

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. APPL. NO. 1360 OF 1998

EAST AFRICA SAFARI AIR LIMITED.....APPLICANT

V E R S U S

THE HON. ATTORNEY GENERAL.....RESPONDENT

R U L I N G

Counsel for the interested party has applied that the claimant (Mr. Kegode) be availed for cross-examination on matters raised in his affidavits filed in support of the notice of motion. He contended that since the notice of motion is brought under O.LIII of cap.21 is not an interlocutory application it is fair that the claimant be annexed to so that the matters in issue come out clearly. He was supposed by Mrs Kimani for the respondent Mr. Kowade for the claimant opposed the application on the ground that no basis had been laid for the application.

When this matter came up for hearing on 11.6.99 all the counsels in record agreed that any interlocutory applications here abandoned and that the interim application be heard. Mr. Kowade presented his submissions on 21st & 22nd June 1999. At the close of the said submissions there was an indication from either the interested party or the respondent that they in intended to cross examined the claimant. In my view that application should have been made before counsel for the claimant presented his submissions. Furthermore I find that the interested party has not laid a proper basis for which cross examination of the claimant may be ordered. After the claimant filed his supporting affidavits the interested party filed replying affidavits which in my view adequately covered the matters in issue. If the interested party felt that the affidavits of the claimant don't sufficiently bring out the matters in issue. He had a right to apply under O.LIII r.4 (2) to file further affidavits to deal with new matters arising out of the affidavits sworn and filed by the claimant.

The interested party has not disclosed what it genuinely contests in the claimant's affidavit. I also wish to point out that an application for judicial review is hinged on the statement of facts. The opposing party can only challenge the same either by filing grounds of opposition, which are not mandatory or by affidavits.

I refuse to grant the application. The same is dismissed.

Dated this 10th day of November, 1999.

J. K. MITEY

JUDGE