



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
Miscellaneous Civil Application 5 of 2008

IN THE MATTER OF APPLICATION FOR JUDICIAL REVIEW

A N D

IN THE MATTER OF L.R. N.WANGA/INDANGALASIA/406 & 808

IN THE MATTER OF MATUNGU LAND DISPUTES TRIBUNAL CASE NO. MTG/13/2008

A N D

IN THE MATTER OF THE KAKAMEGA CHIEF MAGISTRATE'S COURT MISC. AWARD NO.166 OF 2008

BETWEEN

REPUBLIC APPLICANT

V E R S U S

THE CHAIRMAN MATUNGU L. D. TRIBUNAL RESPONDENT

A N D

1. HENDRICA ONYANGO

2. RASMO ODONGOA INTERESTED PARTIES

A N D

1. MUCHELULE KUTUNDU

2. HEZRON O. WESONGA APPLICANTS

R U L I N G

On 10th November, 2008 the applicants were granted leave to file their substantive application for Judicial Review within 21 days. The application was filed on 17th December, 2008. On the same date, 17th December, 2008 the applicant filed an application seeking leave of the court to extend time to file the substantive application.

The Interested parties filed a notice of preliminary objection on 15th January, 2009. Mr. Wanyama, counsel for the interested parties submitted that the notice of motion was filed out of time. He further submitted that there are no proceedings or order to be quashed as no proceedings are annexed to the application.

Mr. Elung'ata, counsel for the applicants opposed the preliminary objection and submitted that the application that was to be heard was the one seeking leave to extend time and not the substantive motion for Judicial Review.

I do find that the issues raised in the preliminary objection can be raised during the hearing of both the application for extension of time or the substantive motion. The points raised in the preliminary objection relates mainly to the substantive motion that was not fixed for hearing. The interested parties should raise the points indicated in their preliminary objection

during the hearing. The preliminary objection is misplaced at this instance and the same is dismissed. Costs shall be in the cause.

SAID J. CHITEMBWE

J U D G E

Delivered, dated and countersigned by the Hon. Justice Isaac Lenaola this 15th day of April, 2010

ISAAC LENAOLA

J U D G E