**Central Organisation of Trade Unions (Kenya) *ex parte* Chamber Summons**

***Re***

**Division:** High Court of Kenya at Nairobi

**Date of judgment:** 3 February 2006

**Case Number:** 1747/04

**Before:** Nyamu J

**Sourced by:** LawAfrica

**Summarised by:** R Rogo

*[1] Judicial review – Jurisdiction, whether judicial review limited to illegality in procedure – Expansion*

*of the scope of judicial review.*

*[2] Judicial review – Notice to the Registrar – Whether failure to give the Registrar notice in good time*

*fundamental to the application.*

*[3] Judicial review – Time within which to apply for certiorari – Whether the rule applies to all*

*decisions being challenged – Effect of delay in making application for judicial review.*

*[4] Judicial review – Whether it is necessary to state order sought in the application.*

**Editor’s Summary**

The applicant sought an order of *certiorari* to quash the decision of the Minister for Health to degazette the appointment of its member to the National Hospital Insurance Fund’s management board. It also sought an order mandamus compelling the Minister to reinstate the member. The respondent filed a preliminary objection on the grounds *inter alia* that the application did not specify the relief sought, the grounds do not envisage an illegality in its making process, notice under Order 53, rule 1(3) was not given later than the preceding day, *res judicata* applied to the suit and that the application for orders of *certiorari* was filed more than six months after the decision had been made and that notice was not given to them before the suit was filed.

**Held** – It is not necessary to specify that one is seeking an order of *certiorari*. A quashing order or *certiorari* would suffice. A quashing order is the other name for the judicial order of *certiorari*, a compliance order or compelling order would suffice for *mandamus.* Concerning the reinstatement, the objection to it can only arise from the fact that once a quashing order is given the decision making body has to appoint in accordance with the law and the court cannot make the decision for the challenged body and the body appears to have a discretion in appointing any one of the nominees.

While it is true that so far the jurisdiction of a judicial review court has been principally based on illegality, irrationality and impropriety of procedure, categories of intervention by the court are likely to be expanded in future on a case to case basis. (*R v Transport Licensing Board ex parte Charles Karanja* followed).

Although the rule that the Deputy Registrar should be given notice not later than the preceding day is worded in mandatory terms, the court does have a discretion under the proviso to excuse the failure to file the notice for good cause shown. However, no cause was shown and the preliminary objection is upheld on this ground.

Order 53, rule 2 only relates to the challenge of the formal orders set out in the rule and it is not of general application. The challenged decision in this case falls outside the formal orders set out therein. In any event the decision was reflected in a Gazette notice and not in any order. This falls outside the limitation under the order and the objection is overruled on this ground. (*R v Goldenburg Commission and another ex parte Mwalulu* followed).

Generally notice should be given to the respondent prior to the institution of the suit. However, since leave has been granted in this matter the court cannot reopen it to apply this principle. (*R v Horsham*

*District Council ex parte Wenman* [1993] The Times 21 October followed).

The term of the affected director had expired before leave was granted and no disclosure was made to the court concerning this. The order of reinstatement is therefore being sought in vain and there has been material non-disclosure of the fact and the preliminary objection will be sustained on this ground. (*R v*

*Kensington Commissioner ex parte Polignac* [1917] KB 486; *R v Land Registrar Kajiado ex parte*

*Kinserk* followed).

Applications for judicial review are required to be made promptly. Undue delay in applying is a major factor and the needs of good administration must be borne in mind. Courts cannot hold the decision making bodies hostage. (*R v Kesington Income Tax Commissioners ex parte Princess Edmond De*

*Polignac* applied).

Even when an applicant discloses meritorious grounds for relief such relief can be denied if he sat on his rights and failed to seek relief in good time and with due diligence.

Application dismissed.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means considered; “**D**” means distinguished; “**DA**”

means disapproved; “**DT**” means doubted; “**E**” means explained; “**F**” means followed; “**O**” means

overruled)

***East Africa***

*R v Goldenberg Commission and another ex parte Mwalulu* – **F**

*R v Horsham District Council ex parte Wenman* [1993] The Times 21 October – **F**

*R v Land Registrar Kajiado ex parte Kinserk* – **F**

*R v Transport Licensing Board ex parte Charles Karanja* – **F**

*Rajwani v Chief Magistrates Court* 1544 of 2004

***United Kingdom***

*R v Kensington Commissioner ex parte Polignac* [1917] 1 KB 486 – **AP** and **F**

*R v Secretary of State for the Environment ex parte Hackney London Bourough Council* [1984] 1