



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND JUDICIAL REVIEW DIVISION
JUDICIAL REVIEW MISC. CIVIL APPLICATION NO. 245 OF 2015

BETWEEN

REPUBLICAPPLICANT

AND

THE CHIEF MAGISTRATES COURT THIKA..... RESPONDENT

GITHUNGURI CONSTITUENCY

RANCHING CO. LTD.....INTERESTED PARTY

EX-PARTE APPLICANT: JOSEPH KAMUNYA KINUTHIA

JUDGEMENT

Introduction

1. By a Notice of Motion dated 24th August, 2015, the *ex parte* applicant herein, **Joseph Kamunya Kinuthia**, seeks in substance an order of certiorari to quash all the proceedings in Chief Magistrates Court at Thika Civil Suit No. 30 of 2015 – **Joseph Kamunya Kinuthia vs. Caretaker Committee Githunguri Constituency Ranching Company Limited** (hereinafter referred to as “the said case”) dated 22nd May, 2015, 27th May, 2015, 12th June, 2015 and 3rd July, 2015.
2. According to the Applicant, he filed the said case on 1st April, 2015, after which the defendants therein appointed an advocate to represent them on 28th April, 2015. On 30th April, 2015 a consent compromising the suit was executed between the advocates on record for the Plaintiff and the Defendants in the said case which consent was adopted as an order of the Court on 15th May, 2015 by the Resident Magistrate, **Hon. G Onsarigo**.
3. However, other non-parties to the said case obtained orders from the Principal Magistrate, **D N Ireri**, after the same had been withdrawn. However on 27th May, 2015, the Applicant again filed a notice of withdrawal of the said suit but notwithstanding the same, the same non-parties on 28th May, 2015 obtained orders from the same Principal whose purport was to commence contempt of Court proceedings against the applicant for not obeying the orders issued to the said non-parties on 22nd May, 2015.
4. Although the applicant’s advocates sought an explanation from the Court on these turn of events no

response was forthcoming. Subsequent the applicant raised a preliminary objection in respect of all the proceedings following the withdrawal of the suit but the said objection was dismissed by the Court on 3rd July, 2015 hence these proceedings.

Interested Party's Case

5. According to the interested party, the ex parte applicant filed the said case seeking that the caretaker committee calls for the elections of the interested party and by a consent order issued in the said case on 30th April, 2015, the said suit was purportedly withdrawn and it was decreed that an annual meeting be called to elect the directors of the interested party.

6. It was however contended that the same was done in secrecy and fraudulently as there is a validly elected Board of the interested party which was however not joined to the said case which Board was authorized and supervised by the Court vide Nairobi ELC Misc. Appl. No. 12 of 2014.

7. On learning of the said consent order, the interested party instructed their advocates to apply for review of the same and obtained orders on 22nd May, 2015 which were served upon the caretaker committee patron and the applicant herein. Although the said elections were not held, the parties purported to hold a meeting and elected themselves as the new directors of the interested party and purported to serve the registrar of companies with the purported list of officials and proceeded to advertise in the media that they were the newly elected officials. It was averred that the said persons purported to open a parallel office close to the legally recognized one.

8. The interested party disclosed that it had notified the registrar of companies of the orders halting the elections. It then filed an application seeking the closure of the illegal office and prohibiting false publication in the media that the said persons were the officials of the interested party and also applied for contempt which orders they obtained and the applicant's preliminary objection was disallowed.

9. It was contended that though the application for contempt has never been argued as what was determined was the preliminary objection. It was therefore contended that these proceedings are mischievous and that after obtaining the stay herein the applicant has proceeded to carry out operations from the said newly opened office which action is causing confusion to the members. According to the interested party, the Court had the power to review its own orders if there was an illegality shown on the face of the record based on an application of an aggrieved party. In the interested party's view the applicant ought to have appealed against the ruling dismissing the preliminary objection sine the decision was made in the exercise of a discretion.

10. According to the interested party this application having been instituted in the name of the Republic instead of the applicant's own name, the same is defective and leave ought not to have been granted. To the interested party there is no proof of the existence of Caretaker Committee of Githunguri Constituency Ranching Co. Ltd, which in its view is an amorphous group cocooned to destabilize the operations of the interested party.

