



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

JUDICIAL REVIEW CASE NO.1 OF 2018

JEPHTER JUMA AMBUCHI.....1ST APPLICANT

JOSEPH KIMARUI JUMA.....2ND APPLICANT

VERSUS

HEZRON BARASA KISACHE.....RESPONDENT

30/7/2018

Coram: Hon. B.N. Olao, Judge

Joy – CA

RULING

I have perused the Judicial Review Application filed herein on 30th July 2018 under Certificate of urgency.

It seeks the main Order that leave be granted to the Applicants to apply for Judicial Review Orders of certiorari and mandamus to remove into this Court and quash the Judgement by **JUSTICE A.O. MUCHELULE** dated 5th December 2012.

It is clear that this application is misconceived. Article 165(6) of the Constitution which grants the High Court powers of Judicial Review reads:

“The High Court has supervisory jurisdiction over the subordinate Courts and over any person, body or authority exercising a judicial or quasi Judicial function but not over a superior Court”. Emphasis added.

Similar powers are donated to this Court by Section 13(5) of the Environment and Land Court Act which reads:

“The Court shall have supervisory Jurisdiction over the subordinate Courts, local tribunals, persons or authorities in accordance with Article 165(6) of the Constitution.” Emphasis added.

It is clear therefore that prerogative Orders of certiorari and mandamus can only issue with respect to subordinate Courts, persons, tribunals or other bodies exercising Judicial or quasi Judicial authority. The Court presided over by **JUSTICE A.O. MUCHELULE** is a Superior Court. It is certainly not a subordinate Court. This Court cannot therefore purport to assume jurisdiction to issue prerogative Orders arising from a judgement of a Court of equal jurisdiction. This Court must decline any invitation to do so.

The up-shot of the above is that the Judicial Review Application filed on 30th July 2018 is in-competent and must be struck out which I hereby do.

As this ruling has been made in Chambers without hearing the Applicants, I direct that a copy thereof be served on Counsel by the Deputy Registrar.

BOAZ N. OLAO

JUDGE

31ST JULY 2018