



**Republic v Kenya Revenue Authority; Omanga (Exparte Applicant)
 (Judicial Review Miscellaneous Application 175 of 2023)
 [2024] KEHC 8081 (KLR) (Judicial Review) (20 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 8081 (KLR)

**REPUBLIC OF KENYA
 IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
 JUDICIAL REVIEW
 JUDICIAL REVIEW MISCELLANEOUS APPLICATION 175 OF 2023**

**JM CHIGITI, J
 JUNE 20, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

KENYA REVENUE AUTHORITY RESPONDENT

AND

DR. JOHN KENNEDY OMANGA EXPARTE APPLICANT

RULING

1. The Exparte applicant filed a Notice of Motion dated 6th November 2024 wherein he sought the following;
 - A. An order of Mandamus be issued against the Commissioner of Investigations and Enforcement, his authorized officers and any person whomsoever or howsoever acting on, with and or under his instructions, compelling him to consider the Notice of Objection dated 10th June, 2022.
 - B. An order of Certiorari to bring the Honourable Court and quash the Commissioner of Investigation and Enforcement decisions vide letters of 20th July, 2022 and 4th August, 2022.
 - C. An order of Prohibition directed towards the Commissioner of Investigation and Enforcement, his authorized officers and or any other person (s) whomsoever or howsoever acting on, with and or under his instructions, prohibiting him from demanding any payments of and or taking any enforcement action of whichever nature in respect of any written law.



2. In reacting to the Application, the Respondent filed a Notice of Preliminary Objection dated 18th January 2024 raising the grounds that:
 1. The Suit herein has been filed contrary to the provisions of section 9(3) of the [Law Reforms Act](#) Cap. 26.
 2. The Suit herein has been filed contrary to the provisions of Order 53, Rule 2 of the [Civil Procedures Rules](#).
3. In the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696. At page 700 Law JA stated:

“A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.”
4. Section 9(3) of the [LRA](#) provides as follows:

“In case of an application for an order of certiorari to remove any judgement, order, decree, conviction or other proceedings for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of that judgment, order, decree, conviction or other proceeding or such shorter period as may be prescribed under any written law; and where that judgement, order, decree, conviction or other proceeding is subject to appeal, and a time is limited by law for the bringing of the appeal, the court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”
5. The Applicant acted in contravention of Order 53, rule 2 of the [CPR](#) which states that:

“Leave shall not be granted to apply for an order of certiorari to remove any judgement, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to an appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”
6. This court has taken note of the fact the Exparte applicant also seeks orders of mandamus and prohibition in the same application, which orders have no prescribed limitation period.
7. It is this court’s finding and I so hold that the preliminary objection has merit.

Order:

1. The Notice of Preliminary Objection dated 18th January 2024 is upheld to the extent of the leave to institute Judicial review order of Certiorari.
2. The leave that was granted to the applicant to pursue orders of mandamus and prohibition shall remain in force.
3. Costs to the Respondent.

DATED, SIGNED, AND DELIVERED AT NAIROBI THIS 20TH DAY OF JUNE, 2024

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J. CHIGITI (SC)

JUDGE