11. The interested party also took issue with the inclusion of the grounds in the Motion and the filing of a supporting affidavit thereto and contended that the grounds be expunged from the record and the said affidavit be struck out. It was further submitted that there is no provision for verifying affidavit in these types of proceedings. To the applicant the citation of the applicant's constitutional rights removes these proceedings from the realm of judicial review to a Constitutional Petition. To the interested party it was inappropriate to seek leave and stay in the same prayer.

12. According to the interested party, by the time it was joined to the proceedings in the said suit, there was no order withdrawing the said suit hence the suit was still alive.

13. It was submitted that the applicant ought to have filed an appeal if not satisfied with the dismissal of the preliminary objection.

14. It was contended that there are several suits filed by the applicant yet **Joseph Kinuthia** and **Ahmed Chege** are not members or shareholders of the interested party. According to the interested party, since a notice to withdraw had been filed in the Thika suit, the issue of contempt of court is no longer alive. To it the prayer seeking to quash the said proceedings is therefore no longer available as a result of the withdrawal of the same.

Determination

15. I have considered the issues raised in this application.

16. It is contended that these proceedings ought to have been instituted in the name of the Applicant rather than the Republic. The issue of intituling of applications for judicial review seems to be one that perennially arises before this Court despite several decisions handed down showing how in the various stages in the judicial review proceedings the intitulement ought to be done.

17. In **Farmers Bus Service and Others vs. The Transport Licensing Appeal Tribunal [1959] EA 779** it was held that when proceedings in the High Court by originating summons or originating motion are *inter partes*, it is not sufficient to intitule them as ‘In the matter of’, etc. This must be followed by the names of the applicants and respondents. However, the Court further provided that The *ex parte* application for leave to apply for an order (for prerogative writ) should have been intituled:

**“In the matter of an application by (applicants) for leave to apply for an order of Certiorari
and**

In the matter of Appeals Nos. 11 to 16 inclusive, 30, 32-35 inclusive, 37, 39, 41-43 inclusive, all of 1958, of the Transport Licensing Appeal Tribunal.”

18. Similarly, the issue of intitulement of an application for leave was dealt with by **Maraga, J** (as he then was) in **Republic vs. Minister for Transport & Communication & 5 Others Ex Parte Waa Ship Garbage Collector & 15 Others Mombasa HCMCA No. 617 of 2003 [2006] 1 KLR (E&L) 563**, where he held that an application for leave ought to be intituled as hereunder:

In the Matter of An Application by (the applicants for leave to apply for orders of certiorari and prohibition

And

In the Matter of Kenya Ports Authority Act

And

In the Matter of the National Environmental Management and Co-ordination Act 1999.

19. The rationale for this was given in **Mohamed Ahmed vs. R [1957] EA 523** where it was held:

“This recital reveals a series of muddles and errors which is not unique in Uganda and is attributable to laxity in practitioners’ offices and in some registries of the High Court. The appellant’s advocate appears to have failed entirely to realise that prerogative orders, like the old prerogative writs, are issued in the name of the crown at the instance of the applicant and are directed to the person or persons who are to comply therewith. Applications for such orders must be intituled and served accordingly. The Crown cannot be both applicant and respondent in the same matter”.

20. In **Jotham Mulati Welamondi vs. The Electoral Commission of Kenya Bungoma H.C. Misc. Appl. No. 81 of 2002 [2002] 1 KLR 486** Ringera, J (as he then was) expressed himself as follows:

“Prerogative orders are issued in the name of the crown and applications for such orders must be correctly intituled and accordingly, the orders of *Certiorari*, *Mandamus* or *Prohibition* are issued in the name of the Republic and applications therefore are made in the name of the Republic at the instance of the person affected by the action or omission in issue and the proper format of the substantive motion for *Mandamus* is: -

“REPUBLIC.....APPLICANT

V

THE ELECTORAL COMMISSION OF KENYA.....RESPONDENT.

