



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

JUDICIAL REVIEW NO. 22 OF 2014

(FORMERLY JR 344/14)

(BEFORE HON. JUSTICE HELLEN S. WASILWA ON 30TH APRIL, 2015)

JOSEPH KWEMOI PONGIZI 1ST APPLICANT

JOSEPH WQAGO NDEGWA2ND APPLICANT

VERSUS

TRAFFIC COMMANDANT1ST RESPONDENT

THE BASE COMMANDER RUIRU.....2ND RESPONDENT

INSPECTOR GENERAL OF POLICE3RD RESPONDENT

NATIONAL POLICE SERVICE COMMISSION4TH RESPONDENT

RULING

1. The Application before court is one dated 18/12/2014 and brought by the Applicants herein under Certificate of urgency. The application was filed in court on 22/12/2014 through an *exparte* Notice of Motion. The Applicants seek orders that:

1. *That the Honourable court be pleased to enlarge time within which the Notice of Motion upon being granted leave to file Judicial Review proceedings should have been filed and the Notice of Motion dated 15/12/2014 be deemed as properly filed and duly on record;*
2. *That the court be pleased to issue urgent directions as to the hearing of the Notice of Motion dated 15/12/2014;*
3. *That costs of this application be provided for.*

2. The application is based on the annexed affidavit of Daniel Wokabi Mathenge herein and on the grounds:

- a. *That on that day, exparte applicant's counsel instructed a counsel to hold his brief whom he had informed to seek that the matter be placed aside as he was held up in another court, and he subsequently wrote a note on his brief that the matter was to be heard on 20/11/2014;*
- b. *That the counsel who held exparte applicants counsel brief informed him that the court had directed that the application for leave be listed for directions on 20/11/2014;*
- c. *That on the 20/11/2014 exparte applicants counsel appeared in court and the matter having not*

been listed went to the registry to inquire of the same and he was informed that the matter was scheduled for mention on 4/12/2014;

- d. *That exparte applicant's counsel reliance on a professional colleague's proper handling in holding his brief led to exparte applicants counsel causing a mistake in failure to file the substantive motion in time.*
3. The Application is supported by the supporting affidavit of Daniel Wokabi Mathenge herein who depones that he is an Advocate of the High Court of Kenya and has conduct of this matter on behalf of the exparte Applicants.
 4. He depones that on 23/10/2014 when the application for leave came up for hearing of the same was allowed, the Respondents had not filed any response in opposition to it. On the same day, he depones, he had instructed Counsel to hold her brief, whom he informed to seek that the matter be placed aside as he was held up in another court and he subsequently wrote a note on his brief that the matter was to be heard on 20//11/2014. On this day however, he appeared in court and noted that the matter had not been listed. On 5/12/2014, he noted that leave to file the substantive motion within 21 days was granted on 23/10/2014.
 5. He was unable however to file this Motion as direction as he fell ill on 8/12/2014 and resumed office on 15/12/2014. It is for this reason that he has moved court to have the time within which to file the substantive motion enlarged so that what he filed in court on 15/12/2014 be admitted and be deemed as properly on record.
 6. This application was not opposed by the Respondents. I find no prejudice will be suffered by the Respondent if this application is allowed. I exercise my discretion under the law and allow the application. I direct further that the Applicant Petitioner should forthwith serve this petition on the Respondent within 14 days from the date herein.

The petition will henceforth without delay set the case for mention on an appropriate day for further directions.

Dated and delivered in open Court this 30th day of April, 2015.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Claimant

No appearance for Respondent