



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Misc Appli 702 of 2007

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

IN THE MATTER OF SERVICE COMMISSION CACT

IN THE MATTER OF THE LAW REFORM ACT CHAPTER 26 OF THE LAWS OF KENYA

IN THE MATTER OF SECTIONS 74, 77 AND 82 OF THE CONSTITUTION OF KENYA

IN THE MATTER OF THE PENSIONS ACT CAP 189

IN THE MATTER OF THE PENSIONS REGULATION AND SERVICE GRATUITY

IN THE MATTER OF THE OFFICIAL SECRETS ACT CAP 187 OF THE LAWS OF KENYA

JOSEPH MAUTI MOGOL..... APPLICANT

AND

THE PERMANENT SECRETARY AND

HEAD OF PUBLIC SERVICE..... 1ST RESPONDENT

THE PERMANENT SECRETARY

INTERNAL SECURITY AND

PROVINCIAL ADMINISTRATION..... 2ND RESPONDENT

PUBLIC SERVICE COMMISSION..... 3RD RESPONDENT

THE ATTORNEY GENERAL..... 4TH RESPODNENT

JUDGMENT

By a letter dated 2/5/07, the Permanent Secretary and Head of Public Service relieved the Applicant of his duties of Assistant Chief, with effect from 1/7/07. The Applicant has challenged the 1st Respondent's decision and seeks several judicial review orders under the notice of motion dated 20/7/07 brought pursuant to Order 53 Civil Procedure Rules.

The prayers sought are as follows:-

Four orders of certiorari to remove into the High Court and quash the decision of the Permanent Secretary Provincial Administration contained in the letter dated 2/5/07 wherein the Applicant was retired on grounds of age, an order of certiorari quash the notice to retire, decision to terminate his employment with the public service. An order of prohibition to prohibit the 2nd Respondent from confirming the notice to retire, to prohibit the 3rd Respondent from confirming the Applicants retirement, and to prohibit the 1st Respondent from effecting the said retirement. The Applicant also seeks two prayers of mandamus to compel the 1st, 2nd and 3rd Respondents to correct the typographical error in form PSC2 at the national level in line with form PSC2 at the Provincial and District Levels and lastly to compel the Respondents to restore the Applicant's name in the payroll. The Respondents case is that the application is incompetent and fundamentally defective and incapable of being granted.

The issues that land themselves for determination are:-

1. Whether the application is incompetent.
2. Whether the termination of the applicant's employment was unlawful.
3. Whether the Respondent breached the rules of natural justice.
4. Whether the decision was made in bad faith, is harsh and unreasonable.

The grounds upon which the application is brought are that the Applicant is only 47 years old as evidenced by his birth certificate (JMN 1) and his national identity card and personal identification number issued on 22/8/94 all showing that he was born in 1959. That the letter from the 1st Respondent dated 2/5/07 indicates that he has attained the age of 55 years and due for retirement on age grounds. Despite reminders there has been no response to his letter of 8/7/67. That the existence of a different date of his birth in his documents is a forgivable mistake and he could not alter the dates to his disadvantage.

It is trite law that Judicial Review applications are brought in the name of the Republic. This is the practice which has gained the force of law since the decision of the East African Court of Appeal in **FARMERS BUS SERVICE V THE TRANSPORT LICENSING APPEALS TRIBUNAL (1959) EA 779** where the court held that Judicial Review applications are made in the name of the Crown (Republic) and must be properly intitled. This is because of the history of Judicial Review orders (prerogative writs). Judicial Review is a mechanism by which the state checks on the excesses of the officers of public bodies so that the state takes over and brings the application on behalf of the aggrieved party. The **FARMERS BUS** case set out the formatting of Judicial Review applications which has been followed in several other cases like **JOTHAM MULATI WELAMONDI V CHAIRMAN ELECTORAL COMMISSION OF KENYA (2002) IKLR 486** where that court also set all the format of Judicial Review application both at leave stage and at notice of motion stage. By a chamber summons The Applicant first seeks leave in his own name. Once the court grants leave to commence Judicial Review proceedings the Republic takes over the matter on behalf of the aggrieved party. The applicant has no capacity to bring the application in his own name. The application as formatted is incompetent and will be struck out on that basis alone. The court will not consider the merits of the application in the event that the Applicant wishes to bring a fresh application. The notice of motion is struck out with costs to the Respondent.

Dated and delivered at Nairobi this 10th day of November 2009.

R.P.V. WENDOH

JUDGE

In the Presence:-

Mr. Kurgat for Applicant

No appearance for Respondents

Muturi Court Clerk