



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

JUDICIAL REVIEW APPLICATION NO. 59 OF 2011

**IN THE MATTER OF AN APPLICATION BY TOM SAVA INYIMIRI FOR AN ORDER OF
CERTIORARI AND PROHIBITION AND OR JUDICIAL REVIEW.**

AND

**IN THE MATTER OF THE ORDERS AND OR PROCEEDINGS VIDE HAMISI SENIOR RESIDENT
MAGISTRATE'S CRIMINAL CASE NO. 461 OF 2010, 265 OF 2011 AND 582 OF 2011**

BETWEEN

REPUBLIC THROUGH

TOM SAVA INYIMIRI APPLICANT

VERSUS

THE SENIOR RESIDENT MAGISTRATE'S

COURT HAMISI RESPONDENT

AND

MARK IMBAYI SAVA INTERESTED PARTY

RULING

This is a Notice of Motion dated 8/12/11 filed by Tom Sava Inyimiri. The Senior Resident Magistrate Hamisi is named as the respondent while Mark Imbayi Sava is named as the Interested Party.

The application was filed by M/S Elung'ata & Company advocates on behalf of the applicant. The prayers are as follows -

- 1. That the applicant Tom Sava Inyimiri be granted an order of certiorari and prohibition to issue and remove into this court and quash forthwith the decision of the Hamisi Senior Resident Magistrate's Criminal Case No. 461 of 2010, 265/11 and 582/11 and all consequential orders thereto in respect of Land Parcel No. LR. S/Tiriki/Senende/3.**
- 2. That the interested parties herein be condemned to pay costs of this application.**

It is not clear from the documents filed and the record whether leave to file Judicial Review proceedings was granted by the court. I note however, that an application by way of Notice of Motion dated 17th March, 2010 was filed together with an affidavit sworn by Joseph Ajevi and a Statement giving the facts,

reliefs sought and the grounds for the reliefs. That application does not ask for leave to file Judicial Review proceedings. Though I see a document purportedly signed by the Deputy Registrar on 18th November, 2009 purporting to be leave, that leave was granted on 12/11/2009. The leave granted was for filing the substantive application within 21 days. In short, the documents are confusing.

Having considered the Notice of Motion herein, I am of the view that it will fail for the following reasons. Firstly, the application is defective in form. The applicant is not described as the ex-parte applicant but as the applicant. Though the Republic is mentioned, the rules require that the Republic be strictly be named as the applicant - see ***Farmers Bus Service –vs- The Transport Licensing Appeals Tribunal [1959] EA 779***. The application is therefore defective on that account.

Secondly, even assuming that leave was indeed granted on 12/11/2009, the application should have been filed by early December, 2009 within 21 days. This application was however filed on 8/12/2011 which was more than 2 years after the leave was granted, in contravention of the mandatory provisions of Order 53 rule 3 (1), which states –

“3 (1) 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 the hearing.”

The third reason why this application will fail is that it seeks to reverse decisions of a criminal court through Judicial Review proceedings. In my view, that cannot be the purpose of **Order 53** of the Civil Procedure Rules. There are adequate avenues for reviewing of decisions made in criminal cases by the lower courts under the Criminal Procedure Code (Cap. 75). These avenues include appeals and the revision powers of the High Court granted under **Section 362** of the **Criminal Procedure Code (Cap. 75)**.

In bringing these judicial review proceedings, the applicant was misadvised. The Judicial Review court is the wrong forum to correct or reverse decisions made in criminal matters. On that account also the application will fail.

Consequently, this application is incompetent. I strike it out with costs to the interested party.

Dated and delivered at Kakamega this 22nd day of May 2014

George Dulu

JUDGE