



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**JUDICIAL REVIEW DIVISION**  
**JUDICIAL REVIEW MISC. APPLICATION NO. 171 OF 2011**

**IN THE MATTER OF AN APPLICATION BY LAWRENCE B KEITANY FOR LEAVE TO  
APPLY FOR AN ORDER OF CERTIORARI AND MANDAMUS**

**AND**

**IN THE MATTER OF ORDERS 53 OF THE CIVIL PROCEDURE RULES CAP 21 OF THE  
LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE RETIREMENT BENEFITS APPEALS TRIBUNAL**

**BETWEEN**

**LAWRENCE B KEITANY .....APPLICANT**

**VERSUS**

**RETIREMENT BENEFITS TRIBUNAL .....1<sup>ST</sup> RESPONDENT**  
**THE ATTORNEY GENERAL .....2<sup>ND</sup> RESPONDENT**

**AND**

**THE TRUSTEES OF KENYA POWER & LIGHTING .....INTERESTED PARTY STAFF  
RETIREMENT BENEFIT SCHEME**

**RULING**

Lawrence B Keitany (the applicant) through the chamber summons dated 18<sup>th</sup> July, 2011 seeks the court's leave to institute judicial review proceedings for issuance of orders of Certiorari and Mandamus against the Retirement Benefits Tribunal (the 1<sup>st</sup> respondent) and the Attorney General (the 2<sup>nd</sup>

respondent). The interested party is named as the Trustees of Kenya Power and Lighting Staff Retirement Benefits Scheme.

The 1<sup>st</sup> respondent and the interested party have challenged the said application by filing grounds of opposition. Their main argument is that the applicant seeks to challenge the merits of the decision of the 1<sup>st</sup> respondent and not the process of making such a decision.

The decision by this court to have the application for leave to be heard inter-partes was based on the proviso to Rule 1 of Order 53 of the Civil Procedure Rules, 2010 which states that:-

**“Provided that where the circumstances so require, the judge may direct that the application be served for hearing inter-partes before grant of leave. Provided further that where the circumstances so require the judge may direct that the question of leave and whether grant of leave shall operate as stay may be heard and determined separately within seven days.”**

Prior to the introduction of this proviso by the Civil procedure Rules, 2010 an application for leave to institute judicial review proceedings was to be made ex-parte.

In commenting about the grant of leave ex-parte, the Court of Appeal in the case of AGA KHAN EDUCATION SERVICE KENYA VS. REPUBLIC EXPARTE ALI SEIF (2004) eKLR observed that:-

**“So once there is an arguable case, leave is to be granted and the court, at that stage, is not called upon to go into the matter in depth.”**

It is therefore clear that the standard set for granting leave is the establishment of an arguable case by the applicant.

In his application the ex-parte applicant prays for orders:-

- 1. THAT the Applicant Lawrence B Keitany be granted leave to apply for an order of certiorari to quash the decision of the Retirement Benefits Appeals Tribunal dated 23<sup>rd</sup> June, 2011.**
- 2. THAT the Applicant Lawrence B Keitany be granted leave to apply for an order of Mandamus to compel the Retirement Benefits Appeals Tribunal to decide the case in accordance with the Trust Deed and Rules.**

The application is supported by grounds on its face a statement of facts and a verifying affidavit. P.L.O. Lumumba at Page 20 of **An outline of Judicial Review in Kenya** out lined the scope of judicial review by stating that:-

**“Courts of law may therefore intervene through judicial review in any of the following circumstances:-**

- (a) Where a body acts ultra vires.**
- (b) When there is jurisdictional error.**
- (c) When there is an error of law.**
- (d) Where there is an error of fact.**
- (e) When there is an abuse of power.**
- (f) When irrelevant considerations governed the making of a decision.**
- (g) When there is bias.**
- (h) When there is an unfair hearing**
- (i) When there is a procedural flaw.**
- (j) When there is irrationality.**
- (k) When there is bad faith.”**

In the case before me the ex-parte applicant claims the 1<sup>st</sup> respondent reached a decision without taking into account the interested party's Trust Deed and Rules. At this stage I need not go into the ex-parte applicant's case in detail. The claim by the applicant is that the 1<sup>st</sup> respondent reached a decision without taking into account a relevant matter namely the interested party's Trust Deed and Rules. That is an issue that calls for this court's intervention by way of judicial review. In the circumstances leave is granted to the ex-parte applicant to seek orders by way of judicial review in the terms of his application dated 18<sup>th</sup> July, 2011 and filed in court on 21<sup>st</sup> July, 2011. The applicant to file and serve the substantive notice of motion within 15 days from the date of the beginning of the new term. The matter will be mentioned on 12<sup>th</sup> February, 2012 for further directions.

Dated and signed at Nairobi this 20<sup>th</sup> day December, 2011

**W. K .KORIR**

**JUDGE**