



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**  
**JUDICIAL REVIEW 17 OF 2012**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE CHAIRMAN, MATUNGU LAND DISPUTES TRIBUNAL.....RESPONDENT**

**AND**

**1. JAMES AMERE**

**2. JUDITH ULUMA**

**3. AMBROSE AMBWERE.....INTERESTED PARTIES**

**4. ONGWENO LILNUS**

**5. JOSEPH MALALAM SAKWA**

**AND**

**1. BERNADETA ATSIENO WESONGA**

**2. JOSEPH LUCHIRI**

**3. MAURICE OKWALO.....APPLICANTS**

**4. JOSEPHAT SIANG'ANI**

**5. JARED CHITAYI**

**RULING**

The application by way of Notice of Motion dated 20.5.12 seeks orders that leave be granted to the applicants to amend the ex-parte Chamber Summons dated 4.2.12 and the Notice of Motion dated 7.3.12. The application is supported by the affidavit of **BERNADETA ATSIEMO WESONGA** sworn on 20.5.12.

The main grounds raised by the applicants are that the amendment is sought in order to correct typographical errors and to annex the copies of the proceedings from the Mumias Land Disputes Tribunal and the Mumias SPMCC Award No. 20 of 2009.

The application is opposed to as per the statement of grounds of opposition dated 21.5.12.

I have considered the pleadings and the submissions of the counsels.

The annexed draft amended Chamber Summons and the draft amended Notice of Motion bear no proposed amendments at all. It seems what the applicants proposes to do is to bring in further affidavit evidence.

The Chamber Summons application dated 4.2.12 was spent on 9.2.12 when the applicant was granted leave to file the substantive motion. If the Notice of Motion is amended, it would amount to being on record without leave. The filling of an amended Chamber Summons and the amended substantive motion would amount to filing a new application.

Although amendments can be carried out in the manner provided for under Order 8 Civil Procedure Rules, the proceedings herein are special proceedings brought under Order 53 Civil Procedure Rules. The provisions of Order 53 Civil Procedure Rules must therefore be complied with.

The application is incompetent and the same is struck out with costs to the Interested Parties.

*Delivered, dated and signed at Kakamega this 28<sup>th</sup> day of June, 2012*

**B. THURANIRA JADEN**  
**J U D G E**