



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Misc. Appli. 311 of 2008

RICHARD ORINA MOGIRE..... APPLICANT

V E R S U S

COMMISSIONER OF POLICE..... 1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

R U L I N G

This is a Chamber Summons filed by Billy Amendi & Co. Advocates dated 26th May, 2006, on behalf of the applicant **RICHARD ORINA MOGIRE**. The respondents are named as **COMMISSIONER OF POLICE** and **THE ATTORNEY – GENERAL**. It is an application for leave to file Judicial Review proceedings for certiorari, mandamus and prohibition. The applicant also prays that leave, if granted, do operate as a stay of the order of the Public Service Commission (Police force) dismissing the applicant. The application has grounds on the face of the Chamber Summons. It was filed with a supporting affidavit, and statement of facts and an affidavit verifying the facts in the statement.

The application was filed under certificate of urgency and was ex-parte. I heard the application on 27/5/2008.

Ms. Rugut, Counsel for the applicant submitted that the applicant was not afforded a fair hearing before his dismissal. That was what necessitated this application for leave to file Judicial Review proceedings. Counsel contended that the Applicant wants the Public Service Commission to provide him with copies of the disciplinary proceedings. He also asks that leave, if granted, do operate as a stay of his dismissal and stoppage of salary.

I have considered the application, documents filed and submissions of Counsel for the applicant. In my view, the applicant has demonstrated a sufficient interest, and the issues raised require investigations by this court. The applicant has a prima facie arguable case. The issues raised can only be canvassed if the applicant is granted leave to file Judicial Review proceedings, and the respondents are served and appear in court to clarify those issues. I will grant leave as sought.

On stay, I will not grant stay orders. It will not be in the interest of justice. It is impossible to stay a dismissal that has already been done and communicated. I will therefore not grant stay orders.

Consequently, I order as follows-

- 1. Leave be and is hereby granted to the applicant to file Judicial Review proceedings for***

certiorari, mandamus and prohibition as requested in prayer 2 of the Chamber Summons. The main motion will be filed within 21 days from today.

2. *I decline to grant stay orders.*

3. *Costs in the cause.*

It is so ordered.

Dated and delivered at Nairobi this 18th day of June, 2008.

GEORGE DULU

JUDGE.

In the presence of-

Mr. Rugut for applicant

Mwangi Court Clerk.