



REPUBLIC OF KENYA



Republic v Officer Commanding Station Salgaa Police Station & 2 others (Civil Case E26 of 2021) [2023] KEHC 716 (KLR) (2 February 2023) (Judgment)

Neutral citation: [2023] KEHC 716 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL CASE E26 OF 2021
HK CHEMITEI, J
FEBRUARY 2, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

**OFFICER COMMANDING STATION, SALGAA POLICE STATION 1ST
RESPONDENT**

ATTORNEY GENERAL OF THE REPUBLIC OF KENYA 2ND RESPONDENT

DIRECTLINE ASSURANCE CO LTD 3RD RESPONDENT

JUDGMENT

1. The Notice of Motion application herein dated 24th December 2021 by the plaintiff/applicant herein seeks for orders of certiorari quashing the letter by the Officer Commanding Station Salgaa Police dated 27th August 2021 revoking Police Abstract and P3 forms issued to BAO and EJO . Also, that the costs of the application be in the cause.
2. Grounds on the face of the application are as follows;
3. That the applicant was neither given notice nor accorded hearing prior to the impugned letter dated 27th August 2021 and she only became knowledgeable about it through her advocates. That Nakuru CMCCC No. 1036 of 2018 in respect to EJO (minor) arising from the Road Traffic Accident of 31st December 2017 along Nakuru-Eldoret Road involving Motor Vehicle Registration Number KCC xxxx insured by the Interested Party based on the Police Abstract and P3 form issued by Salgaa police station was still pending hearing in Court.
4. That the applicant stood to be highly prejudiced on her own behalf and on behalf of BAO and the estate of the late Alphine Awuor following the amicable settlement of Nakuru CMCCC No. 1035 of 2018, CMCCC NO. 1037 of 2018 and CMCCC NO. 1142 of 2018 since she was travelling in the



Motor Vehicle Registration Number KCC xxxx when the fateful road traffic accident of 31st December 2017 occurred as a consequence of which the applicant, BAO (minor) and EJO (minor) sustained severe injuries.

5. She went on to state that the late Alphine Awuor (deceased) sustained fatal injuries and all the suits were based on the police abstracts and P3 forms issued by the Police Station Salgaa. That the said P3 forms were subsequently filled in by government medical doctor at the Nakuru Level 5 hospital and the applicant was not in a position to refund any decretal moneys paid.
6. That the impugned letter by the Officer Commanding Station Salgaa Police Station was based on arbitrary decision with bias and ought to be quashed by orders of certiorari. The Officer Commanding Salgaa Police Station was estopped from revoking police abstracts and P3 forms already acted upon based on the doctrine of legitimate expectation. That the impugned decision violated Article 47 of the Constitution of the Republic of Kenya and the Fair Administrative Action Act regarding fair administrative action.
7. The application was supported by the affidavit sworn on even date by Millicent Anyango Oganga the mother and next of friend to EJO and BAO .
8. Both the respondents and the interested party did not file any response to the application.
9. When the matter came up for hearing the court directed that the same be disposed by way of written submissions which only the applicant has complied.

Applicant's Written Submissions

10. The applicant raised two issues for determination by this court namely; whether the 1st respondent infringed the right of the applicant to prior notice. The applicant cited section 4 (3) of the Fair Administrative Action Act 2015 which stipulates that where an administrative action was likely to adversely affect a person adequate notice of the nature and reasons for the proposed administrative action should be given.
11. The applicant submitted that she was neither given notice nor accorded hearing prior to the impugned letter dated 27th August 2021 revoking the police abstract and P3 forms issued to BAO and EJO .
12. The applicant submitted further the said letter was not addressed to her and she only became aware of it through her advocates when the interested party's advocate served a supplementary list of documents containing the same. That the 1st respondent only investigated their records whether the names existed thereon and that he did not investigate the accident's occurrence book. Further, that the 1st respondent was not the Investigating officer in the matter and that the police abstracts and P3 forms issued indicated that the matter was investigated by one PC Osiro.
13. In addition, that there was no evidence that the 1st respondent interrogated the driver of the motor vehicle involved in the accident or her on the allegation of involvement of the two minors in the accident as claimed. It was therefore her submission that the 1st respondent's impugned letter was based on arbitrary decision, was bias and the same ought to be quashed by orders of certiorari. She placed reliance on the case of Mary Muatbe Muthikwa & Another v Isaac Maina Thomba [2017] eKLR and Republic v Secretary the Firearms Licensing Board & 2 other Ex-Parte: Senator Johnson Muthama [2018] eKLR.
14. On the second issue, whether 1st respondent violated the *ex-parte* applicant's legitimate expectation of fair, impartial procedure of revocation of police abstract and P3 forms the applicant while placing reliance on the case of Republic v Principle Secretary, Ministry of Transport, Housing and Urban



Development Ex parte Soweto Residents Forum CBO [2019] eKLR, submitted that she had legitimate expectation that in case a need arose to revoke the said documents, the responsible public authority herein Salgaa Police station would follow a certain procedure before making the decision. That based on the aforementioned documents issued by Salgaa Police Station four suits were filed in court. Further, that her reasonable expectation of a procedurally fair manner of revocation of the said documents was not only precise and specific but also lawful as a right to fair administrative action not only protected by the *Constitution* of Kenya 2010 in Article 47 but also fleshed out in the *Fair Administrative Action Act*, 2015.

