



## CIVIL

- Correct court fees should be paid before a matter can be considered.

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**JUDICIAL REVIEW MISC. APPLICATION NO. 99 OF 2009**

REPUBLIC ..... APPLICANT

VERSUS

DISTRICT LAND ADJUDICATION OFFICER  
TIGANIA WEST/EAST DISTRICT ..... RESPONDENT  
GRACE KAILU GEOFFREY ..... INTERESTED PARTY  
JULIUS MARETE IBUTU ..... *EX PARTE*

## RULING

The *ex parte* applicant obtained the leave of this court on 18<sup>th</sup> December 2009 to seek for judicial review orders. Leave was granted to seek for orders of *certiorari*, mandamus and prohibition. After leave was granted, the *ex parte* applicant filed the substantive Notice of Motion on 7<sup>th</sup> January 2010 seeking those orders. In so doing, the *ex parte* applicant paid a fee of Kshs. 6,000/=. The clauses in the guide on the **Assessment of Court Fees (Revised Edition) 1995** provides that on filing the substantive application each prerogative order attracts a fee of Kshs. 6,000/= for each of such order. In this case, the *ex parte* applicant sought three prerogative orders. He should therefore have paid a court fee of Kshs. 18,000/=. He failed to pay Kshs. 12,000/=. In view of that, the *ex parte* applicant, if he intends to get all the prerogative orders he seeks should pay Kshs. 12,000/=-, being the balance of the fees owed. The court can only grant one prerogative order on the fees already paid. The court has no power to act on the other two prerogative orders in the absence of payment of the correct court fees. Section 71 of the Interpretation and General Provisions Act Cap 2 provides that public officer cannot act on a document where the fee is not paid. That section provides as follows:-

***“71. (1) Where a person, public officer or local authority is required to do anything for which a fee is to be paid or a charge made under a written law, that person, public officer or local authority may decline to do that thing until the fee is paid or until payment of the charge is made, or, where the precise amount of the payment to be made cannot be ascertained until the thing has been done, until there is paid such an amount as may be estimated to be the correct amount by the person or public officer, or the responsible officer of the local authority, required to do the thing.”***

From that section, it becomes clear that the *ex parte* applicant cannot obtain the orders that he seeks in the absence of the payment of the full court fee. The Court of Appeal in the case **South Nyanza Sugar Company Limited vs. Samuel Osewe Ochillo P/A Ochillo & Co. Advocates** in Civil Application No. 1270 of 2003 state:-

*“The Deputy Registrar, however, had no power to exempt the respondent from paying the requisite fee*

with the result that the plaint was not properly filed and that being so, there was no valid plaint upon which the learned Judge of the superior court could proceed to deliver his judgment. The judgment was based on no valid plaint.

Dealing with a similar situation in the Ugandan case of Unta Exports Ltd Vs Customs [1971] EA 648, Goudie, J. stated as follows at page 649 letters E to F:-

***I have no doubt whatsoever that both as a matter of practice and also as a matter of law documents cannot validly be filed in the civil registry until fees have either been paid or provided for by a general deposit from the filing advocate form which authority has been given to deduct court fees.....”***

*With respect, we agree and would adopt that principle as being aptly applicable to the issue we are dealing with.”*

In keeping the overriding principal of the Civil Procedure Act and in particular section 1B (1) where the court is required in order to attaining the overriding objective to aim to give a just determination of the proceedings, I am of the view that the *ex parte* applicant should be afforded an opportunity to pay the balance of the court fees before this court delivers its judgment. At the reading of this ruling, another date will be given when the judgment will be delivered. If by that date the *ex parte* applicant has not made the full payment, the court will proceed to only determine one prerogative order sought in the *ex parte* applicant’s substantive Notice of Motion dated 6<sup>th</sup> January 2010.

***Dated, signed and delivered at Meru this 13<sup>th</sup> day of April 2011.***

**MARY KASANGO  
JUDGE**