



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**JUDICIAL REVIEW MISC APPLICATION NO. MISC E053 OF 2021**  
**IN THE MATTER OF AN APPLICATION FOR LEAVE FOR**  
**JUDICIAL REVIEW ORDERS OF MANDAMUS**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**KENYA COMMERCIAL BANK.....1<sup>ST</sup> RESPONDENT**

**JOSHUA OIGARA.....2<sup>ND</sup> RESPONDENT**

**BONNIE OKUMU.....3<sup>RD</sup> RESPONDENT**

**EX PARTE APPLICANT: EMMAH WAIRIMU WACHIRA**

**RULING**

**The Application**

1. The *ex parte* Applicant herein, Emmah Wiarimu Wachira, has filed an application by way of a Chamber Summons dated 14<sup>th</sup> April 2021, wherein she is seeking leave to apply for judicial review orders of mandamus, and she has indicated that the orders sought are as set out in the statement of facts and grounds accompanying the application.

2. The said application is supported by a statutory statement dated 14<sup>th</sup> April 2021 and an affidavit sworn on the same date by the *ex parte* Applicant. I have perused the pleadings filed herein, and note that the orders of mandamus sought as against the Respondents have not been specified. This Court is accordingly not in a position to determine if the leave sought is justified. Order 53 Rule 1(1) and (2) in this respect envisages the specific relief sought by a party to be indicated in an application for leave, and provides as follows:

**“(1) No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule.**

**(2) An application for such leave as aforesaid shall be made ex parte to a judge in chambers, and shall be accompanied by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and by affidavits verifying the facts relied on.”**

3. In addition, the grounds for the application, which I shall reproduce verbatim, are as follows:

**1. THAT on 18th November, 2019, Hon. Otindo issued an order of attachment of Robley Otieno Njoge’s salary in Nairobi Children's Case No. 591 of 2019.**

**2. THAT the 1<sup>st</sup> Respondent was served with the Order on 22<sup>nd</sup> November 2019 and also on 24th March, 2021.**

3. THAT to date the 1<sup>st</sup> Respondent has failed to comply with the Court Order and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent are principal officers of the 1<sup>st</sup> Respondent in charge of operations and legal compliance and have not even made the faintest attempt to comply with the order.

4. THAT the Ex parte Applicant seeks orders of Mandamus against the Respondents herein.

4. The Court of Appeal in Republic vs Kenya National Examinations Council exparte Gathenji and 9 Others, [1997] e KLR. held as follows as regards the circumstances when an order of mandamus will issue:

**“ What do these principles mean? They mean that an order of mandamus will compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed....”**

5. The statutory and public duties owed to the *ex parte* Applicant by the Respondents that makes them amenable to judicial review have not been specified, and it is evident from the grounds of the application that the proceedings giving rise to the instant application arise from the enforcement of a private law dispute and rights.

6. Lastly, the Applicants have not provided any evidence of compliance with the Government Proceedings Act, and in particular, they have not provided any evidence of a Certificate of Order Against the Government issued to them in respect of any judgment they seek to enforce against the Respondents.

#### The Orders

7. In the circumstances, I hereby direct and order as follows:

**I. The ex parte Applicant's Chamber Summons dated 14<sup>th</sup> April 2021, is hereby struck out for being incompetently filed.**

**II. There shall be no order as to costs.**

8. Orders accordingly.

**DATED AND SIGNED AT NAIROBI THIS 15<sup>TH</sup> DAY OF APRIL 2021**

**P. NYAMWEYA**

**JUDGE**