EX PARTE

JOTHAM MULATI WELAMONDI”

21. I have perused the pleadings herein and with due respect, I find no substance in the contention that these proceedings are incompetent on the basis of wrong or incorrect intitulement thereof. It must be remembered that judicial review proceedings are commenced by the Notice of Motion and not the Chamber Summons. The Chamber Summons is simply an application for leave or permission to commence judicial review proceedings and whereas on the filing of the Notice of Motion the Chamber Summons is subsumed or submerged in the Motion, it is the Motion that originates the judicial review application proper. I can do no better than quote the Court of Appeal in **R vs. Communications Commission of Kenya & 2 Others Ex Parte East Africa Televisions Network Ltd. Civil Appeal No. 175 of 2000 [2001] KLR 82; [2001] 1 EA 199** where it expressed itself *inter alia* as follows:

“The proceedings under Order 53 can only start after leave has been obtained and the proceedings are then originated by the notice of motion filed pursuant to the leave granted. It would be somewhat ridiculous to bring the application for leave by way of an originating summons and once the leave is granted, the originating summons is then swallowed up or submerged in the notice of motion.”

22. Similarly, in **Mike J. C. Mills & Another vs. The Posts & Telecommunications Nairobi HCMA No. 1013 of 1996**, it was held *inter alia* that the application for leave does not commence judicial review until such permission is granted to institute appropriate Judicial Review application. Accordingly whereas the Chamber Summons seeking leave or permission to commence judicial review proceedings is made by the person aggrieved by the questioned decision or proceedings,, who is usually referred to as the “ex parte applicant”, the application proper by way of Notice of Motion is commenced in the name of the Republic with the person aggrieved referred to as the “ex parte applicant.

23. In any case in **Republic Ex Parte the Minister for Finance & The Commissioner of Insurance as Licensing and Regulating Officers vs. Charles Lutta Kasamani T/A Kasamani & Co. Advocate & Another Civil Appeal (Application) No. Nai. 281 of 2005** the Court of Appeal stated:

“Suffice it to say that a defect in form in the title or heading of an appeal, or a misjoinder or non-joinder of parties are irregularities that do not go to the substance of the appeal and are curable by amendment...Is the form of title to the appeal as adopted by the Attorney General in this matter defective or irregular? We think not, as we find that it substantially complies with the guidelines set out by this Court”.

24. It was further contended that since the Motion contained grounds, the same was similarly defective. Similarly the applicant was faulted for filing a supporting affidavit together with the Motion. It is trite that there is no place for a supporting affidavit in the substantive application for judicial review and the only affidavit provided for is the affidavit verifying the facts which ought to be detailed and contain all the facts relied upon by the Applicant which is filed with the application for leave. This position was clarified in **Republic vs. Land Disputes Tribunal Court Central Division and Another Ex Parte Nzioka**

[2006] 1 EA 321 where Nyamu, J (as he then was) was of the view which view I associate myself with that:

“There is no legal requirement that the statement and verifying affidavit or any other supporting affidavits and documents relied on by the applicant be filed together with the Notice of Motion and indeed there is no requirement that the motion be filed simultaneously with any other document. Order 53, rule 4 requires that the Motion be served together with the documents filed at the application or (leave stage) stage and the grounds to be relied on in support of the motion are those set out in the statement filed at leave stage and the facts are as set out in the affidavit verifying the statement. This means that no other documents need be filed with the Motion and the Motion is supported by the statement and the affidavits accompanying the application for leave. However under Order 53, rule 4(2) the applicant can file other or further affidavits, apart from those accompanying the application for leave, in reply to any affidavits filed by the other parties (where they introduce a new matter arising out of the affidavits) and the applicant can do so after sending out a notice to the parties and the procedure for this is clearly outlined in the rules. Where the other parties have not filed any affidavits the applicant would under Order 53 have no legal basis for filing another or further affidavits. To this extent the applicant’s case is complete at leave stage and practicing advocates are cautioned that the Civil Division Procedure of filing many affidavits to counter the opponent’s case is a hangover, which is not acceptable under the Judicial Review jurisdiction.”

25. Accordingly, I agree that the applicant ought not to have filed any affidavits further to the one filed at leave stage without the leave of the Court. However where the subsequent affidavit does not introduce any new material or fresh facts, the filing of such an affidavit is purely superfluous and to deny an otherwise merited application on the basis of such a procedural flaw would be contrary to Article 159(2) (d) of the Constitution. Therefore nothing turns on the issue of the said supporting affidavit or even the grounds in the Motion though the failure to adhere to the rules may be a ground for consideration when it comes to issues of costs.

