

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Misc Civil Appli 34 of 2009

**IN THE MATTER FOR THE APPLICATION FOR LEAVE TO COMMENCE
PROCEEDINGS IN THE NATURE OF JUDICIAL REVIEW**

AND

**IN THE MATTER OF KENYATTA UNIVERSITY ACT CAP 210C LAWS OF KENYA AND
RULES MADE THEREUNDER**

AND

**IN THE MATTER OF SUSPENSION OF SIMON GATHUO FROM THE UNIVERSITY ON
THE 9TH OF JANUARY 2009**

BETWEEN

REPUBLIC APPLICANT

AND

KENYATTA UNIVERSITY 1ST RESPONDENT

OLIVE MUGENDA 2ND RESPONDENT

JOHN KOGA 3RD RESPONDENT

RULING

The application dated 4th February 2009 seeks leave to file a substantive judicial review application seeking the orders of certiorari, mandamus and prohibition. When the matter came under a certificate of urgency I directed that the application for leave be heard inter-parties.

Based on the Statement, Verifying Affidavit and the submissions of the learned counsel for both parties, my assessment is that the application is fairly arguable. At this stage any comment from the court on any issue would reveal the court's hand in advance and would be prejudicial to the hearing at the next stage.

Having reached the above conclusion, I grant leave in terms of prayer 1(i), 2(ii), 3(i), 4(i) and 5(i) of the application dated 19th January 2009 and amended on 4th February 2009. In the circumstances I consider it inappropriate to order that leave operates as stay and therefore prayer (6) is hereby declined. Instead I order that the substantive judicial review application be filed within 10 days and served within 8 days. Upon compliance with this direction the matter be mentioned before me on 27th February 2009 at 9.00 a.m with a view to giving further directions concerning fasttracking the hearing of the Notice of Motion. Costs shall abide the outcome of the judicial review application.

DATED and delivered at Nairobi this 20th February, 2009.

J.G. NYAMU

JUDGE