

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

MISCELLANEOUS APPLICATION NO. 595 OF 2001

DANIEL OGANAH APPLICANT

VERSUS

THE SOLICITOR GENERAL & ANOTHER DEFENDANT

RULING

The application before me is the Chamber Summons dated 2nd December 2003. It was fixed for hearing on the 2nd of February 2004 pursuant to an order made by the Hon. Lady Justice Aluoch when the matter was mentioned before her on 11th December 2004. I note that the Learned Judge's order refers to an application dated 2nd October 2003 which does not exist. However the representations and arguments before me on 2nd February were in relation to the Chamber Summons dated 2.12.2003.

I have noted that at the mention before the Learned Judge on 11.12.2003, no mention was made of the Ruling made by Justice Nyamu on 3rd December 2003 when the application was first in court. On that day the Learned Justice Nyamu ruled as follows:

“Application dated 2 nd December 2003 is flawed in that there is no provision for setting aside an order made in respect of Judicial Review. The relief given by law is an appeal as per Section 8 (5) of the Law Reform Act. The Application is struck out with no order as to Costs”.

It is surprising that the applicant herein had the matter mentioned before Justice Aluoch and had the same application fixed for hearing when the above order is in place and without disclosing the same to her Ladyship. It is also upsetting that the Applicant knowing fully well that his application had been struck out would attend on the date so fixed and argue the same. I find that such action borders on contempt as it demonstrates an outright disregard of the dignity of this court.

The proceedings herein constitute a clear case of abuse of the process as the applicant does not come with clear hands as he hops from one Judge to another. I have no cause to disturb the Learned Justice Nyamu's order of 3rd December 2003. However, in view of the circumstances, I order that the Applicant do bear costs of the application. Orders accordingly.

Dated, signed and Delivered at Nairobi this 25th day of February 2004.

M.G. Mugo

Ag. Judge

25.02.04

