



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET**

Judicial Review 17 & 232 of 2009

SILAS KIPKEMBOI APPLICANT
=VERSUS=
THE DISTRICT CO-OPERATIVE OFFICER
NANDI CENTRAL NORTH DISTRICT AND COMMISSIONER
FOR CO-OPERATIVE DEVELOPMENT..... RESPONDENT
R U L I N G

I. Introduction

1. Leave was granted on 29/4/2009 (Ibraim J.) to the applicant to file Judicial Review Proceedings to this Court under **Order L III Civil** Procedure Rules
2. A Notice of motion dated 19th may 2009 was filed but the parties who were named therein did not include the Republic. To this end the Respondent brought it to the applicant's attention in their replying affidavit that the motion was fatally defective.
3. As a result of this the applicant filed the application of 21st January 2010 seeking leave to amend the notice of motion of 19th May 2009 to include the Republic . This application was opposed to by the State.

II. Arguments put forward

4. In replying on the case law of **In the mater of Commissioner of Lands and Others and in the Misc. Application 105/2001** Visram J stated that the omission in not having the name of the Republic was not fatal. Leave to amend the notice of motion was accordingly granted.
5. The reasons further given was in the case of **Farmers Bus Service and others**
-vs-
The Transport Licensing Appeal Tribunal (1959) E.A. 779
Forbes Ag. P. Wendan JA and Templeton J.
The Court of appeal stated the notice of motion may be amended.

III. In Reply

6. The State argued that there are authorities that show the notice of motion and the amendments are fatal and defective, should not be permitted.

In the case law of

James Kega Kargan and Others

=vrs=

Misc. App. No. 1570/2005, Wendoh J.

and in the case law of

Republic .-vr-

Chairman, Electoral Commissioner of Kenya

Exparte Welmond Ringera J; the Courts

held that the omission of the name Republic was

fatal and the notice of motion was fatal.

IV. Opinion

7. The other authorities relied on by the advocates for the applicant consistently shows amendments of the notice of motion being allowed. These amendments though are as concerned additional parties to the application. None refers to the Republic.

8. In this case the name of the Republic had been omitted. There is no way an applicant and a respondent can be identified.

The Case Law of

In the mater of Commissioner of Land and Others Misc. 105/2001 Visram J.

expounded how various Courts struck out application for having been brought under the incorrect law or procedure.

9. The said decision points out that other Judges have permitted amendments in the case.

In the case law of

Kentan Kijabe Hills Farmers & Co. Society

-vrs-

The District Commissioner

(Nairobi) H. Misc. App. 280/1996 Aganyanya J. application must be brought in the name of the Republic or else it was defective.

10. I find that it is a party who is being brought to Court being the Republic. The name of the Republic is compulsory in applications of Judicial Review. I would decline to grant the application as prayed and agree with the principle that failure to include the Republic, the application is defective and fatal.

11. The application is hereby struck out with costs to the respondent.

DATED THIS 25TH DAY OF MAY, 2010 AT ELDORET.

M.A. ANG'AWA,
JUDGE.

- (i) *G. Adhiambo Advocate for the State from Ministry of Co-operatives for the 1st and 2nd Respondent –Present/Absent*
- (ii) *W. Wanyonyi Advocate instructed by the firm of M/s Walter Wanyonyi and Co. Advocate for the Applicant – Present/Absent*

