



Republic v Mwaura (Chairman) & 2 others (Sued as officials and on behalf of the Management Committee of Ruiru Sports Club); Muriu (Exparte) (Judicial Review E007 of 2021) [2022] KEHC 12062 (KLR) (23 June 2022) (Ruling)

Neutral citation: [2022] KEHC 12062 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
JUDICIAL REVIEW E007 OF 2021
MM KASANGO, J
JUNE 23, 2022**

BETWEEN

REPUBLIC APPLICANT

AND

PETER MWAURA (CHAIRMAN) 1ST RESPONDENT

ANTHONY KAMAU (HONORARY SECRETARY) 2ND RESPONDENT

DAVID KABERA (HONORARY TREASURER) 3RD RESPONDENT

**SUED AS OFFICIALS AND ON BEHALF OF THE MANAGEMENT
COMMITTEE OF RUIRU SPORTS CLUB**

AND

MICHAEL MURIU EXPARTE

RULING

1. The ex parte applicant Michael Muriu seeks by chamber summons dated September 8, 2021 leave to apply for orders of judicial review. The ex parte applicant did not state in that chamber summons the precise judicial review orders he seeks.
2. Order 53(1) of the *Civil Procedure Rules* provides that an application for mandamus, prohibition or certiorari can be made after leave therefor has been granted. Sub-Rule(2) of that order provides:-

“An application for such leave as aforesaid shall be made ex parte to a judge in chambers, and shall be accompanied by a statement setting out the names and description of the applicant,



the relief sought and the grounds on which it is sought and by affidavit verifying the facts relied on.”

3. On September 16, 2021 when the chamber summon was filed, the court ordered for the same to be heard, this order was in exercise of the discretion afforded to a judge under Order 53(4).

4. The purpose for which I reproduced Order 53(2) above, is to emphasise that an application needs to be filed for leave to apply for judicial review orders. The chambers summons filed by the ex parte applicant in this matter is deficient for it fails to set out what judicial review order are subject of the leave sought. The ex parte applicant instead set out, in his statutory statement the reliefs he seeks as certiorari, prohibition and mandamus. There is a decision which splendidly speaks to what is before that is a *HM v SK* [2015] eKLR thus:-

“21. Orders are sought in applications. The prayers in the application should be comprehensive and should carry sufficient detail. The order that the court eventually makes should be based on the prayer sought and not on the contents of the affidavit. The affidavit in support merely sets out the factual background to the application. In a sense therefore the application is superior to the affidavit for the affidavit is merely an appendage to the application. An application can stand without an affidavit, but an affidavit cannot stand without the application it purports to support. There must therefore be a logical connection between the affidavit and the application.”

5. The chamber summons dated September 8, 2021 is incompetent for it does not set out the specific orders for judicial review sought by the ex parte applicant. It is for that reason it is dismissed with costs.

RULING DATED AND DELIVERED AT KIAMBU THIS 23RD DAY OF JUNE, 2022.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Mourice

For Ex Parte Applicants :- Gatuhi Advocate

For Respondents:- N/A

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE

