



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**JUDICIAL REVIEW NO. 42 OF 2012**

**IN THE MATTER OF AN APPLICATION BY SIAT KEDIE SALAT TO APPLY FOR  
JUDICIAL REVIEW ORDERS OF CERTIORARI PROHIBITION AND MANDAMUS**

**AND**

**IN THE MATTER OF LAW REFORM ACT (CHAPTER 26 LAWS OF KENYA)**

**AND**

**IN THE MATTER OF KENYA PRISONS ACT (CHAPTER 90 LAWS OF KENYA AND  
CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF TENDER Q/UOE/15-16/ACADEMICS/088 FOR PRINTING OF  
EXAMINATION BOOKLETS**

**SIAT KEDIE SALAT .....APPLICANT**

**VERSUS**

**COMMISSIONER OF PRISONS.....RESPONDENT**

**JUDGMENT**

1. On 17<sup>th</sup> February 2012, 5 years ago, Honourable Korir J did grant to the exparte applicant herein Siat Kedie Salat leave to institute judicial review proceedings as sought in the chamber summons dated 27<sup>th</sup> January 2012 and filed in court on 1<sup>st</sup> February 2012. The application was to be instituted within 7 days from the date of issue of leave. However, by 15<sup>th</sup> March 2012 the exparte applicant had not filed the substantive notice of motion hence he sought by a notice of motion dated 2<sup>nd</sup> March 2012 for enlargement of time within which to file the substantive notice of motion, which time had lapsed by 24<sup>th</sup> February 2012. The application for enlargement of time dragged on and on and was according to the court record, either fixed for inter parties hearing or mention on several occasions but for one reason or the other, the parties were not ready to proceed with the hearing including 25<sup>th</sup> July 2012; 24<sup>th</sup> October 2012; 10<sup>th</sup> December 2012; 12<sup>th</sup> February 2013; 16<sup>th</sup> April 2013; 16<sup>th</sup> May 2013; 16<sup>th</sup> July 2013; 16<sup>th</sup> July 2013; 4<sup>th</sup> December 2013; 4<sup>th</sup> February 2014; and 4<sup>th</sup> March 2014.

2. On the latter date, the court directed the Deputy Registrar to issue dismissal noticed for 8<sup>th</sup> April 2014 on which date the parties were absent. On the latter date, a further order was made by Korir J to the Deputy Registrar to issue dismissal notices for 28<sup>th</sup> May 2014.
3. The Notice to show cause why the matter could not be dismissed was heard on 28<sup>th</sup> May 2014 and the court after hearing the parties' advocates saved the case and directed that the matter be heard on 9<sup>th</sup> July 2014. It is on the latter date that the application for enlargement of time to file the substantive notice of motion was finally heard and allowed. The applicant was granted 14 more days to file and serve the substantive notice of motion, and the respondents were allowed 14 days to file their responses to the motion from the date of service, with the applicant having corresponding leave of court to file and serve a further affidavit if need be, within 7 days from the date of service. The matter was then slated for mention on 16<sup>th</sup> October 2014 for further directions. Again, by the latter date, there was no compliance on the part of the exparte applicant herein with the order for enlargement of time. On 4<sup>th</sup> November 2014, Mr Kinyanjui counsel for the applicant sought for more time to file the substantive notice of motion as the client had been unable to raise shs 17,000 court fees for filing, within the 14 days earlier on granted on 9<sup>th</sup> July 2014.
4. The respondent's counsel Mr Odhiambo did not object to the request and Honourable Korir J granted a further 30 days to the exparte applicant within which to file and serve the substantive notice of motion.
5. On 10<sup>th</sup> December 2014, Mr Kinyanjui informed the court that they had filed and served the substantive application on 13<sup>th</sup> November 2014 and served it on 5<sup>th</sup> December 2014 upon the respondents and sought for a hearing date.
6. This judgment therefore determines the exparte applicant's application dated 13<sup>th</sup> November 2014 brought by way of chamber summons seeking for the following Judicial Review orders:
  1. An order of certiorari to remove into this High Court and quash and revoke the decision of Commissioner of Prisons contained in a letter Ref S/23/Vol 23/Vol. III/74 dated 5<sup>th</sup> December 2011 reverting the applicant from Chaplaincy duties to general duties;
  2. An order of prohibition directed at the respondent herein prohibiting them, by themselves, their servants or agents from executing the decision aforesaid.
  3. The costs of damages and interest occasioned by this application be paid by the respondent.
7. The application is predicated on the statutory statement and verifying affidavit of Siat Kedie Salat sworn on 13<sup>th</sup> November 2014 and the annexures thereto.
8. The exparte applicant's case as stated in the facts contained in the statutory statement and verifying affidavit is that he was a Prison Warder constable PF No. 20214/1988020652 attached to Maralal Prison and formerly in Athi River Prison in the Chaplaincy duties. That he had served prisons for 27 years twelve of which were in the Chaplaincy. That he had obtained a degree in Islamic Sharia Law and that on 5<sup>th</sup> December 2011 the Commissioner of Prisons reverted the applicant from Chaplaincy to general duties and a signal communicated on 13<sup>th</sup> December 2011 transferring him from Athi River to Maralal Prison.
9. That the decisions to re designate the exparte applicant from Chaplaincy to general duties and to transfer him were illegal, harsh, oppressive, defaming, intimidating, unfair, without any justification, malicious and lacked due process. That he was condemned unheard. That the allegations made against him that informed the disciplinary action to transfer him to a hardship area and reversion to general duties were false, fabricated, baseless, utterly malicious and unjustified.