26. With respect to the verifying affidavit, Order 53 rule 1(2) of the *Civil Procedure Rules* mentions "affidavits verifying the facts relied on" as opposed to a verifying affidavit. It is my view however that the distinction between the two, if there is any, is simply a matter of semantics. To disallow the application on that basis would amount to elevating procedural rules to a fetish. It has been held time and again that rules of procedure are the handmaids and not the mistresses of justice and should not be elevated to a fetish since theirs is to facilitate the administration of justice in a fair, orderly and predictable manner, not to fetter or choke it and where it is evident that a party has attempted to comply with the rules, but has fallen short of the prescribed standards, it would be to elevate form and procedure to fetish to strike out the suit. Deviations from, or lapses in form and procedure, which do not go to jurisdiction of the court or prejudice the adverse party in any fundamental respect ought not to be treated as nullifying the legal instruments thus affected. In those instances the court should rise to its calling to do justice by saving the proceedings in issue. **See Microsoft Corporation vs. Mitsumi Garage Ltd & Another Nairobi HCCC No. 810 of 2001; [2001] 2 EA 460.**

27. The interested party also took issue with the fact that the applicant sought both leave and stay in the same application. Order 53 rule 1(4) of the *Civil Procedure Rules* provides:

The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the judge so directs , operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise.

28. Whereas a strictly legalistic approach to the above provision does not lend itself to the interpretation that one need to apply expressly for stay, it is one of the fundamental rules of pleadings that Courts do not grant orders which are not sought. Directions in the nature of stay being discretionary it is upon the applicant to seek the same. I accordingly find that prudence demands that an applicant seeks directions in the nature of stay if the same are deemed appropriate.

29. The respondent was of the view that issues of Constitutional nature ought not to have been raised in these proceedings. The first issue for determination is whether the application is incurably defective for the reasons that it is brought both under the Constitution and the **Law Reform Act**. In order to determine this matter, one ought to appreciate the current Constitutional dispensation.

30. Before delving in details on this issue, one needs to recall the holding in **O'Reilly vs. Mackman [1982] 3 WLR 604, 623** where **Lord Denning** expressed himself as follows:

“Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new up-to-date machinery, by declarations, injunctions, and actions for negligence...We have in our time to deal with changes which are of equal constitutional significance to those which took place 300 years ago. Let us prove ourselves equal to the challenge. Now, over 30 years after, we do have the new and up-to-date machinery...To revert to the technical restrictions...that were current 30 years or more ago would be to reverse that progress towards a comprehensive system of administrative law that I regard as having been the greatest achievement of the English courts in my judicial lifetime. So we have proved ourselves equal to the challenge. Let us buttress our achievement by interpreting section 31 in a wide and liberal spirit. By so doing we shall have done much to prevent the abuse or misuse of power by any public authority or public officer or other person acting in the exercise of a public duty.”

31. In our case, it is my considered view that this Machinery was achieved by the promulgation of the current Constitution under which Article 23(3) of the provides:

In any proceedings brought under Article 22, a court may grant appropriate relief, including—

(a) a declaration of rights;

(b) an injunction;

(c) a conservatory order;

(d) a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;

(e) an order for compensation; and

(f) an order of judicial review.

32. The current Constitution provides in Article 47 as follows:

(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

33. It is therefore clear that the right to fair administrative action is no longer just a judicial review issue but a Constitutional issue as well. As was appreciated in **Re Bivac International SA (Bureau Veritas) [2005] 2 EA 43 (HCK)** judicial review has been said to stem from the doctrine of *ultra vires* and the rules of natural justice and has grown to become a legal tree with branches in illegality, irrationality, impropriety of procedure (the three “I’s”) and has become the most powerful enforcer of constitutionalism, one of the greatest promoters of the rule of law and perhaps one of the most powerful tools against abuse of power and arbitrariness. In my view it is no longer possible to create clear distinction between the grounds upon which judicial review remedies can be granted from those on which

remedies in respect of violation of the and Constitution can be granted. Whereas the remedies in judicial review are limited and restricted, the grounds cut across both.

