**Musyoka v Chief of General Staff**

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

**Date of judgment:** 7 July 2000

**Case Number:** 84/00

**Before:** Gicheru, Lakha and Keiwua JJA

**Sourced by:** LawAfrica

**Summarised by:** W Amoko

*[1] Judicial review – Application for leave to institute judicial review proceedings – Jurisdiction of the*

*Court – Circumstances in which leave should be granted.*

**Editor’s Summary**

A court martial was convened on 19 April 1999 to try the Applicants. Upon their application to the High Court, the court martial was stayed pending the hearing and determination of the judicial review proceedings they had obtained leave to institute. These proceedings were eventually dismissed. Following that dismissal, a reconstituted court martial was reconvened. At the hearing the Applicants raised several objections, going to the jurisdiction of the court martial, all of which were overruled. The Applicants then applied to the High Court for leave to institute judicial review proceedings for orders of *certiorari* and prohibition to issue against the court martial on grounds, *inter alia*, that the court martial had been improperly convened and some of the charges they were facing were time barred by virtue of the provisions of section 142 of the Armed Forces Act. The High Court refused to grant leave holding that the Applicant had not made out a *prima facie* case for the grant of relief and further they were guilty of non-disclosure. On appeal by the Applicants.

**Held** – The Applicants had shown a *prima facie* case that there were complaints with regard to the manner in which the court martial had been disbanded and reconvened was improper, the conduct of the prosecution with regard to the amendment of the charges was improper, charges might have been time barred. The High Court had misdirected itself in holding otherwise. Appeal allowed.

**No cases referred to in judgment**