10. It was averred that standing orders paragraphs 1 and 2 of Prisons Chaplaincy Services stipulates that the Chief Kadhi advises the Commissioner of Prisons on spiritual disciplines and welfare needs of Maalims and in consultation with the commissioner he personally plays a part in the selection and appointment of suitable Muslim Maalims.
11. That the scheme to revert the applicant to general duties from chaplaincy started on 5<sup>th</sup> October 2010 when the applicant was unfairly ordered to vacate the allocated self contained house to a single room Mabati house. That even after transferring him to Maralal, from Athi River Prison, the respondent failed to provide the applicant with transport but instead forced him to vacate the single room Mabati house on grounds that he posed a great danger.
12. The exparte applicant laments that his record of performance as Maalim had been impeccable and impressive as after only one year he initiated and completed a project for the construction of a mosque inside the Athi River Prisons compound.
13. The exparte applicant complains that the decision to revert him from spiritual to general duties has impacted negatively on him socially, morally psychologically, economically, professionally and in terms of advancement in his career.
14. That the exparte applicant continues to suffer public ridicule and embarrassment as a result of the impugned decision of 5<sup>th</sup> December 2011. That the aforesaid decision was irregular, punitive, oppressive, intimidating, defaming, damaging and spoiling his reputation and without any justification. That no formal charges were preferred against the applicant and that he was never given an opportunity to defend himself contrary to the Rules of Natural Justice, The Prisons Act, Public Servants Code of Conduct, Kenya Prison standing order Chaplaincy service and the Constitution of Kenya.
15. The exparte applicant alleges that the impugned decisions were actuated by the applicant's demands that pertinent problems affecting his work including security in the mosque, trespassers, grazers and office of the Maalim be urgently addressed.
16. Further, that the decision to revert the applicant to general duties will curtail and frustrate his growth as a Maalim and that the decision is contrary to the Kenya Prisons Scheme of Service and Public Code of conduct related to Public Scheme of Service.
17. The respondent never filed any replying affidavit or grounds of opposition.
18. Both parties advocates filed written submissions which they wholly adopted for disposal of the chamber summons seeking for substantive orders of Judicial Review.
19. The exparte applicant's submissions were filed on 19<sup>th</sup> January 2017 whereas the respondent's submissions were filed on 23<sup>rd</sup> June 2015. According to the exparte applicant, the powers of the Commissioner of Prisons are not absolute. They are guided by prisons standing orders and the scheme of service or prisons uniformed personnel and that the respondents have not proved alleged dishonesty, poor performance or insubordination alluded to in the letter of 5<sup>th</sup> December 2011 hence there is no justification for the actions of the Commissioner.
20. That the respondent never denied the fact that the applicant was never accorded any hearing before being condemned, which violates the principles of natural justice and the Constitution of Kenya, 2010.
21. Reliance was placed on **Republic vs The Vice Chancellor JKUTAT Exparte Dr Cecilia Mwathi & Moses Muchira Miscellaneous Application No. 30/2007** where Nyamu J (as he then was) stated that though the University Council was mandated to hire and remove academic staff, the court can intervene in the following situation:-

1. Where there is an abuse of discretion;
2. Where the decision maker exercises discretion for an improper purpose.
3. Where the decision maker is in breach of duty to act fairly.

