



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT OMBASA**  
**MISC. APPL. CIVIL CASE NO. 473 OF 2003**

**IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW**

**BY JOSEPH KIBORUS TARUS T/A TARUS**

**AND COMPANY ADVOCATES FOR LEAVE**

**TO APPLY FOR ORDES OF CERTIORARI, PROHIBITION AND MANDAMUS**

**AND IN THE MATTER OF: DECISION BY THE COMMISSIONER OF**

**POLICE THROUGH POLICE 18, BOND AND**

**BAIL DATED 29TH DAY OF JULY 2003**

**AND**

**IN THE MATTER OF: THE HIGH COURT CIVIL CASE NO. 68 OF**

**2001(MOMBASA) MOTATIRO MATHIAS**

**NYAMOHANGA –VS-HUSSEIN ALI SEIF**

**AND**

**IN THE MATTER OF: THE CONSTITUTION OF KENYA, THE LAW**

**SOCIETY OF KENYA ACT (Cap 18), THE**

**ADVOCATE'S ACT (Cap 16 laws of Kenya**

**Section 80, 61(3), 60, 45, 53, 59, THE PENAL**

**CODE (Cap 63 L.o.K, Section 124 & 283(b), THE**

**CRIMINAL PROCEDURE ACT (Cap 75) Civil**

**Procedure Act (Cap 21 L.o.K, Order 26, 52 rule 4**

**of the Civil Procedure Rules)**

**AND**

**IN THE MATTER OF: THE HONOURABLE ATTORNEY GENERAL**

**OF THE REPUBLIC OF KENYA**

## **RULING**

The Ex-parte Applicant has sought leave to apply for Judicial Review for orders of Certiorari, Prohibition and Mandamus. The reasons given are that the plaintiff in HCC 68 OF 2001 MONTATIRO NYAMOHANGA has filed a complaint with the police against his Lawyer the Applicant on the ground that he, the Applicant has refused to pay him a sum of Kshs.338,190/= being the entire decretal sum inclusive Of costs.

The judgement having been delivered by Consent on 14.4.03 a cheque was paid to the Applicants on 8.7.03. The disagreement on fees payable arose on 24.7.03 and the applicant has now filed a Bill of costs coming up for taxation on 5.9.03. In the meantime the entire sum has been deposited with the Court but the police are in hot pursuit and want to arrest the applicant for purposes of charging him with the offence of stealing by Agent today.

It is against the given background that the Court is satisfied the applicant has a genuine fear and the situation is likely to cause a lot of injustice to him if not arrested. It is therefore ORDERED:

1. That leave is hereby granted to the Ex-parte Applicant in terms of prayer 1 of the Chamber Summons dated 1.8.03.
2. That the said leave do operate as a stay for 21 days The application be filed and served and heard on the 21.8.2003.

**Dated and Delivered at Mombasa this 4th day of August, 2003.**

**P.M. TUTUI**

**COMMISSIONER OF ASSIZE**