



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**MISC CIVIL APPLICATION NO 33 OF 2014**

IN THE MATTER OF AN APPLICATION FOR LEAVE TO INSTITUTE JUDICIAL REVIEW  
ORDERS OF CERTIORARI

**AND**

IN THE MATTER OF LAND ADJUDICATION ACT, CAP 284 LAWS OF KENYA

**AND**

IN ACCORDANCE WITH ORDER 53 OF THE CIVIL PROCEDURE RULES

**AND**

IN THE MATTER OF AN APPLICATION

**BETWEEN**

THE DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER, TIGANIA  
EAST.....1ST RESPONDENT

ATTORNEY GENERAL .....2ND RESPONDENT

**AND**

JAMES KIRANGA.....INTERESTED PARTY

MUTUNGA IGWATHU.....EX PARTE APPLICANT

**R U L I N G**

In his ex-parte Chambers Summons dated 15th October, 2014, the Plaintiff sought the following orders:-

1. *That the Honourable Court be pleased to certify this application extremely urgent and hear it on priority basis in the first instance.*
2. *That leave be granted to the Applicant to institute judicial review proceedings seeking for an order of certiorari to remove to this Honourable Court for the purpose of being quashed the decision of the District Lands Adjudication & Settlement Officer in land Objection No. 271 regarding Parcel No. 1666 Kiguchwa Adjudication Section made on 22/08/2014.*
3. *An order of prohibition to prohibit the 1st Respondent from implementing the decision of*

22/08/2014.

4. ***THAT leave granted to operate as stay of the implementation of the decision of the 1st respondent of 22/08/2014 .***
5. ***THAT costs of this application be provided for.***

The application was supported by the Verifying Affidavit of Mutunga Igwathu, the ex-parte applicant and by a statement pursuant to Order 53 , Rule 1(2) of the Civil Procedure Rules. Leave was granted on 17/10/2014.

When the matter came up for directions on 25/02/2016, Mr . Kiongo for the Respondent told the Court that despite the exparte applicant having been granted leave on 17/10/2014, almost one and half years later, the apposite Notice of Motion had not been filed. He prayed that this file be closed as there were no Judicial Review proceedings in existence.

Mr. Ojiambo for the applicant told the Court that the exparte applicant had not filed the apposite Notice of Motion because his firm had learnt that the decision they intended to challenge had already been implemented. Mr. Ojiambo sought this Court's directions.

Order 53 Rule 3(1) states as follows:-

***“ When leave has been granted to apply for an order of mandamus, prohibition or certiorari, the application shall be made within twenty one days by notice of motion to the High Court, and there shall, unless the Judge granting leave has otherwise directed, be at least eight clear days between the service of the Notice of Motion and the day named therein for hearing”.***

Almost one and half years after leave was granted, no application has been filed. The application by way of Notice of Motion having not been filed within the stipulated time, I find that there are no judicial review proceedings in existence in this matter. In the circumstances, I issue the following orders;-

1. ***High Court Misc. Civil Application No. 33 of 2013 is dismissed and any orders granted at the exparte stage are hereby set aside.***
2. ***In view of the fact that the apposite notice of Motion had not been filed or served upon any of the parties, no costs are awarded to any of the parties in this matter.***
3. ***The Executive Officer should ensure that this file is closed and the matter be removed from the list of cases pending in this Court.***

***It is so ordered.***

*Delivered in open Court at Meru this 14th day of March, 2016 in the presence of:-*

*CC: Daniel/Lilian*

*Ojiambo for the Applicants*

**P.M NJOROGE**

**JUDGE**