

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

MISCELLANEOUS APPLICATION 165 OF 2006

ELIJAH KIMURU KATHOKORO.....EXPARTE APPLICANT

VERSUS

CHARITY NJOKI MUCHIRA.....RESPONDENT

& 5 OTHERS

RULING

The Applicant through Ngigi Gichoya and company advocates filed the application dated 14/6/2007 UNDER Order XLIV Rule 1 of the Civil Procedure Rules, Section 80 and Section 3 A of the Civil Procedure Act. As at the time this application came up for hearing the said firm of advocates had ceased acting for her and she therefore prosecuted the application in person. She is seeking others that the exparte leave granted on 27/11/2006 for the applicant to apply for orders of certiorari be set aside, vacated, discharged and or reviewed. She relies on the 4 grounds on the face of the application and on her supporting affidavit dated 14/6/2007. She asserts that the leave was granted in error as no sufficient cause was shown; that there was an error on the face of the record; and that the application and the subsequent notice of motion is therefore incompetent and untenable. Counsel for the ex-parte applicant replied purely on points of law. He told the court that the orders cited are not applicable to Judicial Review matters. Further, that he has not said what error is apparent on the face of the record; and not demonstrated that the leave and the notice of motion are bad in law.

I have considered the said application. I do not wish to go into intricate details as to whether the cited provisions are applicable or not now that the applicant is in person. I would nonetheless say that the application in question is actually prima facie bad in law even under the provisions of the Order XLIV cited. The orders or decree sought to be reviewed has not been annexed and that on its own would call for a dismissal of the same. The so called error apparent on the face of the record is not indicated; there is no sufficient cause shown and generally, the applicant's application has no basis at all.

I have perused the application for leave in question and the proceedings before my predecessor who granted it. The application was properly before the court; the correct procedure was followed and there is no basis whatsoever for the application that the same should be set aside or otherwise vacated or reviewed. The application dated 14/6/2007 is therefore dismissed with costs to the ex-parte applicant.

W. KARANJA

JUDGE

Delivered signed and dated at Embu this 1st day of July 2009.

In presence of:-Both parties.

W. KARANJA

JUDGE

1/7/2009.