



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

JUDICIAL REVIEW NO. 5 OF 2017

IN THE MATTER OF AN APPLICATION BY EBRAHIM MWANJE ZIA FOR JUDICIAL REVIEW AND FOR ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION

AND

IN THE MATTER OF THE CONSTITUTION OF THE SOVEREIGN REPUBLIC OF KENYA, 2010

AND

IN THE MATTER OF THE COUNTY GOVERNMENTS ACT, 2012

AND

IN THE MATTER OF THE LAW REFORM ACT, CAP 26 OF THE LAWS OF KENYA

AND

IN THE MATTER OF FAIR AND ADMINISTRATIVE ACTIONS ACT, 2015

AND

IN THE MATTER OF THE CIVIL PROCEDURE RULES, 2010

REPUBLIC.....APPLICANT

VERSUS

THE KILIFI COUNTY PUBLIC SERVICE BOARD.....RESPONDENT

EBRAHIM MWANJE ZIA.....EX-PARTE APPLICANT

JUDGEMENT

1. On 30th March, 2017 this court granted leave to the ex-parte Applicant, Ebrahim Mwanje Zia to commence judicial review proceedings and seek various orders pertaining to a disciplinary process that the Respondent, Kilifi County Public Service Board had initiated against the ex-parte Applicant. The grant of leave was subsequently followed with an order issued on 3rd April, 2017 directing that the leave would operate as stay of the Respondent's impugned actions.

2. The matter was subsequently mentioned several times before the Respondent filed submissions and this matter was reserved for judgement.

3. A perusal of the file does not disclose any substantive motion filed in compliance with the leave granted to the ex-pare Applicant. There is also no response filed by the Respondent. Of course there cannot be a response to a non-existent application.

4. Rule 3(1) of Order 53 of the Civil Procedure Rules, 2010 (CPR) requires the filling of a notice of motion within 21 days from the date of the grant of leave to apply for an order of mandamus, prohibition or certiorari. It is the notice of motion which is filed after leave is granted

that forms the basis of the ex-parte applicant's claim for judicial review remedy. Without the notice of motion, there is no case to be considered by the court.

5. In this case, the leave granted to commence judicial review proceedings lapsed twenty one days from 30th March, 2017 when the leave was granted. There is therefore no application for any of the judicial review orders which the ex-parte applicant had been granted leave to seek.

6. In the submissions filed on 17th November, 2017 counsel for the Respondent also submitted that this court has no jurisdiction to hear the ex-parte Applicant's claim. Although I have already held that there is no application for judicial review orders before this court, it is important to render an opinion on the Respondent's submissions on the alleged lack of jurisdiction by this court.

7. It is noted that the basis of the ex-parte Applicant's application for leave perambulates around his employment with the Respondent. He challenges his interdiction and contemplated dismissal.

8. Article 162(2) of the Constitution provides for the establishment of a court with the status of the High Court to hear and determine employment and labour relations disputes. Such a court was established by the Employment and Labour Relations Court Act, 2011 which at Section 12 delineates the jurisdiction of the said court. Looking at the facts of this case, it is clear that the ex-parte Applicant's cause of action squarely falls within the jurisdiction of another court. By virtue of Article 165(5)(b) this court has no jurisdiction to handle disputes reserved for that court.

9. Jurisdiction is everything and once a court establishes that it has no jurisdiction it downs its tools – See **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR 1**. I need not say more but down my tools.

10. In conclusion the proceedings before this court are struck out with costs to the Respondent.

Dated, signed and delivered at Malindi this 17th day of April, 2018.

W. KORIR,

JUDGE OF THE HIGH COURT