

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JR CASE NO 126 OF 2009

REPUBLIC.....APPLICANT

VERSUS

COLLECTOR OF STAMP DUTY.....1ST RESPONDENT

PERMANENT SECRETARY

MINISTRY OF LANDS2ND RESPONDENT

ATTORNEY GENERAL3RD RESPONDENT

EX-PARTE JAMES KARUGU

RULING

In these judicial review proceedings, James Karugu is the ex-parte applicant and the respondent in respect of the notice of motion application dated 26th February, 2013. The Collector of Stamp Duty, the Permanent Secretary of the Ministry of Lands and the Attorney General who are the 1st to 3rd respondents in the substantive proceedings are the applicants in the application dated 26th February, 2013.

When the application came up for hearing on 27th November, 2013 Mr. Kaumba for the applicants applied that Tim Wamiti, an advocate of the High Court, who had represented the ex-parte applicant at the signing of a consent on 14th December, 2010 compromising the matter, be summoned for cross-examination. In the application dated 26th February, 2013 the applicants are seeking a review of the consent order recorded on 14th December, 2010.

Mr. Rugo for the respondent/ex-parte applicant opposed the summoning of Tim Wamiti on the grounds that Mr. Wahigi Kamau has deponed an affidavit as to what took place on the day the consent was recorded and the Court will form its opinion on that affidavit. Secondly, he argues that Tim Wamiti has not sworn any affidavit and there is no basis for cross-examining him.

In reply, Mr. Kaumba submitted that it is important to get the evidence of Tim Wamiti as to what took place at the time the consent was recorded.

I have considered the submissions of the parties. I agree with Mr. Rugo that there is no basis for cross-examining Mr. Tim Wamiti. He has not sworn any affidavit and I wonder what Mr. Kaumba intends to be the foundation of the proposed cross-examination. Is Mr. Kaumba seeking props for his application? Is he on a fishing expedition? That, in my view, would amount to an abuse of the court process. In any case, these being judicial review proceedings the calling of witnesses is sparingly allowed.

The application to summon Mr. Tim Wamiti for cross-examination has no basis and the same is dismissed. The advocates to take a date for the hearing of the application dated 26th February, 2013.

Dated, signed and delivered at Nairobi this 30th day of April, 2014

W. KORIR,

JUDGE OF THE HIGH COURT