22. In the instant case, it was submitted that this case falls in the above categories of Judicial Review proceedings. That the applicant was subjected to unfair accusation of insubordination which were not substantiated as he was never given a chance to respond to the same before actions were taken against him.

23. It was also submitted that the relegation of the applicant to a single room; and transfer affected him as his wife was to deliver the same month and his child was to join secondary school which affected him negatively as his salary was also reduced. Reliance was placed on **John Ogendo Anyona v Chief of Defence Forces JR 2/2014** where Nduma Nderi J held that the respondents exercised their jurisdiction unreasonably and thereby abused the authority conferred to them by statute. The court quashed the respondent's decision to demote and dismiss an officer of 26 years good standing. In the above case, the respondents were also ordered to reinstate the applicant to his previous position with full pay and to retire him without loss of rank and benefits.

24. It was submitted that for the period the exparte applicant herein worked as a prisons warder, no complaint was ever raised against him hence it was demeaning for the respondent to redesignate him from Maalim to general duties and to move him into a mabati single room from a self contained house. Further, that his transfer was malicious as his seniors demanded from him money thinking he had from donors who supported construction of a Mosque in Athi River Prison.

25. The applicant maintained that his assertions and depositions had not been controverted and that what he sought in the application for leave is what he sought in the application for substantive Judicial Review orders and that the filing of the substantive notice of motion by way of chamber summons was an unfortunate oversight on his part which error is not fatal to the applications.

26. Reliance was placed on **Republic vs SPM's Limuru Law Courts & Others JR 413/2014** to argue that rules of procedure are hand maidens and not mistresses of justice and should not be elevated to a fetish since theirs is to facilitate the administration of justice in a fair, orderly and predictable manner, not to fetter or choke it.

27. Further, it was submitted on behalf of the applicant that in any event, there is no prejudice occasioned to the respondent by the filing of chamber summons instead of notice of motion as that does not go to the root of and merits of the proceedings.

28. The applicant submitted that actions of the respondent are in violation of Article 28 of the Constitution on the right of one's dignity to be respected and protected. He prayed for the orders sought and that he be returned to his duties of chaplain.

29. On the part of the respondent who did not file any replying affidavit as none is on record, it was submitted vide written submissions filed on 23<sup>rd</sup> June 2015 that the applicant filed a chamber summons for notice of motion contrary to order 53 Rule 3 of Civil Procedure Rules hence the application is fatally defective.

30. Secondly, that the chamber summons for the main prayers as prayed are different from the chamber summons for leave hence the application is contrary to the provisions of Order 53 of the Civil Procedure Rules.

31. It was also submitted that in the application for leave, the prayers were for certiorari and mandamus whereas the chamber summons for the main prayers is for certiorari and prohibition orders hence there is no application before the court that needs to be determined and therefore the chamber

summons should be dismissed with costs to the respondent.

32. On whether the orders sought can be issued, it was submitted that the applicant had not shown how the respondent's decisions were marred with irrationality, impropriety and irregularity and that as to how the respondents acted ultra vires, in excess or without jurisdiction or irrationality in making its determination has not been demonstrated.

33. The respondents further submitted that mandamus cannot issue as it will not serve any purpose.

34. On whether the respondents had powers to make the decisions, it was submitted that the respondent had power to make decisions in regard to redeployment.

35. On whether the order of prohibition can issue, it was submitted that the same had been overtaken by events as the applicant has already settled in his new station of Maralal Prisons.

### **DETERMINATION**

36. I have carefully considered the Ex parte applicant's application by way of chamber summons filed on 13<sup>th</sup> November 2014 and dated the same day. I have also considered the submission filed by both parties' advocates and cited authorities.

37. In my humble view, the main issues for determination are:

i. whether *the chamber summons dated 13th November 2014 is properly before the court.*

38. On this issue, the respondent submitted that the applicant's application violates Order 53 Rule 3 of the Civil Procedure Rules which stipulates 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 be at least eight clear days between the service of the notice of motion and the day named therein for the hearing.***

39. In the instant case, it is not in dispute that the application for Judicial Review orders was commenced on 13<sup>th</sup> November 2014 by way of chamber summons and so was the application for leave. That that being the case, it is clear that the provisions of Order 53 Rule 3(1) of the Civil Procedure Rules on the mode of instituting the substantive motion after leave is granted was violated.

