



**REPUBLIC OF KENYA**

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

**MISC. CIVIL SUIT NO.57 OF 2019**

**IN THE MATTER OF: AN APPLICATION BY THEOPHILUS KIPKOECH ROP FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

**AND**

**IN THE MATTER OF THE COMPANIES ACT CAP 486 LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF THE CIVIL PROCEDURE ACT CAP 21 LAWS OF KENYA**

**IN THE MATTER OF THE BOMET PRINCIPAL MAGISTRATE COURT FILE NO.68 OF 2015 WARRANT CONSTRUCTION COMPANY LTD -VERSUS- TRANSWIFT INVESTMENT COMPANY LIMITED**

**EX PARTE**

**THEOPHILUS KIPKOECH ROP.....APPLICANT**

**VERSUS**

**WARRAN CONSTRUCTION CO. LTD.....1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. This is an application dated 24<sup>th</sup> July 2019 for leave to file Judicial Review proceedings which is erroneously described as a Miscellaneous Civil Suit.
2. It was brought under Order 53 rules (1), (2) and (4) of the Civil Procedure Rules 2010, seeking leave to commence Judicial Review proceedings for Certiorari relating to orders made in Bomet Principal Magistrate's Civil Case No.68 of 2015 committing the applicant to civil jail; and for stay of execution of the magistrate's orders.
3. The application is grounded on the Statement of the applicant Theophilus Kipkoech Rop, which was however, signed by counsel, as well as a Verifying Affidavit of the applicant which he swore on 24<sup>th</sup> July 2019 in which he annexed a ruling dated 1<sup>st</sup> April 2019 in which the Magistrates Court at Bomet dismissed his request for lifting the warrant of arrest issued against him.
4. This court ordered that the respondents including the Attorney general be served, but the Attorney General according to counsel was not served. In addition, though the order complained of is the order of the Principal Magistrate at Bomet, that court is not a party in the application.
5. This court will not grant the leave sought to commence Judicial Review proceedings herein. The first reason for this is that though this court ordered under the provision to Order 53 rule (4) of the Civil Procedure Rules that the application should be served on all parties, the Attorney General who would represent the Principal Magistrate's Court which made the orders complained of was not served.

6. The second reason is that in my view, the application is fatally defective as the Bomet Principal Magistrate's Court whose orders are sought to be challenged in the intended Judicial Review proceedings and who would have to be served with the Notice of Motion under Order 53 rule (3) (2) of the Civil Procedure Rules is not named as a party.

7. In those circumstances, this application in my view is fatally defective and I strike out the same.

**Dated and delivered at Kericho this 11<sup>th</sup> day of December 2019.**

**George Dulu**

**JUDGE**