



JUDICIAL REVIEW

- All interested parties should participate in the hearing.

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
JUDICIAL REVIEW NO. 87 OF 2009

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR A JUDICIAL
REVIEW WRIT OF CERTIORARI

AND

IN THE MATTER OF THE LAW REFORM ACT, CAP 26 LAWS OF KENYA AND ORDER
LIII OF THE CIVIL PROCEDURE RULES

AND

IN THE MATTER OF THE PROCEEDINGS FINDINGS AND ORDER MADE ON 17TH
SEPTEMBER 2009 IN OBJECTION NO. 1594 OVER LAND PARCEL NOS. 2940 AND 2925
SITUATED IN KIGUCHWA ADJUDICATION SECTION

BETWEEN

ELIJAH M'MAITAI CHAURI EX PARTE
APPLICANT

VERSUS

TIGANIA DISTRICT LAND ADJUDICATION AND
SETTLEMENT OFFICER 1ST
RESPONDENT

ATTORNEY GENERAL 2ND
RESPONDENT

AND

JOSHUA MURUNGI ATHINYA 1ST INTERESTED
PARTY

GIDEON KIRAGU RUTHIRI 2ND INTERESTED
PARTY

RULING

The *ex parte* applicant by Notice of Motion dated 1st December 2009 seeks an order of *certiorari* to bring to this court for quashing the decision of the 1st respondent in objection number 1594 between the 1st and 2nd interested parties and the *ex parte* applicant over parcel numbers 2940 and 2925 situated at Kiguchwa

adjudication section within Tigania East District. That Notice of Motion was argued before me on 3rd March 2011 and I reserved my judgment to today. However, when I handled another matter in this court being Petition High Court Meru No. 1 of 2011, where an injunction application had been filed and argued before me, I realized that there is a party by the name Misheck Mwilaria who is interested in the parcels of land the subject of this judicial review. Elijah M'Maitai is the *ex parte* applicant in this matter. In Petition High Court Meru No. 1 of 2011 Elijah sued Misheck. As stated before, on hearing the arguments in that petition, I formed the opinion that Misheck should be an interested party in this matter. I am of the view that Misheck ought to have been given an opportunity before judgment is delivered in this matter. It is for that reason that I had decided not to deliver judgment to day in this matter until Misheck has been heard. I therefore set aside the whole proceedings in this matter of 3rd March 2011 and I do order that the Notice of Motion dated 1st December 2009 be served upon Misheck Mwilaria. Once Misheck has been served and has filed his reply, the Notice of Motion may be re-fixed for hearing with the participation of Misheck. In summary I grant the following orders:-

1. *The proceedings in this matter of 3rd March 2011 are hereby set aside. The costs of that day's proceedings shall be in the cause.*

2. *The ex parte applicant shall within 14 days of today's date serve all the documents pertaining to this action including replying affidavits on Misheck Mwilaria. Misheck Mwilaria shall henceforth be the 3rd interested party. To that end, the ex parte applicant shall file an amended Notice of Motion within 7 days from this date hereof reflecting the name of Misheck Mwilaria as the 3rd interested party.*

3. *The Notice of Motion which shall be amended when fixed for hearing must be with the participation of Misheck Mwilaria. To that end, the ex parte applicant must involve Misheck Mwilaria in the process of taking hearing dates or serving him with a hearing notice.*

Dated, signed and delivered at Meru this 13th day of April 2011.

**MARY KASANGO
JUDGE**