



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW APPLICATION NO. E019 OF 2024

**IN THE MATTER OF AN APPLICATION FOR THE JUDICIAL
REVIEW ORDER OF *CERTIORARI***

**REPUBLIC-----
APPLICANT**

-VERSUS-

**CHIEF MAGISTRATE NAKURU-----
RESPONDENT**

- AND -

DAVID MWANGI-----

INTERESTED PARTY

EX-PARTE APPLICANT-----BENNAH

NERIMA GITAU

JUDGMENT

1. The “Ex-parte” Applicant obtained leave to bring this Application for the prerogative writ of *Certiorari*, on 25th

October, 2024. By Notice of Motion dated 13th November, 2024, she subsequently filed is for Orders as hereunder:

- 1. That an ORDER OF CERTIORARI do issue for purposes of being quashed the Order of FORFEITURE of the *Ex-parte* Applicant Motor Vehicle registration number KAC 852W by NAKURU CHIEF MAGISTRATE COURT in Criminal Case No. 1121/2023 REPUBLIC -VS- DAVID MWANGI AND SAMUEL KARANU by Hon. ORENGE K. I. PRINCIPLE MAGISTRATE on 13th June, 2023. (sic)**
- 2. THAT the cost of this application be provided for. (sic)**

2. The *Ex-parte* Applicant avers through affidavit purportedly sworn on 15th November, 2024 that his subject motor vehicle was found to have been used to remove forest produce without a permit contrary to **Section 64 (1) as read with Section 64 (2) and 68 (1) of the Forest Conservation and Management Act.** The vehicle had allegedly been rented to the Interested Party to transport construction materials when it was arrested, and the Interested Party as well as his driver were charged with the offence alluded to above. They pleaded guilty to the offence and were each sentenced to a

fine of Kshs.20,000 which they paid and got released. According to this *Ex-parte* Applicant, the vehicle was impounded and detained by the Kenya Forest Service Yard in Pyrethrum Nakuru, on the ground that it was involved in illegal activities. The *Ex-parte* Applicant contends that he never permitted the vehicle to be used in any illegal activities.

3. I have perused the Application and other filings in the Court's e-filing portal. An Affidavit of Service of the Application filed in the portal indicates that an unnamed Court Assistant received the Application and signed and/or stamped on the *Ex-parte* Applicant's copy. It is unclear whether the Court Assistant is authorized to receive court process on behalf of the Respondent. Besides, a copy of the Application showing evidence of receipt is not filed. There is therefore no proof of proper service, of the Application, if at all.

4. On this ground alone, the Application would fail. Were the court to consider its merits, if only for academic purposes, it is now trite law as observed in many judicial authorities that judicial review orders including those in the nature of *certiorari* are concerned with the decision making process and

not the merits of a decision in question (See case law in **Republic -vs- Kenya Revenue Authority *Ex-parte* Yaya Towers Limited (2008) eKLR**).

5. In **Republic -vs- Nairobi City Council and Hannah Waithira Gatundu *Ex-parte* Boniface Gichimu (20006) eKLR**, it was explained in pertinent part thus;

“...It is now a cardinal principle that save in the most exceptional circumstances, judicial review jurisdiction would not be exercised and the Court must not exercise it where there exists an alternative remedy...”.

6. **Section 389A of the Criminal Procedure Code** allows the owner of property liable to forfeiture or any other interested party, to show cause why the property should not be forfeited before any forfeiture order is issued. The *Ex-parte* Applicant does not show if this procedure was exhausted. The proceedings of the trial court have not been exhibited for the court's perusal.

7. The *Ex-parte* Applicant further seems to state that the vehicle in question is in the custody of the Kenya Forest Service. If

this be the case, this public body has not been joined to these proceedings

8. It would in the premises, appear that the *Ex-Parte* Applicant has not first approached the lower court for redress before bringing this Application. The remedy of *certiorari* is not available to him in the circumstances. There are no exceptional factors foregoing demonstrated to warrant bypassing the provided alternative forum.
9. For the foregoing reasons, the Application is dismissed with no order as to costs.

**Judgement Signed, Dated, and Delivered at Nakuru
This 12th day of November, 2025.**

**J. M. NANG'EA
JUDGE.**

In the presence of:

Mr. Ombati Advocate for the *Ex-parte* Applicant

Respondent - Absent

Interested Party - Absent

Court Assistant - Jennifer

J. M. NANG'EA
JUDGE.

ORIGINAL