**Ole Keiwua v Chief Justice of Kenya and others**

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

**Date of judgment:** 5 August 2005

**Case Number:** 202/05

**Before:** Githinji JA

**Sourced by:** LawAfrica

*[1] Judicial review – Right of appeal – Whether a right of appeal existed against directional and*

*procedural orders of court – Section 8(5) – Judicature Act (Chapter 8).*

**Editor’s Summary**

The applicant filed a judicial review application, being High Court miscellaneous application number 1298 of 2004 in which the applicant sought orders of *certiorari*, *mandamus*, prohibition relating to matter number 2 of 2004 of the Tribunal to investigate the conduct of certain judges of appeal, published under Gazette Notice number 95 of 6 January 2004. The application was fixed for hearing for three consecutive days. The Honourable Attorney-General, who appeared for the first six respondents, gave a notice to raise a preliminary objection to the judicial review application. When the judicial review application came up for hearing, the applicant drew the attention of the court to affidavits of two persons who were not parties to the application. He also sought leave to file affidavits in reply to the affidavit of counsel for the seventh respondent. He also applied for an adjournment and leave to file a further affidavit. On 14 June 2005, the applicant was given 10 days to respond to the said affidavits. The hearing of the Preliminary Objection was fixed for 21 July 2005. The applicant filed a notice of appeal indicating his intention to appeal against the decision of 14 June 2005. The applicant then filed the notice of motion, dated 14 July 2005, under certificate of urgency asking the court to stay further proceedings of the judicial review application pending the hearing and determination of the intended appeal against the ruling of the superior court, delivered on 14 June 2005.

**Held** – The orders that the applicant intended to appeal against were procedural and directional in nature. By section 8(5) of the Law Reform Act, there is a right of appeal by a person aggrieved by orders of *certiorari*, prohibition or *mandamus*. There is no right of appeal, without leave from the orders of the superior court which are not prerogative orders.

**No cases referred to in judgment**