



**Republic v Director of Public Prosecution & 3 others; Manku  
(Exparte Applicant) (Miscellaneous Civil Application E049 of 2023)  
[2023] KEHC 24959 (KLR) (Judicial Review) (27 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 24959 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
MISCELLANEOUS CIVIL APPLICATION E049 OF 2023  
JM CHIGITI, J  
OCTOBER 27, 2023**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTION ..... 1<sup>ST</sup> RESPONDENT**

**INSPECTOR GENERAL OF POLICE ..... 2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**THE CHIEF MAGISTRATES COURT, MILIMANI CRIMINAL COURT**

**DIVISION ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**PARMINDER SINGH MANKU ..... EXPARTE APPLICANT**

**JUDGMENT**

1. By a Chamber Summon dated 13<sup>th</sup> April, 2023 - brought under Section 9 of the *Fair Administrative Action Act*; Sections 8 and 9 of the *Law Reform Act* (Chapter 26 the Laws of Kenya); Order 53, Rule 1, 2, 3 & 4 of the Civil Procedure (Revised (sic) Rules) - the ex-parte applicant sought for leave to inter alia commence judicial review proceedings seeking prerogative orders of certiorari and prohibition.
2. The Applicant filed the Chamber Summon application and Substantive Notice of Motion application on 13<sup>th</sup> April, 2023. On 14<sup>th</sup> April, 2023 the ex-parte applicant was granted leave by this court to, inter alia, commence judicial review proceedings.
3. The upshot of the foregoing is that the Notice of Motion is filed without leave.



4. Order 53, Rule 3 of the Civil Procedure Rules provides for application to be by notice of motion. It states that;

“3.

- (1) When leave has been granted to apply for an order of mandamus, prohibition or certiorari, the application shall be made within twenty-one days by notice of motion to the High Court, and there shall, unless the judge granting leave has otherwise directed, be at least eight clear days between the service of the notice of motion and the day named therein for the hearing.” (Emphasis Added).

5. Additionally, Order 53, Rule 1 of the Civil Procedure Rules, provides that applications for mandamus, prohibition, and certiorari to be made only with leave. It states,

“1.

- (1) No application for an order of mandamus, prohibition, or certiorari shall be made unless leave therefor has been granted in accordance with this rule.” (Emphasis Added)

6. Clearly, Order 53 Rule 1 and 3 of the Civil Procedure Rules are couched in mandatory terms. Therefore, a substantive notice of motion application, for prerogative orders, can only be properly filed before this court upon the granting of leave. Also, the substantive application should be filed within twenty-one (21) days. However, the court, in some instances, may grant extension of time to file the substantive application out of time.

7. It then follows that the Notice of Motion dated 13<sup>th</sup> April, 2023 is fatally defective and incompetent, for being filed in absence of leave. The same is struck out with no orders as to cost.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> OCTOBER 2023**

.....

**JOHN CHIGITI (SC)**

**JUDGE**

