**Republic v Permanent Secretary/Secretary to the Cabinet and Head of Public**

**Service Office of the President and another *ex parte* Ng’ang’a and others**

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

**Date of judgment:** 5 July 2006

**Case Number:** 612/04

**Before:** Visram J

**Sourced by:** LawAfrica

**Summarised by:** R Rogo

*[1] Whether judicial review is bar to other remedies – When prohibition remedy applied – When*

*remedy of certiorari applies.*

*[2] Whether Minister can transfer an employee of a state corporation.*

**Editor’s Summary**

The *ex parte* applicant, *vide* a letter of appointment from the interested party herein was appointed as the

Director of the Kenya National Library Services (KNLS).

Later, the Minister for Gender, Sports and Culture, after friction with him, wrote a memo to the Permanent Secretary, Ministry of Gender, Sports, Culture and Social Services stating that it was necessary that disciplinary action be taken against the *ex parte* applicant for engaging in “acts of insubordination”. The *ex parte* applicant then received a letter from the Ministry informing him that he had been posted to the Ministry of Trade and Industry (KIPO) as Chief Documentalist/Information Officer. He filed thus judicial review application alleging that the actions by the Permanent Secretary in the Ministry and the Permanent Secretary, Office of the President were prejudicial, an abuse of the process and a breach of the rules of natural justice.

**Held** – The purpose of judicial review is to check that public bodies do not exceed their jurisdiction and carry out their duties in a manner that is detrimental to the public at large. The institution of a judicial review suit is not a bar to seeking other forms of relief as judicial reviews posit that as soon as a public body exceeds its jurisdiction, or acts unfairly, or disregards the principles of natural justice, then the very act of the public body must be scrutinised. A prohibition order forbids a tribunal or body to continue in excess of its jurisdiction or in contravention of the laws of the land. Prohibition cannot quash a decision which has already been made, it can only prevent the making of a contemplated decision. Only an order for *certiorari* can quash a decision already made and, it is issued if the decision is made without or in excess of jurisdiction, or where the rules of natural justice are not complied with. The Ministry has a major role to play in the administration of the KNLS Board by virtue of section 4 of The State Corporations Act (Chapter 446). The role of the Public Service Commission cannot be downplayed as KNLS under section 4 of Kenya National Library Services Board Act (Chapter 225) carries out functions of public nature, thereby making its affairs those in public service. As such, the hiring, discipline and removal of officers from offices in the public service is vested in the Public Service Commission. Thus, the minister, together with his counterpart, the Head of Civil Service, were within their ambit in deciding to transfer the applicant. There was no “statutory protection” afforded to the applicant as the Director of KNLS. His terms of employment were intended to be governed in the letter of appointment.

**Cases referred to in ruling**

(“**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***

*Apollo Richard Oluoch v Kenya National Library Services* High Court civil case number 1299 of 1990

*Charles Kariuki Wambugu v The Kenya National Library Service Board* High Court civil case number

2013 of 1989

*Eric J Makokha and others v Lawrence Sagini and others* High Court civil case number 73 of 1994

*Kenya National Examination Council v Gathenji and others* [1996] LLR 483 (CAK)

*Paul Kipkemoi Melly v The Permanent Secretary, Treasury and Minis*