15. In conclusion, the applicant submitted that the 1st respondent acted *ultra vires* in the revocation of the police abstract and P3 forms without notice or any investigations and or giving her a hearing. That it was in the interest of justice that the court grants her an order of certiorari quashing the impugned letter by the 1st respondent dated 27th August 2021.

Analysis and Determination

16. The court has perused carefully the plaintiff's/applicant's application, the affidavit and submissions. In my view the issue for determination is whether an order of certiorari quashing the letter by the Officer Commanding Station Salgaa Police Station dated 27th August 2021 should issue.
17. This court has, by virtue of Section 8 of the *Law Reform Act* (Cap 26, Laws of Kenya) jurisdiction to determine the application herein. Section 8 aforesaid provides that the High Court shall in its civil and criminal jurisdiction issue any of the prerogative orders of certiorari, prohibition or mandamus. Judicial review is not about the merits of case, but the decision-making process.
18. In *Republic v Kenya Revenue Authority, Ex Parte Yaya Towers Limited* [2008] eKLR, the Court of Appeal expressed itself thus –

“... the remedy of judicial review is concerned with reviewing not the merits of the decision of which the application for judicial review is made, but the decision-making process itself. It is important to remember in such case that the purpose of the remedy of judicial review is to ensure that the individual is given fair treatment by the authority to which he/she has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or that of individual judges for that of the authority constituted by law to decide the matter in question.”
19. Further, in the English Case of *Civil Servants Union v The Minister for Civil Service* [1985] Ac, the court held as follows;

“the remedy of judicial review, and in particular the remedy of “certiorari”, is founded upon the three “I’s”, “illegality”, “irrationality”, and “procedural impropriety”, all summarized in the doctrine of “ultra vires”, and is intended and meant to correct the various improprieties which may be committed by those entrusted with the exercise of public authority.”
20. Additionally, in *Republic v Anti-Counterfeit Agency & 2 Others ex parte Surgipharm Limited* [2011] eKLR the court referring to *Halsbury's Laws of England*, 4th Edition Vol. III, paragraph 12, at page 270, the court said -

“The remedies of quashing orders (formerly known as orders of certiorari), prohibiting orders (formerly known as orders of prohibition), mandatory orders (formerly known as orders of mandamus) ... are all discretionary. The court has a wide discretion whether to



grant relief at all and if so, what form of relief to grant. In deciding whether to grant relief the court will take into account the conduct of the party applying, and consider whether it has not been such as to disentitle him to relief. Undue delay, unreasonable or unmeritorious conduct, acquiescence in the irregularity complained of or waiver of the right to object may also result in the court declining to grant relief.”

21. In the instant application the applicant’s contention is essentially that the 1st respondent acted *ultra vires* in revoking the police abstracts and P3 forms because the applicant legitimately and reasonably expected to be given notice or accorded a hearing prior to the impugned letter of revocation. The evidence before this court regarding the same is only by the applicant, the same is uncontroverted as the 1st respondent did not file any response justifying his actions or challenging the said application and the contents therein despite being served.
22. As to what constitutes legitimate expectation, in the case of *Republic v Kenya Revenue Authority, Ex Parte Amsco Kenya Limited* [2014] eKLR the held as follows;

“It was held in *Keroche Industries Limited v Kenya Revenue Authority & 5 others*, [2007] KLR.....legitimate expectation is based not only on ensuring that legitimate expectation by the parties are not thwarted but on a higher public interest beneficial to all including the respondents, which is, the value or need of holding authorities to promises and practices they have made and acted on and by so doing upholding responsible public administration. This in turn enables people affected to plan their lives with a sense of certainty, trust, reasonableness and reasonable expectation. An abrupt change as was intended in this case, targeted at a particular company or industry is certainly abuse of power. Stated simply legitimate expectation arises for example where a member of the public as a result of a promise or other conduct expects that he will be treated in one way and the public body wishes to treat him or her in a different way...Public authorities must be held to their practices and promises by the courts and the only exemption is where a public authority has a sufficient overriding interest to justify a departure from what has been previously promised.”
23. In upshot, and taking the totality of the facts herein and specifically the fact, the respondent did not consult or notify the applicant before issuing the impugned letter the application dated 24th December 2021 is hereby allowed and prayed.
24. Costs shall be in the cause.

DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 2ND DAY OF FEBRUARY 2023.

H. K. CHEMITEL.

JUDGE