40. However, I am in agreement with the ex parte applicant that the court should be slow to dismiss the application for want of form. The error, in my view, of filing the substantive motion by way of chamber summons as opposed to the notice of motion does not go to the substance of the Judicial Review application but is one of technicality and which is curable by application of Article 159 of the Constitution which stipulates that justice shall be administered without undue regard to procedural technicalities.

41. Accordingly, I find that the objection raised by the respondent as to the form of the application is without merit. It is overruled.

42. The second question that the court must answer regarding the competence of the application for Judicial Review dated 13<sup>th</sup> November 2014 is

ii. *whether the application is competently before the court since the prayers in the application are not the same as the prayers for leave as granted.*

43. Examining the prayers for leave in the chamber summons dated 27<sup>th</sup> January 2012, the ex parte

applicant sought leave of court to apply for Judicial Review Orders of **certiorari and mandamus** directed to the respondent to remove into the High Court and quash the decision of the respondent to transfer the applicant from Athi River Prisons to Maralal Prisons and to revert him from Chaplain (Maalim to general duties).

44. In the chamber summons dated 13<sup>th</sup> November 2014 the substantive prayers sought are :An order of **certiorari** to remove into the High Court and quash revoke the decision of Commissioner of Prison contained in a letter Ref S/23/VOL.II.III/74 dated 5<sup>th</sup> December 2011 reverting the applicant from Chaplaincy duties to general duties; An order of **prohibition** directed at the respondent herein prohibiting them, by themselves, their servants or agents from executing the decision aforesaid.

45. Rather evidently, there is a difference in those prayers being sought at the leave stage and at the substantive stage. In both instances, the applicant seeks for Judicial Review orders for which leave must be obtained as stipulated under Section 9 of the Law Reform Act Cap 26 Laws of Kenya and Order 53 Rule 1 of the Civil Procedure Rules which stipulates that no application for an order of mandamus, prohibition or certiorari shall be made unless leave therefore has been granted in accordance with this rule. (4) (1) copies of the statement accompanying the application for leave shall be served with the notice of motion and copies of any affidavits accompanying the application for leave shall be supplied on demand and no grounds shall, subject as hereafter in this rule provided, be relied upon or any relief sought at the hearing of the motion except the grounds and relief set out in the said statement.

46. It follows therefore that the applicant is bound by the **grounds and reliefs** sought in the application for leave and cannot be allowed to substitute grounds and reliefs set out in the chamber summons for leave except where leave to amend statutory statement or to file further affidavits is sought and granted.

47. Thus, once leave is granted to apply for specific Judicial Review orders, it is those prayers that must be sought in the substantive motion and not new prayers for which leave was never sought.

48. In this case, it is noticeable that in the application for leave, the prayers sought and for which leave was granted to apply, were **certiorari and mandamus**. On the other hand, it is also evident that the prayers sought in the main application which was instituted by way of chamber summons dated 13<sup>th</sup> November 2014 are **certiorari and prohibition**.

49. As if that is not enough, the prayers for leave as sought are basically one, having regard to the manner in which they are framed. This is so because only certiorari can be issued to quash and remove. Certiorari is essentially a two part remedy. The first part is an order removing the official record of the impugned decision maker into the superior court issuing the certiorari order. The second part is an order quashing the impugned decision, and the record thereof. Certiorari is used to wipe the slate clean.

50. Mandamus on the other hand lies to compel performance of a statutory public duty which is justifiable and unperformed. Mandamus consists of an order to do a positive act, rather than to desist from doing something. Mandamus cannot remove the record or quash the decision. It has no quashing effect and neither can it prohibit, unlike certiorari.

51. Prohibition has a largely negative aspect. It prohibits the impugned decision maker and those relying on the decision from doing something illegal which they are about to do, or from continuing on an illegal course of action already commenced.

52. The locus classicus case on the scope of the three traditional Judicial Review remedies of mandamus, prohibition and certiorari are the decisions in **Kenya National Examinations Council vs Republic Exparte Geoffrey Gathenji Njoroge & Others CA 266/1996 (AK) [1977] e KLR** where the Court of Appeal expressed itself thus:

***“The remedies of certiorari and prohibition are tools that this court uses to supervise public bodies and inferior tribunals to ensure that they do not make decisions or undertake activities which are ultra vires their statutory mandate or which are irrational or otherwise illegal. They are meant to keep public authorities in check to prevent them from abusing their statutory powers or subjecting citizens to unfair treatment. The nature and scope of certiorari was discussed in the case of Captain Geoffrey Kujoga Murungi Vs Attorney General Misc Civil Application No. 293 of 1993 where it was stated; “Certiorari deals with decisions already made ....Such an order can only be issued where the court considers that the decision under attack was reached without or in excess of jurisdiction or in breach of the rules of natural justice...”***

53. The case of **Shah vs Attorney General (No. 3) Kampala HC MC No. 31/1969[1970] EA 543** by Goudie J is also relevant on the scope of mandamus.

