



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

HCC JUDICIAL REVIEW NO 56 of 2011

GEOFFREY NGANGA NYOIKE

PETER MBURU NGUGI &

HOSEA MUTHAMA.....APPLICANTS

VERSUS

NAIVASHA LAND DISPUTE TRIBUNAL.....RESPONDENT

RULING

By the Chamber Summons dated 9/5/2011, the applicants Peter Mburu Ngugi, Geoffrey Nganga Nyoike and Hosea Muthama

seek the leave of the court to apply for an order of Certiorari to remove into the High Court and quash the proceedings and award of the Naivasha Land Disputes Tribunal dated 15/3/2011, in Tribunal case no 139/09. They also seek an order that the leave do operate as stay of the decree in Naivasha Misc Civil application no 38/2010 given on 1st April 2011.

The application is supported by a statement dated 9/5/2011 and a verifying affidavit sworn by Peter Mburu Ngugi on the same date. He also filed a supplementary affidavit in reply to the replying affidavit sworn by Interested Party.

When Mr Mwaniki, Counsel for the applicant appeared before Justice Ouko on 10/5/2011, the Judge directed counsel to serve the application so that the Chamber Summons application can be heard inter partes.

Some Interested Parties filed a reply to this application but the court did not hear them because under Order 53, it is the Notice of Motion that is served and all persons interested or those that may be affected by the court's orders in a Judicial Review application. At the leave stage, only the Respondent should be served. That is why the Interested parties have no audience at this stage.

The Respondent did not appear and the hearing proceeded ex parte. Only the DC Naivasha was served on behalf of the Land Disputes Tribunal. The Principal Magistrate's Court was not served.

I have considered the application and in my view, it is incompetent and offends provisions of Order 53 Civil Procedure Rules. Order 53 rule 1(2) requires an applicant to file a Chamber Summons application accompanied by a statutory statement and verifying affidavit. It is the verifying affidavit that contains the facts that verify the statement. I am guided by the Court of Appeal decision

in **COMMISSIONER GENERAL KRA VRS SILVANO ONEMA OWAKI MISC A 39/1999**, in which the court discussed Order 53 Rule 1(2) CPR. The court said:-

“ we would observe that it is the verifying affidavit not the

Statement to be verified , which is of evidential value in an application for Judicial Review. That appears to be the meaning of Rule 1(2) of order 53 Rule 2. This position is confirmed by the following passages from the Supreme Court Practice 1976 Vol 1 at paragraph 53/117:

“The application for leave “ By a statement” in the affidavit (see RV WANDSWORTH JJ ex P Read (1942) K.R .281) “ The statement should contain nothing more than the name and description of the applicant, the relief sought, and the grounds on which it is sought it is not correct to lodge a statement of all the facts, verified by an affidavit”

In the instant case, the verifying affidavit filed in support of the Chamber Summons is four paragraphed and does not contain any facts. Instead the facts are contained at paragraph 3 of the statement. The want of facts to support the application renders the whole application incompetent .

At a cursory look at the application, the parties to this application are not disclosed. In the case of **FARMERS BUS SERVICES VRS TRANSPORT LICENSING APPEAL TRIBUNAL (1959) EA 779**, the East African Court of Appeal set out the format of a Judicial Review application both at the leave stage and the Notice of Motion of Stage. That has become the practice and was adopted in the case of **JOTHAM MULATI WELAMONDI VRS CHAIRMAN ELECTORAL COMMISSION OF KENYA (2002) 1KLR 486**, where Justice Ringera struck out a Judicial Review application for being incompetent and went ahead to set out the format of a Judicial Review applications both at leave and Notice of Motion stage. The application before the Court is incompetent and this Court finds no need to consider the merits. It is hereby struck out with costs.

DATED THIS 22nd DAY OF JUNE 2011

RPV WENDOH
JUDGE

PRESENT

MS Maija holding brief for Mwaniki
N/A For defendant
CC: Kennedy Oguma