



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION

ACEC MISCELLANEOUS NO. 6 OF 2018

**IN THE MATTER OF: AN APPLICATION BY WILSON KIPKOTI FOR
LEAVE TO APPLY FOR ORDERS OF CERTIORARI & PROHIBITION**

AND

**IN THE MATTER OF: ETHICS AND ANTI CORRUPTION COMMISSION
WILSON KIPKOTI.....APPLICANT**

VERSUS

ETHICS & ANTI CORRUPTION COMMISSION.....RESPONDENT

JUDGMENT

1 The Notice of Motion dated 25th September 2018 was filed on 1st of October 2018 pursuant to leave granted by this court on 20th September 2018.

2 The Notice of Motion seeks the following orders:

(i) That the applicant be granted leave to apply for an order of certiorari to bring into this court and quash the decision of the Secretary/Chief Executive Officer of Ethics and Anti Corruption commission to summon the Applicant, Wilson Kipkoti for purposes of interviewing and recording statements pursuant to the letter dated 12th January, 2018.

(ii) That the Applicant be granted leave to apply for order of prohibition preventing the Secretary/Chief Executive Officer, Ethics and Anti Corruption Commission or any other person acting on his behest, from summoning, interviewing and or recording the statement of Wilson Kipkoti, pursuant to the letter dated 12th January, 2018.

(iii) That costs of this application be provided for.

3 It is supported by the grounds on its face plus the statement of the Applicant.

4 The Respondent filed a replying affidavit sworn by Catherine Ngari opposing the application.

5 Both counsel agreed to dispose of the application by written submissions.

6 The Notice of Motion herein clearly seeks **Leave** to apply for orders of Certiorari and Prohibition. As stated above **Leave** was granted by this court on 22nd September 2018. The court directed that the Applicant files the substantive motion for the orders being sought. Instead of him seeking the substantive orders, he again sought leave to apply for the orders of certiorari and prohibition. This is clear on the face of the application. Though in his statement the Applicant clearly indicates the reliefs sought, this court will not substitute the statement for the Notice of Motion. The Notice of Motion must clearly set out the reliefs sought by the Applicant. A party is bound by his pleadings, and so is the Applicant herein. The Applicant failed to set out the proper reliefs in his Notice of Motion. There is therefore no substantive prayer sought for this court to deliberate on. I therefore dismiss the Notice of Motion dated 25th September 2018 with costs to the Respondent.

Orders accordingly.

Dated, signed and delivered this 22nd November 2018 in open court at Nairobi.

HEDWIG I. ONG'UDI

JUDGE