



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**

**J.R. E.L.C. NO 37 OF 2014**

**FORMERLY EMBU JR 4 OF 2007**

**JOSEPH N. MITARU.....APPELLANT**

**VERSUS**

**16 CLANS.....RESPONDENTS**

**AND**

**IN THE MATTER OF JUDICIAL REVIEW**

**REPUBLIC.....APPLICANT**

**AMBROSE N. NTHIGA.....EX-PARTE APPLICANT**

**VERSUS**

**DISTRICT COMMISSIONER MBEERE DISTRICT.....1<sup>st</sup> RESPONDENT**

**JOSEPH N. MITARU.....INTERESTED PARTY**

**RULING**

1. A ruling in this application and three others namely JR ELC 29/14, Ambrose Nthiga v. Mbeere South District, JR ELC 40/14 Ambrose Nthiga v. D. C. Mbeere South District and JR ELC 41/14, Ambrose Nthiga v. D. C Mbeere South District and Another was to be delivered on 16 April 2015, but was postponed to 22<sup>nd</sup> April 2015 due to other official engagement. In all of them, an order of certiorari is sought to quash the appellate decision of the District Commissioner on behalf of the Minister for Lands.
2. I have perused the appeal judgement of the District commissioner (D C), the decision of the Land Adjudication Officer and the order of this court (*Khaminwa, J*) dated 22<sup>nd</sup> November, 2007, granting leave to the *ex parte* applicants to file the substantive notices of motion under Order 53 of the 2010 Civil Procedure Rules. I have come to the conclusion that the subject matter of the suit land involved 17 clans namely:

1. Ngithi

2. Mbandi

3. Rweru,
4. Marigu,
5. Nditi,
6. Mururi,
7. Mwitia,
8. Ngui,
9. Ikandi,
10. Ikambi,
11. Kere,
12. Mwendia,
13. Ciina,
14. Iruma,
15. Kiragua,
16. Ngai and
17. Rwangondi

3. I find that only two clans namely Mbandi and Kiragu clans are involved in the current Order 53 judicial review process. Furthermore I find that the remaining 15 clans were not involved in the current judicial review process.
4. Under **Order 53 rule (3) (2)**, the remaining 15 clans should have been served with the substantive notices of motion. This is a mandatory requirement. In the English case of **R v. Rent Officer Service, ex parte Muldoon (1996) 3 All ER 498** the House of Lords held that it is only those parties that are directly affected who should be served with the notice of motion. In that case the Secretary State was refused leave to be joined as a party because he was not a person directly affected within the meaning of the English rules of procedure governing judicial review in that Kingdom. In the instant case the 15 clans were not served with the notice of motion as mandatorily required.
5. In the light of the foregoing I hereby direct as follows:
  1. Counsel for the *ex parte* applicant should serve the notices of motion on all the remaining 15 clans.
  2. Thereafter, the matter should be mentioned before the Deputy Registrar to fix a hearing date for the substantive motion in respect of the order of certiorari.
  3. This order applies to all the above mentioned applications in para. 1

**RULING DATED, SIGNED and DELIVERED** in open court at **EMBU** this 22<sup>nd</sup> day of April 2015

In the presence of Mr. Njoroge holding brief for Ms Wairimu for the *Ex parte* Applicants and Mr. Okwaro for the Interested Parties

Court clerk Mr Muriithi.

**J.M. BWONWONGA**

**JUDGE**