34. It is therefore my view and I so hold that the citation of the provisions of the Constitution in a judicial review application is no longer fatal to such an application. The decision in **Nation Media Group Limited vs. Attorney General [2007] 1 EA 261** has therefore got to be read in light of the current Constitutional dispensation. In that case the Court held that:

“The applicant is seeking the intervention, enforcement and protection of its Constitutional rights against alleged violations by the respondent. Since there are general averments in the originating summons and in the affidavit in support thereof about breach or likely breach of the applicant’s constitutional rights, the applicant was perfectly entitled to come to the Constitutional Court in the manner he did in the circumstances. He could have opted to come to Court by way of judicial review for a limited remedy excluding the alleged constitutional contravention but he chose to come under the Constitution. A Constitutional application is much wider and may in suitable cases such as the instant one also include judicial review. The proviso to sections 70 to 83 (inclusive) gives the Court such wide latitude in the kind of remedies it can grant on a Constitutional reference including orders available in judicial review in a Constitutional reference...A party has a right to choose the jurisdiction to invoke when coming to court, depending on the results he/she desires. What such a party should not do however is to invoke two different jurisdictions in one application and or suit, because both judicial review jurisdiction and Constitutional jurisdictions are special and each jurisdiction has a set of special rules. The first jurisdiction is donated by an Act of Parliament namely Law Reform Act, Chapter 26 and the second Constitutional jurisdiction springs directly from the Constitution itself with rules made pursuant to section 84(6) of the Constitution. The Constitution is the Supreme Law and all other laws must conform to the Constitution. The rules of interpretation are different and the methods of amendment or repeal of ordinary laws are different from those of the Acts of Parliament. At the moment although desirable, it is not statutorily possible in judicial review proceedings to grant declarations, injunctions and damages whereas under section 84 of the Constitution the Court has a wide discretion to grant such orders as may be appropriate. A combination unnecessarily muddles up and confuses both parties and the Court and such combination is fatal to the application as well...In the instant application the applicant is seeking to enforce his fundamental rights under the Constitution. There is no combination of two or more jurisdictions in the application. Invoking constitutional jurisdiction in the place of judicial review jurisdiction where there is a Constitutional issue for determination does not by itself amount to invoking a wrong procedure and consequently that the application should fail. Flowing directly from the foregoing, the application is properly before the Court and the objection on that score must automatically fail.”

35. It is clear that by an order issued on 15th May, 2015, Thika Chief Magistrate’s ELC Case No. 30 of 2015 was withdrawn. That however was not the only order issued and there were further orders inter alia directing the Defendant in the said case, Caretaker Committee Githunguri Constituency Ranching Company Limited, to convene an annual general meeting for purposes of electing directors of the interested party herein within 30 days.

36. A not too dissimilar circumstances seems to have been the subject of the decision of **Bosire, JA** in **Pil Kenya Ltd vs. Oppong Civil Appeal No. 102 of 2007 [2009] KLR 442** in which the learned Judge expressed itself inter alia as hereunder:

“The effect of a notice of withdrawal is to terminate the suit of course subject to costs to the opposite party. In this matter however, there was a dispute as to whether Jeneby Taita had indeed withdrawn the suit. His advocate...later told the court that the letter giving notice of withdrawal of the suit could have been a forgery. If, however, the notice of withdrawal was valid such an amendment did not arise as there was no suit in existence respecting which an amended plaint or amended defence could be filed. The order was made ex parte, and later, a

Mr. Obura for the plaintiff lamented that he should have been but was not served with order en-joining the respondent herein as defendant and directing the amendment of the plaint. A plaint could not properly be amended at the instance of a party who was not the plaintiff. The said advocate also asserted that the suit had not been withdrawn and any notice to that effect was a forgery. It later transpired, however that the plaintiff disappeared. He was not answering his advocate's letters nor did he ever visit him thereafter. The notice of withdrawal was home made and I infer that it was indeed filed by the plaintiff personally. I say so advisedly. By his conduct he had no interest in the suit, with the result that his advocates had to formally apply for leave to cease acting for him. The plaintiff in that suit did not need the leave of the court to withdraw his suit nor was a court order necessary to give effect to the withdrawal. All that was necessary was for the plaintiff to file a notice of withdrawal before judgement. After judgement, however, the leave of the court was necessary...Having come to the foregoing conclusion, it is my view that the Superior Court was in grave error to continue with the case without first ascertaining whether the notice of withdrawal of the suit was valid or not. Besides, on 7th February, 2001 M/s Musinga & Company Advocates who were then on record for the plaintiff were granted leave to cease acting for the plaintiff. Yet on 9th February, 2001 Mr Musinga is shown on record to have appeared and was party to a consent order earlier reproduced in which the respondent consented to pay US\$ 3000 in order for the container to be released to him. As at the date the consent was recorded, there was no technically no suit in existence. It is noteworthy that there is no bar in bringing a fresh suit."

