



**Republic v National Transport & Safety Authority & 2 others; Metro Trans EA Limited (Exparte);
Kaka Travellers Co-operative Savings Credit Society Limited (Interested Party) (Application
E022 of 2023) [2023] KEHC 27164 (KLR) (Judicial Review) (29 December 2023) (Judgment)**

Neutral citation: [2023] KEHC 27164 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
APPLICATION E022 OF 2023
J NGAAH, J
DECEMBER 29, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

NATIONAL TRANSPORT & SAFETY AUTHORITY 1ST RESPONDENT

KIAMBU POLICE COMMANDER 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

AND

METRO TRANS EA LIMITED EXPARTE

AND

**KAKA TRAVELLERS CO-OPERATIVE SAVINGS CREDIT SOCIETY
LIMITED INTERESTED PARTY**

JUDGMENT

1. On 22 February 2023, the applicant was granted leave to file a substantive motion for judicial review reliefs. To be precise, the applicant was to seek orders for mandamus and prohibition against the respondents. Amongst the directions that were given upon the grant of leave was the direction for the substantive motion to be filed and served within seven days from the date of grant of leave.
2. On 16 June 2023, this Honourable Court allowed an application for joinder by Kaka Travelers Co-operative Savings and Credit Society Limited to be joined to the proceedings as an interested party



and gave further directions on the hearing and disposal of the substantive suit. In particular, the court ordered that:

- " 1. Kaka Travelers Co-operative Savings and Credit Society Limited are joined to this suit as an interested party.
2. The applicant to serve them with the substantive motion and summons seeking leave to file the substantive motion within three days of the date hereof.
3. The respondents and interested party to file and serve their responses within seven days of the date of service of the motion to the interested party.
4. The motion shall be disposed of by way of written submissions:
 - (i) The applicants to file their submissions within seven days of the date of service of the respondents and interested party's responses.
 - (ii) The respondents and interested party to file and serve their submissions within seven days of the date of service of the applicants' submissions.

Mention for highlighting of submissions on 4 July 2023."

3. On 4 July 2023 Mr. Marube, holding brief for Ms. Mukami, the learned counsel for the applicant, informed the court that Ms. Mukami had not complied with the court's directions because she had been unwell and, therefore, she wanted more time to comply. The hearing was then adjourned to 26 July 2023.
4. On 26 July 2023, Ms. Mukami was, once again, absent and Mr. Canon who held her brief informed the court that Ms Mukami had not filed the applicant's submissions because she was unwell. The court adjourned the matter to 9 October 2023.
5. But on 9 October 2023 Mr. Angoh appeared for the applicant. Apparently, he had taken over the matter from the applicant's previous advocates but had not filed a notice of change of advocates. This what I gathered when he informed that court as follows:

"We are yet to come on record on behalf of the applicant."
6. Even then, the applicant's submissions had not been filed. Since no reason was given for failure to file the submissions and, considering that the highlighting of submissions had been adjourned on two previous occasions at the instance of the applicant, I reserved the application for judgment on 22 December 2023.
7. When I retreated to write the judgment, I could not find the substantive motion that ought to have been filed by the applicant. It was neither in the court file nor on the Case Tracking System's portal.
8. In these circumstances, I can only proceed on the assumption that the motion was not filed and, therefore, there is no suit for determination by this Honourable Court. But even if there was, it would still be dismissed for want of prosecution. The court having directed that the suit would be disposed of by way of written submissions, and the applicant having failed to file the submissions, no other order would be open to this Honourable Court except the order for dismissal for want of prosecution.
9. But in the absence of any evidence that a substantive motion was filed, the only order I can make is the order for closure of the file. The file is thus marked as closed. The respondents and interested party did



not, and, of course, could not have responded to a non-existent suit and, therefore, I make no order as to costs. It is so ordered.

SIGNED, DATED AND POSTED ON CTS ON 29 DECEMBER 2023

NGAAH JAIRUS

JUDGE

