



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT EMBU**  
**MISC. CIVIL APPLICATION NO. 14 OF 2008**

EUNICE WANJIRU MUCHIRI.....APPLICANT

VERSUS

COUNTY COUNCIL OF KIRINYAGA.....RESPONDENT

**R U L I N G**

The ex-parte Applicant has moved this court for prerogative orders of certiorari and prohibition to be directed at County Council of Kirinyaga which is named as the Respondent. Leave to file the motion was obtained on 13.3.08. The notice of motion is supported by the supporting Affidavit of the ex-parte applicant dated 28.3.08. It is opposed by the replying affidavit of one R.W. Miano clerk to the respondent dated 29.4.09. The matter proceeded by way of written submissions.

I will say from the onset that the application is fatally defective or failure to invoke the provisions of **Section 8 & 9 of the Law Reform Act** which is the substantive law enabling a party to file a motion for prerogative orders; and thus invoking the proper jurisdiction of this court. When hearing and determining matters of judicial review, the court does not sit as a civil or criminal court. Nor does it do so under its inherent jurisdiction. Its jurisdiction in Judicial Review matters is *sui generis* and is drawn from **Section 8 and 9 of Cap 26 of the Laws of Kenya**. Failure to peg the motion on that law robs the court of jurisdiction to entertain the motion. That on its own calls for the dismissal of this motion.

For the sake of argument however, even assuming that the proper provision of the law had been relied on, the motion would still have failed. I say so because it is clear from the annexures that as at the time the ex-parte Applicant moved this court, they were litigating before the Kerugoya Court over the same matter. She could not therefore leave that case and hop into this court for the orders that would have the same effect. That amounts to an abuse of the court process.

Further, Judicial Review is not about the decision itself but about the process used to arrive at the decision. In this matter, she is challenging the warning letter issued by the Council – yet the Council was writing the letter on the basis of the matter that was in Kerugoya Court. What was wrong with issuing that warning? The letter was properly issued by the writer in lawful execution of his duties. There was no impropriety or illegality about the writing of the letter.

Lastly, since there was an injunction before a court of law, prohibition orders should not have been sought as they could not be used to circumvent justice in the other matter. For all these reasons this notice of motion was meant to fail. I accordingly dismiss the same with costs to the Respondent.

**W. KARANJA**

**JUDGE**

Delivered, signed and dated at Embu this 6<sup>th</sup> day of December 2010

**In presence of:- Mr. Kiama for Ex-parte applicant**  
**N/A by Respondent**