54. Mandamus is the appropriate remedy for compelling a person to perform a public duty imposed on him by statute or rules which govern the administrative body, which duty the public officer or administrator had refused to perform to the detriment of the applicant. ( see **Jotham Mulati Welamondi vs The ECK Bgm HC Miscellaneous Application 81 of 2002 [2002] 1 KLR 486 [2008] 2 KLR (EP) 393.**

55. And in the **KNEC vs Republic Exparte Geoffrey Gathenji** (supra) the Court of Appeal was clear that mandamus is a command requiring a person to do some particular thing therein which appertains to his or her office and is in the nature of a public duty and its purpose is to remedy the defects of justice. It is issued so that the ends of justice may be in all cases where there is a specific legal right or no specific legal remedy for enforcing that right.

56. Applying the above principles to this case, in the application for leave, the prayers for which leave was granted was certiorari directed at the respondent to remove into the High Court and quash the decision of the respondent to transfer the applicant from Athi River Prisons to Maralal Prison and mandamus to compel the respondent to revert him from Chaplain (Maalim) to general duties.

57. However, in the main/substantive application, the prayer for mandamus was abandoned and replaced with prohibition, prohibiting the respondent from executing the decision aforesaid.

58. It follows that the prayers for mandamus not being in the substantive application cannot be considered by this court as it is not available for consideration.

59. With regard to the prayer for prohibition, the court notes that no leave was sought and or obtained to apply for prohibition hence that prayer in the main motion is not available for consideration. Even if the prayer for prohibition was available for consideration, the fact that the decision to revert the applicant from Chaplaincy duties to general duties was already executed by the respondent as there was no stay, and with the decision having taken effect upon the applicant's transfer to Maralal Prisons from Athi River Prisons, there is nothing capable of being prohibited.

60. Accordingly, I am inclined to decline to consider for purposes of this case, the Judicial Review orders of mandamus and prohibition as presented in the applicant's application dated 13<sup>th</sup> May 2014. I find and hold that the prayers for mandamus and prohibition are misplaced and misguided and are hereby dismissed.

61. The third issue for determination is

***iii. whether the Judicial Review orders of certiorari as presented in court are available to the exparte applicant.***

62. Again, before considering that issue, it is important to examine the prayer for leave vis avis the prayer for the main or substantive remedy.

63. The prayer for leave, for clarity purposes as reproduced above, I shall re-reproduce it here. It seeks for ***leave to apply for an order of certiorari, mandamus directed to the respondent to remove into the High Court and quash the decision of the respondent to transfer the applicant from Athi River to Maralal Prisons and revert him from Chaplain (Maalim) to general duties.***

64. The above prayer, compared with the substantive prayer in the application dated 13th November 2014, the latter reads as follows;

***“ An order of certiorari to remove into the High Court and quash/ revoke the decision of Commissioner of Prisons contained in a letter Ref S/23/VOL11.111/74 dated 5<sup>th</sup> December 2011 reverting the applicant from Chaplaincy duties to general duties.***

65. No doubt, the prayers are substantially apart in the sense that whereas in the prayer for leave the applicant sought and obtained leave to apply for Judicial Review orders to remove into this court and quash the decision of the respondent Commissioner of Prisons to transfer the applicant from Athi River Prisons to Maralal Prisons and revert him from Chaplaincy (Maalim) to general duties, in the substantive prayer, the applicant left out of the part of the prayer for transfer and only sought to remove into the court and quash the decision dated 5<sup>th</sup> December 2011 reverting the applicant from Chaplaincy duties to general duties.

66. No doubt, the latter prayer is not the prayer for which leave was granted to institute Judicial Review proceedings and therefore the court will not have jurisdiction to consider prayers for which no leave to apply was granted. I say so for reasons that where the prayer for leave is one, the party cannot split that prayer for purposes of the substantive application at his convenience.

67. Judicial Review remedies are constitutional remedies espoused in Article 23 of the Constitution and Article 47 of the Constitution. They however remain discretionary remedies and the court may refuse to issue the Judicial Review remedies of certiorari and prohibition especially, even if a substantive review ground has been established.

