



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**JUDICIAL REVIEW APPLICATION NO. MISC. E058 OF 2021**

**SAMUEL DOMNIC MUATHE C/O**

**PARK TOWERS LIMITED.....APPLICANT**

**VERSUS**

**ATTORNEY GENERAL..... 1ST RESPONDENT**

**INSPECTOR GENERAL OF POLICE.....2ND RESPONDENT**

**DIRECTOR OF CRIMINAL INVESTIGATIONS OFFICER,**

**KAMKUNJI STATION.....3RD RESPONDENT**

**RULING NO. 2**

1. The Applicant herein has filed a Notice of Motion dated 10<sup>th</sup> May 2021 in which it is seeking the following orders:

**1. THAT this application be certified urgent and be heard on a priority basis dispensing with service in the first instance due to its urgency.**

**2. THAT the Application dated the 22nd day of April 2021 be reinstated by this Honourable Court and heard on ex-parte basis.**

**3. THAT the cost of this Application be provided for.**

2. The application is supported by an affidavit of Ben Munyasya, the Applicant's Advocate, and the grounds are that the Applicant herein filed an application dated 22<sup>nd</sup> April 2021 which was wrongly dismissed on the 23<sup>rd</sup> April 2021 by this Court, and that before the application was struck out, the Applicant's law firm duly assembled and filed certificate of Urgency, Chamber Summons, statutory Statement, a Verifying affidavit and a Supporting Affidavit. Further, that the said application was assessed at a cost of Kshs. 13,755/= and an invoice was issued to that effect, and the sum paid vide receipt number FSCA-0071112. The Applicant annexed copies of the aid invoice and receipt.

3. However, that the Court observed that the Applicant filed a disjointed and incomplete document on the e-filing portal, in which neither the parties, nor the Application before the court were indicated and the suit was struck out with no orders as to cost. The Applicant therefore believes that there couldn't have been any assessment of non-existent application and an invoice raised and paid for without a confirmation electronically.

4. The Applicant beseeched the Court to consider to reinstate its application on the grounds that the Judiciary's e-filing system:-

a) Is still on its infancy stage to detect and dispel any mistakes that may occur since some point it needs human input to complete the filling process.

b) It also lacks the capacity to communicate that a document or no document has been uploaded and confirm with certainty as the human counter-part that it's the right documents.

c) That rectifying a mistake which is most likely electronic in nature should not be prejudicial or detrimental to any to any party of the suit at its initiation stage.

d) On humanitarian ground and in the interest of dispensation of justice without fear of being a victim of technological error being visited upon a party in terms of cost in a suit instituted by him/her.

e) The fact that COVID-19 has taken a toll on the entire population financially.

5. I have considered the application herein, and note the sentiments made on the operations of the Judiciary's e-filing system, which will be forwarded to the appropriate department for noting and where possible redress. It is however necessary to point out that the payment of fees for the documents does not absolve a party of the duty to ensure that a complete set of documents are filed or uploaded on the Judiciary's e-filing portal, and only permits the party to proceed with the filing.

6. It is also notable that the position that still obtains is that this Court is not seized of the Applicant's complete application, which has not yet been uploaded on e-filing portal, nor availed to the Court. I am however cognizant of the financial hardship that may be caused to the Applicant if he is required to upload the complete application on the Judiciary's e-filing portal, given that he had already paid for the application.

7. The Applicant's Notice of Motion application dated 10<sup>th</sup> May 2021 is therefore dispensed with on the terms of the following orders:

**I. The suit herein is reinstated for hearing of the Applicant's application dated 22<sup>nd</sup> April 2021.**

**II. The Applicant shall avail to the Court a complete set of the pleadings in the application dated 22<sup>nd</sup> April 2021 and its supporting documents by sending soft copies by electronic mail to the Deputy Registrar of the Judicial Review Division at [judicialreview48@gmail.com](mailto:judicialreview48@gmail.com) and [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com) within seven (7) days of today's date.**

**III. The hearing of the application dated 22<sup>nd</sup> April 2021 shall be held by email on 26<sup>th</sup> May 2021, and the Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for hearing on that date.**

**IV. There shall be no order as to the costs of the Applicant's Notice of Motion application dated 10<sup>th</sup> May 2021.**

**V. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling to the Applicant by electronic mail by close of business on Thursday, 13<sup>th</sup> May 2021.**

8. Orders accordingly.

**DATED AND SIGNED AT NAIROBI THIS 12<sup>TH</sup> DAY OF MAY 2021.**

**P. NYAMWEYA**

**JUDGE**