



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

(MILIMANI LAW COURTS)

MISC APPLI 639 OF 2008

**IN THE MATTER OF AN APPLICATION BY JOHN MURIITHI WAIGANJO TO APPLY FOR
LEAVE AND JUDICIAL REVIEW**

AND

**IN THE MATTER OF THE LAW SOCIETY OF KENYA DISCIPLINARY COMMITTEE
CAUSE NO. 2 OF 2008**

AND

IN THE MATTER OF JOHN MURIITHI WAIGANJO ADVOCATE

AND

IN THE MATTER OF THE ADVOCATES ACT 1989

AND

**IN THE MATTER OF JUDICIAL REVIEW FOR ORDERS OF MANDAMUS, PROHIBITION
AND CERTIORARI**

R U L I N G

Before me is a Notice of Motion dated 7th May, 2009 filed by M/s Gacau Kariuki & Company advocates for the applicant named as **JOHN MURIITHI WAIGANJO**. The respondent is named as the **DISCIPLINARY COMMITTEE OF THE LAW SOCIETY OF KENYA**. The application was brought under Order L. Rule 1, 2 and 3 of the Civil Procedure Rules, section 3A and 63(c) of the Civil Procedure Act (*Cap. 21*).

The orders sought are that-

1. *The Respondent be restrained from proceeding to entertain cause Number 2 of 2008 in the matter of John Muriithi Waiganjo on 28th May, 2009 for mitigation and sentence.*

2. ***This Honourable Court be pleased to set aside the Respondent's judgment delivered on 16th day of February, 2009.***

The application was filed with a **SUPPORTING AFFIDAVIT** sworn on 7th May, 2009 by the applicant **JOHN MURIITHI WAIGANJO**. It was deponed in the said affidavit that the respondent went ahead and delivered judgment on 16th February, 2009 while they had on 12th February, 2009 been served with stay orders from the court.

When the application came up before me on 11th May, 2009 I ordered that the same be served for inter-partes hearing and fixed the hearing date for 14th May, 2009. On that date, Mr. Kariuki for the applicant informed me that the application had been served. Nobody came to court on behalf of the respondent. Mr. Kariuki, counsel for the applicant addressed me in support of the application.

I will not allow the application on two grounds. Firstly, it has been held that judicial review is special jurisdiction under Order 53 of the Civil Procedure Rules and section 8 and 9 of the Law Reform Act (**Cap. 26**) – see **WELAMONDI -VS- THE CHAIRMAN ECK [2002] IKLR 486**. Judicial review proceedings are neither criminal nor civil proceedings. The Civil Procedure Rules under the Civil Procedure Act (**Cap. 21**) are not applicable to judicial review proceedings. This application has been brought under the Civil Procedure Rules made under the Civil Procedure Act, which are not applicable. The applicant has also not demonstrated to me where, under judicial review procedures applicable in Kenya, this court derives jurisdiction to entertain this application and grant the orders sought. It was incumbent upon the applicant to demonstrate to this court the law under which it can exercise its jurisdiction in this application and grant the orders sought. The absence of jurisdiction means this court cannot move any further, because it is my finding that I have no jurisdiction to hear this application brought under the civil Procedure Rules.

The second reason why I will not allow this application relates to the prayers sought. Judicial Review remedies in Kenya are limited to certiorari prohibition and mandamus -**see KNEC -VS- REPUBLIC – CIVIL APPEAL NO. 266 OF 1996**. Before the Notice of Motion in judicial review proceedings is heard and determined, stay orders can be granted. This is done at the application for leave to file the Notice of Motion if leave is granted. The prayers sought herein are restraining orders and setting aside orders. Both these prayers are not within the purview of judicial review jurisdiction. They cannot be granted in judicial review proceedings. For this reason also, the application has to fail.

For the above reasons I dismiss the application.

Dated and delivered at Nairobi this 18th May, 2009.

GEORGE DULU

JUDGE.

In the presence of-

Mr. Kariuki for applicant

Kevin Court Clerk.