



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

MISC. CIVIL APPLICATION NO. 12 OF 2015

IN THE MATTER OF AN APPLICATION BY JACKSON LANGAT FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS IN THE NATURE OF MANDAMUS

AND

IN THE MATTER OF KISII CHIEF MAGISTRATE’S COURT CASE NO. 1238 OF 1996 JACKSON LANGAT .VS. SOTIK TEA CO. LTD

BETWEEN

REPUBLIC..... APPLICANT

THE CHIEF REGISTRAR JUDICIARY.....RESPONDENT

VERSUS

JACKSON LANGATEX-PARTE APPLICANT

RULING

1. The leave to file application for the Judicial Review order of mandamus was sought for by the applicant **Jackson Langat**, against the Chief Registrar of the Judiciary (respondent) vide the Chamber Summons dated **1st October 2015**. The leave was accordingly granted.

The substantive application was to be filed within twenty one (21) days from the **9th December 2015**, when the application for leave was heard and granted ex-parte the respondent. (**see, Order 53 Rule 3(1) of the Civil Procedure Rules, 2010**).

Under Order 50 Rule 4 of CPR, it is stated that:-

“Except where otherwise directed by a judge for reasons to be recorded in writing, the period between the twenty first day of December in any year and the thirteenth day of January in the year next following, both days included shall be omitted from any computation of time (whether under these rules or any order of the court) for the amending, delivery or filing of any pleading or the doing of any other acts.

Provided that this rule shall not apply to any application in respect of a temporary injunction”.

2. Therefore, the substantive application ought to have been filed and served on or prior to the **29th day**

of January 2016. However, the relevant Notice of Motion dated **19th December 2015** was filed on **21st December 2015,** when time stopped running and was served on **23rd December 2015,** when time had already stopped running for filing any pleadings or doing any act.

There is indication on the body of the motion that it was re-filed on **18th January 2016,** but there is no indication that service upon the respondent was effected at any time from that day. The applicant therefore relied on the earlier service effected on **23rd December 2015,** which was erroneous and the later service dated **7th January 2016,** which was also erroneous because time was not running at the time and what was served was a hearing notice.

Suffice to say that the respondent was served twice when time had stopped running. The hearing date for the application was thus fixed pre-maturely. Perhaps this explains why the respondent has not filed any response.

3. Although the fault aforementioned is procedural it is costly as the period within which time stops running for purposes of any process save that to do with temporary injunction is embedded in law. In any event, this is a judicial review matter which is special in nature such that anything to do with time must be strictly observed.

For all the foregoing reasons, it is the view of the court that the proceedings undertaken herein on **19th January 2016,** which resulted in the applicant filing his submission were pre-mature. It would in the circumstances be unfair and unjust to the respondent if this court were to render a ruling on the main application when clearly service upon the respondent was faulty. It would be tantamount to condemning the respondent unheard which is very much against the principles of natural justice.

4. It is therefore directed and ordered by this court that the respondent be properly and effectively served with the substantive application and a fresh hearing date to be fixed in the registry. A ruling on the main application can only be rendered after all the parties have been given an opportunity to be heard on the merits.

J.R. KARANJA

JUDGE

Read and signed this **21st** day of **March 2016.**