



REPUBLIC OF KENYA
HIGH COURT AT NAKURU
MISCELLANEOUS APPLICATION 446 OF 2006

REPUBLIC.....PLAINTIFF

VERSUS

THE PERMANENT SECRETARY, MINISTRY OF LANDS & HOUSING...RESPONDENT

AND

HON. ATTORNEY GENERAL.....INTERESTED PARTY

EXPARTE

VIJAY MORJARIA.....SUBJECT/APPLICANT

RULING

By a notice of motion dated 27th September, 2006, the applicant seeks orders

“1. That this honourable court be pleased to issue a writ of mandamus against the Permanent Secretary, Ministry of Lands and Housing to compel him to comply with decree issued by court in Nakuru H.C.C.C.No.224 of 1999 and to pay the applicant the decreed sum now standing at Kshs.534,700/= together with such further interest as may accrue till payment is made in full”

I do not intend to go beyond this prayer.

The statutory basis for judicial review in Kenya is the Law Reform Act Cap. 26. Part VI and specifically section 8 sets out the circumstances *H.C.C.MISC. APPL. NO.446/06* in which the High Court exercises jurisdiction in judicial review matters as follows:

“8.(1) the High Court shall not, whether in the exercise of its civil and criminal jurisdiction, issue any of the prerogative writs of mandamus, prohibition or certiorari

8(2) In any case in which the High Court in England is, by virtue of the provisions of section 7 of the Administration of Justice (Miscellaneous Provisions) Act, 1938, of the United Kingdom empowered to make an order of mandamus, prohibition or certiorari, the High Court shall have power to make a like order.”

(Emphasis added).

The High Court in Kenya can only issue orders as opposed to writs in matters of judicial review.

It is on the basis of this that the Court of Appeal in the case of **Commissioner of Land V. Kunste Hotels Ltd.** (1995-1998) IEA1 held that:

“In exercising the power to issue or not to issue an order of certiorari, the court would be exercising a special jurisdiction

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By virtue of the provisions of section 7 of the Administration of Justice (Miscellaneous Provisions) Act, 1938, of the United Kingdom, which is applicable in this country by reason of section 8(2) of the Law Reform Act, prerogative writs were changed to be known as “orders”, except for the writ of habeas Corpus. So section 8(1) above denies the High Court the power to issue orders (Writs?) of mandamus prohibition and certiorari.”

Learned counsel for the applicant explained from the bar that the word ought to have been “**order**” and not “**writ**”. Did he want the court to amend the notice of motion? It is noted that that is the only prayer in the motion.

There is no provision under order 53 of the Civil Procedure Rules for the amendment of the notice of motion. Order 53 rule 4(2) only allows the amendment of the statement.

This court has no jurisdiction to grant a writ of mandamus and *H.C.C.MISC. APPL. NO.446/06* therefore this application fails and is dismissed.

I make no order as to costs.

Dated and Delivered at Nakuru this 25th day of September, 2009.

W. OUKO

JUDGE