



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**Miscellaneous Application No.215 Of 2014**

**IN THE MATTER OF JUDICIAL REVIEW**

**AND**

**IN THE MATTER OF AN APPLICATION (BY ROSE JAHENDA MULEHANE) FOR LEAVE TO APPLY FOR AN ORDER OF MANDAMUS**

**BETWEEN**

**REPUBLIC .....APPLICANT**

**AND**

**PRINCIPAL SECRETARY OFFICE OF THE PRESIDENT ....RESPONDENTS**

**THE HON ATTORNEY GENERAL.....RESPONDENTS**

**ROSE JAHENDA MULEHANE .....EXPARTE APPLICANT**

**R U L I N G**

1. By the Chamber Summons dated 15<sup>th</sup> September 2014 the exparte applicant ROSE JAHENDA MULEHANE prays for ORDERS:

- 1. THAT this Honourable Court be pleased to grant leave to the ex-parte applicant to commence proceedings against the Principal Secretary, Office of the President for an order of MANDAMUS compelling the said Principal Secretary to pay the decretal sum outstanding in Kakamega C.C. No.149 of 2006 between ROSE JAHENDA MULEHANE and THE ATTORNEY GENERAL and
- 2. THAT the costs of this application be in the cause.

2. The application is brought pursuant to Order 53 Rules 1 and 2 of the Civil Procedure Rules 2010 and all enabling provisions of the Law and is premised on the grounds on the face of it and supported by the applicant’s own affidavit. She depones that she instituted her case on 22<sup>nd</sup> March 2006 against the Attorney General and Patrick Njage for general and special damages together with costs and interest after she was hit by motor vehicle registration number G.KA 997E Peugeot 406 Saloon owned by the respondent.

3. The applicant avers that Judgment was entered in her favour on 26<sup>th</sup> May 2010 as per the decree and certificate of costs but since then she has not been paid the decretal sum. She wants to be granted leave to enable her seek for the orders of Mandamus. The Decree and certificate of costs

- have been annexed and are marked “RJM-1”.
4. The application was served upon the Attorney General and hearing notices were also served upon the Attorney General. Evidence of service is on record. The application is not opposed as there are neither grounds of opposition nor a replying affidavit to that effect.

### **Determination**

5. The commencement of an application for Judicial Review is governed by order 53 Rule 1 (1) and (2) of the Civil Procedure Rules which provides:

“(1) No application for an order of mandamus prohibition or certiorari shall be made unless leave therefore has been granted in accordance with this rules.

(2) 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 name and description of the applicant, the relief sought and the grounds on which it is sought and by affidavits verifying facts relied.

6. It is thus clear that before any application for judicial review is made, unless such an application is brought by way of a Constitutional Petition pursuant to Article 23 of the Constitution, prior leave to do so must be sought and obtained otherwise such an application would be rendered incompetent. Rule 1(2) of Order 53 clearly requires that the application for leave must be accompanied by a statutory statement and affidavits verifying the facts relied on.
7. From the foregoing provision the correct application to file when seeking permission to commence judicial review proceeding is a chamber summons in which the Republic should be named as the applicant in this initial stage of the proceeding. At the stage of seeking leave only the aggrieved party or parties should appear as applicants. It is only after leave is granted that the actual judicial review proceedings should be instituted in the name of the Republic as the Applicant while the aggrieved party becomes the ex parte applicant. See **FARMERS BUS SERVICE & OTHERS – VS- TRANSPORT LICENSING APPEAL TRIBUNAL [1999] E.A 779.**
8. The rationale for this format was espoused in **MOHAMMED AHMED –VS- R [1957] E.A 525** and also in **JOTHAM MULATI WELAMONDI –VS- THE ELECTORAL COMMISSION OF KENYA [2002] 1 KLR 486.** I note that the application as filed does not conform to the requirements of Order 53. There is no statement setting out the name and description of the applicant, the relief sought and the grounds upon which it is sought and there are also no affidavits verifying the facts relied on. The Chamber Summons herein is only having a supporting affidavit annexed to it.
9. In my considered view the details required to be stated in the statement have not been given and the affidavit in support is not sufficient for purposes of Order 53 Rule 1 (2) of the Court Civil Procedure Rules. I therefore find that being non-compliant in its present form the applicant’s application dated 15/09/2014 is fit for striking out. The same is accordingly struck out with no order as to costs. The applicant is at liberty to file a fresh application in the proper form for the reliefs sought.
10. Orders accordingly.

**Ruling delivered, dated and signed in open Court at Kakamega this 25<sup>th</sup> day of February 2016.**

**RUTH N. SITATI**

**J U D G E**

In the presence of:

Mr. Kiveu (present)for Ex parte Applicant

N/A for Respondents

N/A Court Assistant