GEOFFREY ONGESA MANONO.....INTERESTED PARTIES

RULING

This is an application for leave to file judicial review application for the prerogative orders of prohibition and for the leave to operate as stay of an intended private prosecution.

The Applicant's Counsel has submitted that the intended prosecution would arise out of the default consent of the Director of Public Prosecution (DPP) in review of the interested parties' letter dated 22.08.2012. The letter states that the interested parties would deem themselves to have obtained the DPP's consent if the allowed 7 days from 22.08.2012 lapsed.

Counsel has submitted that the matter in dispute is subject to investigation by a Labour Officer under the Employment Act, 2007, and the Labour Institutions Act, 2007.

This court finds that in the circumstances where the interested parties would enjoy default consent for want the DPP's express response to the request for consent amounts to a constructive decision that a stay order would apply. If a stay order is not issued the applicant will be subjected to a private criminal proceeding on the basis of a constructive consent to commence prosecution. The court further finds that the matters of employment should not be submitted to a criminal process in circumstances whereby statutory provisions and the constitution has clearly spelt out the investigative and dispute resolution institutional framework which include this court and the Labour officers.

In the circumstances the court:

- (a) Grants the prayers in No. 1, 2 and 3 of the chamber summons dated 30.08.2012.
- (b) The applicant to file and serve the Notice of motion as prescribed in the rules.
- (c) The Applicant shall serve the pleadings, supporting documents and this court orders upon interested parties within 7 days of filing the Notice of motion.
- (d) Costs in the cause.

Delivered at Nairobi this 30th day of August, 2012 in presence of Ms P.K. Makori holding brief for Mr. Kelvin Mogeni for Applicant.

Byram Ongaya
JUDGE