37. From the said authority, it is clear that the said case having been withdrawn whether properly or not, there was no suit in which further orders could be made without reinstating the same. This position seems to have been appreciated by the interested party who contends that by withdrawal of the suit to grant orders sought will be in vain. In David Mugo T/A Manyatta Auctioneers vs. Republic Civil Appeal No. 265 of 1997, the Court of Appeal in that matter held that where the body has ceased to exist but its decision is still enforceable, certiorari must issue to quash or nullify it. See also Republic vs. The Funyula Land Dispute Tribunal Ex Parte Prof. Washington O.Pamba Busia HCMA No. 78 of 2003 [2005] eKLR.

38. Therefore this Court cannot permit a clearly unlawful decision to stand simply because the matter has been determined. In Kimani vs. Attorney General [1969] EA 29, it was held that:

"The law is a living thing and a court would be shirking its responsibility were it to say, assuming that there be no existing recognised tort covering the facts of a particular case, "Why then, this must be an end to it". The law may be thought to have failed if it can offer no remedy for the deliberate act of one person which causes damage to the property of another... The law must, of necessity, adapt itself; it cannot lay still. It must adapt to the changing social conditions."

39. What then is the option available to a party aggrieved by orders obtained by fraud? In Ramdev Malik vs. Lionel Albert Callow HCCA No. 2 of 1958, it was held:

"The court has jurisdiction to set aside a judgement obtained by fraud in a subsequent action brought for that purpose, the proper remedy being an original action and not a re-hearing, but such a judgement will not be set aside upon mere proof that the judgement was obtained by perjury in which case his remedy lies in seeking a review of the judgement...The principle is that where a decree has been obtained by fraud practised upon the other side, by which he was prevented from presenting his case before the tribunal which was called upon to adjudicate upon it in the way most to his advantage, the decree is not binding upon him and may be set aside in a separate suit, and not only by an application made in the suit in which the decree was passed to the court by which it was passed; but it is not the law that because a person against whom a decree has been passed alleges that it is wrong and that it was obtained by perjury committed by, or at the instance of the other party, which is of course fraud of the worst kind, that he can obtain a re-hearing of the questions in dispute in a fresh action by merely changing the form in which he places it before the court and alleging in his

plaint that the first decree was obtained by perjury of the person in whose favour it was given. To hold so would be to allow defeated litigants to avoid the operation, not only of the law which regulates appeals, but that which relates to *res judicata* as well.”

40. However where the person alleging fraud was a party to the suit the settled position is that the party ought to apply for review. See **Jeraj Shariff & Co. vs. Chotai Fancy Stores Civil Appeal No. 77 of 1959 [1960] EA 374.**

41. In this case the interested party was not a party to the proceedings in the lower Court. Clearly it was not bound by the said order whether by consent or otherwise. It could therefore challenge the same in a separate suit. Even assuming that he could apply for review, unless the order marking the suit as withdrawn was set aside, the Court had no jurisdiction to issue fresh orders in a suit which to all intents and purposes did not exist. If the said order was given without jurisdiction as the interested party alleged, nothing would have stopped the interested party from moving this Court to have the order in question quashed.

42. It follows that the proceedings and orders which were issued subsequent to the withdrawal of the suit were tainted with procedural irregularity which is one of the grounds for granting reliefs in the nature of judicial review.

Order

43. In the premises I find merit in the Motion dated 24th August, 2015 and an order of certiorari is hereby issued removing into this Court for the purposes of being quashed the proceedings in Chief Magistrates Court at Thika Civil Suit No. 30 of 2015 – **Joseph Kamunya Kinuthia vs. Caretaker Committee Githunguri Constituency Ranching Company Limited** dated 22nd May, 2015, 27th May, 2015, 12th June, 2015 and 3rd July, 2015 which proceedings are hereby quashed.

44. In light of the seriousness of the allegations made by the interested party which still remain unresolved as well as the clear procedural defects in these proceedings, there will be no order as to costs.

45. It is so ordered.

Dated at Nairobi this 22nd day of January, 2016

G V ODUNGA

JUDGE

Delivered in the presence of:

Mr. Bulle for Prof Wangai for the Applicant

Cc Patricia