



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU**

Civil Suit 243 of 2004

**IN THE MATTER OF AN APPLICATION BY ROSE OBAGA FOR LEAVE TO APPLY FOR
JUDICIAL REVIEW (CERTIORARI PROHIBITION)**

IN THE MATTER OF THE ATTORNEY GENERAL OF THE REPUBLIC OF KENYA

IN THE MATTER OF SENIOR PRINCIPAL MAGISTRATE'S COURT AT KISII

AND

IN THE MATTER OF REPUBLIC

AND

THE ATTORNEY GENERAL 1ST RESPONDENT

SENIOR PRINCIPAL MAGISTRATE

KISII LAW COURTS 2ND DEFENDANT

DISTRICT CRIMINAL INVESTIGATION

OFFICER KISII CENTRAL DISTRICT 3RD DEFENDANT

AND

ROSE OBAGA APPLICANT

ANGELINE ONYANGO OKUMU INTERESTED PARTY

RULING:

The applicant one ROSE OBAGA, an Advocate of High Court of Kenya brought this application under Order 50 rule 1 & 2 of the C.P.R. Mr. Bosire for the applicant submitted that applicant is seeking leave to file application for Judicial Review in form of certiorari and prohibition. The applicant has already been charged vide Kisii Chief Magistrate criminal case No.3488 of 2004. He sought to have the hearing of that criminal case stayed.

I have carefully considered the application. I find that it is misconceived and incapable of being granted. A court cannot grant what is not prayed for. Though Mr. Bosire in his submission stated that the applicant is seeking leave to file judicial review in the application there is no such a prayer in the application.

The application seeks for the following orders:

1. That the matter be certified urgent and the same be heard during christmas vacation.
2. That the leave so granted by this Honourable court do operate as an order of stay of proceedings in respect of Kisii CMCR Case No.3488 of 2004 between the Republic –versus- Rose K. Obaga, pending the hearing and determination of the intended application.
3. The applicant be at liberty to apply to the honourable court for all necessary and consequential orders that the honourable court may deem fit to grant.
4. Costs of this application do abide the substantive application for Judicial Review.

There is no quarrel with prayer (1). The main prayer is No.2. It talks of “That leave so granted by the court” There is no prayer for any leave and as such the applicant cant ask court to order leave not prayed for to operate as stay. To my mind the applicant omitted the most important prayer – that for leave to bring application for judicial review. Prayer 2 in the application does not make any sense the way it is drafted.

I don't think the applicant can find refuge in prayer 3. She does not say which are the “necessary and consequential orders” which she would want court to grant. Reading that prayer one has the feeling that the applicant expected the court to make other orders after granting leave and that is why she talks of consequential orders. As I have said court cannot grant any leave for none is prayed for and for that reason I find the application has no merit. In the circumstances the same is dismissed.

Dated this 26th April 2005.

KABURU BAUNI

JUDGE

Cc – Mobisa

N/A for applicant (though aware of today's date)