

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

Misc Civ Appli 24 of 2007

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR AN
ORDER OF CERTIORARI**

AVIATION AND ALLIED WORKERS UNION APPLICANT

VERSUS

THE REGISTRAR OF TRADE UNIONS RESPONDENT

RULING

In this matter an order for leave to file a judicial review application was made on 18th January 2007 by the court. In addition the court ordered that the leave operates as stay. The application for judicial review was filed on 25th January 2007.

By an application dated 7th of February 2007 the applicant seeks an order for striking out the affidavits in support of the application for leave and the striking out of the entire judicial review proceedings. In the alternative, the applicant seeks an order of review and or the vacating of the orders made on 18th January 2007 staying the decision of the Registrar of Trade Disputes and an order for costs.

The application is opposed and as usual all the parties have filed and exchanged written skeleton arguments. I have in giving this ruling taken into account the skeleton arguments filed by the parties.

The application for judicial review having been filed and served on the applicant find it unacceptable for them to purport to challenge the leave and also to ask for the striking out of the entire judicial proceedings instead of a hearing on merit of the substantive judicial review application. In the case of ***R v ex-parte Kaka Nzoka Misc Civil Application No. 1217 of 2003*** I explained in depth the purpose of leave and I reiterate those reasons in this ruling. Unless a challenger brings an application in good time challenging leave and the stay already given, it would not be right for the court to hear such challenge after the filing and service of the substantive application. The proper way to proceed is to hear the substantive application on merit including any issues which could have affected the grant of leave. Leave having been granted and not challenged in good time is spent and any serious challenge by an applicant must be taken up in the substantive application. For this reason I would dismiss this application. The additional reason why this application is incompetent is that it purports to invoke both the Provisions of the Civil Procedure Act and Rules and this court including the Court of Appeal have repeatedly ruled that they do not apply to judicial review proceedings which are sui generis. There is a wealth of authorities on this and I need that reproduce them again.

In the result, the Motion dated 7th February 2007 is dismissed with costs to the Respondent and the Interested Parties.

DATED and delivered at Nairobi this 27th April 2007.

J.G. NYAMU

JUDGE