



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Misc Civil Appli 34 of 2009**

**IN THE MATTER FOR THE APPLICATION FOR LEAAVE TO COMMENCE PROCEEDINGS IN THE  
NATURE OF JUDICIAL REVIEW**

**AND**

**IN THE MATTER OF KENYATTA UNIVERSITY ACT CAP 210C LAWS OF KENYA AND RULES  
MADE THEREUNDER**

**AND**

**IN THE MATTER OF SUSPENSION OF SIMON GATHUO FROM THE UNIVERSITY ON THE 9<sup>TH</sup> OF  
JANUARY 2009**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**KENYATTA UNIVERSITY ..... 1<sup>ST</sup> RESPONDENT**

**OLIVE MUGENDA ..... 2<sup>ND</sup> RESPONDENT**

**JOHN KOGA ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

The application dated 4<sup>th</sup> February 2009 seeks leave to file a substantive judicial review application seeking the orders of certiorari, mandamus and prohibition. When the matter came under a certificate of urgency I directed that the application for leave be heard inter-parties.

Based on the Statement, Verifying Affidavit and the submissions of the learned counsel for both parties, my assessment is that the application is fairly arguable. At this stage any comment from the court on any issue would reveal the court's hand in advance and would be prejudicial to the hearing at the next stage.

Having reached the above conclusion, I grant leave in terms of prayer 1(i), 2(ii), 3(i), 4(i) and 5(i) of the application dated 19<sup>th</sup> January 2009 and amended on 4<sup>th</sup> February 2009. In the circumstances I consider it inappropriate to order that leave operates as stay and therefore prayer (6) is hereby declined. Instead I order that the substantive judicial review application be filed within 10 days and served within 8 days. Upon compliance with this direction the matter be mentioned before me on 27<sup>th</sup> February 2009 at 9.00 a.m with a view to giving further directions concerning fasttracking the hearing of the Notice of Motion. Costs shall abide the outcome of the judicial review application.

DATED and delivered at Nairobi this 20<sup>th</sup> February, 2009.

**J.G. NYAMU**

**JUDGE**



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