

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII
MISCELLANEOUS CRIMINAL APPLICATION NO.58 OF 2004

WILFRED MORIASI OMBUI APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING:

Mr. Kemo for Respondent raised a preliminary objection and stated that the application is brought under the wrong provisions of the law and that the applicant should have applied for judicial review.

I have considered the submissions and objection thereto. I concur that section 356 and 357 of the C.P.C. are not applicable in this application. Those two sections deal with application for bail by a convicted person pending appeal. That is not the case in the instant application. There is no application for bail and court has not been told of any or intended appeal. These two sections are not applicable.

However s.362 and 364 of CPC are proper sections. S.362 provides for the High Court calling for records of the lower court to satisfy itself of the legality, correctness or propriety of any finding, sentence or order recorded or passed. Court has been told that there were proceedings in the lower court, which culminated in the court issuing a warrant of search. Those are the proceedings the applicant may want the court to look at s.364 CPC provides for actions which the High Court can take if satisfied that the proceedings, sentence or order were not proper or illegal. I therefore find that the application is proper.

In the circumstances the preliminary objection is dismissed.

Dated on 30th July 2004.

KABURU BAUNI

JUDGE

30/7/2004