68. In this case, even if this court were to accept splitting of the prayers as has been done by the exparte applicant, on the material availed to court that he was being stripped of the Chaplaincy (Maalim) to general duties, I find no sufficient material to persuade me to grant him the remedy of certiorari.

69. This is because the applicant did not avail to court any evidence to show that the position of Chaplaincy (Maalim) was a promotion of sorts or that it was a permanent position and that on being reverted to general duties, he was being demoted and that therefore he needed to be accorded a hearing in order for the decision to be demoted (disciplined) could be made.

70. The Annexures SKS1 is an identification of the applicant showing that his rank is a prison warder No. 20214 while annexure SKS 2 is a letter of confirmation in appointment as a warder, admitted to permanent and pensionable –establishment from 25th February 1990.

71. The applicant advanced his training and studies and obtained a Bachelors Degree from International University of Africa at the Thika College for Sharia & Islamic Studies, Kenya on 22<sup>nd</sup> March 2014. This was after serving as Chaplain (Maalim) for about 12 years. He claims to have been a diligent worker and that therefore in the absence of previous complains against him, the decision to revert him to general duties was malicious. Further, that the allegations against him were false, fabricated, baseless, malicious and unjustified.

72. Judicial Review does not look at the merits of the decisions but the process of decision making and where it is established that the process was illegal, irrational/unreasonable and laced with procedural impropriety, the court will intervene. However, the court has to weigh one thing against another to see whether or not the remedy of Judicial Review as the one sought herein is the most efficacious one in the circumstances obtaining. The discretion of the court being a judicial one must be

exercised on the basis of evidence and sound legal principles.

73. Judicial Review is concerned with checking of the exercise of power or statutory duty by public bodies and the court's role in the circumstances is to ensure that those bodies do not exercise those powers unlawfully, irrationally and or with procedural impropriety.

74. In **Nasieku Tarayia v Board of Directors, AFC & Another [2012] eKLR** the court held that Judicial Review is an alternative remedy of last resort and where alternative remedy exists, the court has to be satisfied that judicial review is the most efficacious, beneficial, convenient alternative remedy available for the court to grant.

75. In this case, the applicant challenges the decision to revert him to general duties made on 5th December 2011. He only filed an application to challenge the decision on 1<sup>st</sup> February 2012 nearly 2 months after the decision was made. Although the challenge was made within 6 months as stipulated in Section 8 and 9 of the Law Reform Act, the applicant took too long to challenge the decision by which time he had already been replaced and he had already moved by way of transfer to Maralal Prisons.

76. Being a discretionary remedy, time is of essence and any delay to seek to challenge the decision must be made expeditiously.

77. Even after obtaining leave to institute these proceedings, the applicant took nearly 2 years to finally file the chamber summons dated 13<sup>th</sup> November 2014 on account of various reasons including lack of legal fees and he had to seek for enlargement of time twice. He did not invoke the application of Article 48 of the Constitution which would have enabled him to apply for waiver of payment of part of court fees to enable him apply for Judicial Review orders expeditiously, yet he was ably represented by an advocate.

78. In addition, this court finds that the allegations by the applicant that he had worked diligently and without any discipline case or that the allegations against him were false and fabricated, are best canvassed in a civil matter which he could have initiated before the Employment and Labour Relations Court for an appropriate remedy after that court had considered all the evidence and merits of the case.

79. The applicant's application basically hinges on the merits of the decision and not the process. For this court to revert him to Chaplaincy from the general duties which he considers unfair and unjustified, it must hear evidence and or be seized of the Judicial Review prayer for mandamus to compel such reversal of the decision by the respondent. This is so because the main prayers do not seek for quashing of the transfer to Maralal Prisons and as there was no evidence that in Maralal he could not perform Chaplaincy duties, the absence of the prayer for certiorari to quash the transfer to Maralal leaves the applicant with an impotent remedy incapable of enforcement.

80. For the above reasons, I find and hold that the Judicial Review orders sought in the chamber summons dated 13<sup>th</sup> November 2014 are not merited. I proceed to dismiss the chamber summons dated 13th November 2014 with no orders as to costs.

Dated, signed and delivered in open court at Nairobi this 23<sup>rd</sup> day of March 2017.

**R. E. ABURILI**

**JUDGE**

**In the presence of:**

Mr Munene h/b for Miss Chimau for the respondents

Miss Soi h/b for Mr Kinyanjui for the exparte applicant

CA: George &Gitonga