



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Miscellaneous Civil Appeal 15 of 2009**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO INSTITUTE JUDICIAL
REVIEW FOR AN ORDER OF CERTIORARI**

AND

**IN THE MATTER OF REGISTERED LAND ACT CAP 300 LAWS OF KENYA
AND**

**IN THE MATTER FOR AN APPLICATION BY NAIPARAKWO TENGEMA
MURWOK AND TAPKIGEN LESHAWO KIPINDOI FOR LEAVE TO APPLY FOR
AN ORDER FOR CERTIORARI**

REPUBLIC (EXPARTE).....APPLICANT

VERSUS

RIFT VALLEY PROVINCE LAND DISPUTES

APPEALS COMMITTEE.....1ST RESPONDENT

**DANIEL CHEBII CHESANG.....2ND RESPONDENT
SENIOR RESIDENT MAGISTRATE**

NAKURU.....3RD RESPONDENT

ATTORNEY GENERAL.....4TH RESPONDENT

AND

NAIPARAKWO TENGEMA MURWOK.....1ST SUBJECT

TAPKIGEN LESHAWO KIPINDOI.....2ND SUBJECT

RULING

This is an application under **Order 50 Rule 1** of the **Civil Procedure Rules** as well as **Section 3A** of the **Civil Procedure Act**. It seeks to reinstate the Ex-parte applicant’s Judicial Review application dated 11th March 2009 which was on 11th February 2010 been dismissed for non-attendance. It is based on the ground that that date counsel for the Applicant had just stepped out and gone to High Court No. 2 only to return and find it dismissed.

On behalf of the 1st, 3rd and 4th Respondents, the Attorney General opposes the application on the ground that the same is bad in law as there is no provision for the reinstatement of dismissed Judicial Review proceedings. For the 2nd Respondent, it is argued that there is no proof the counsel was in High Court No. 2 when the application was dismissed.

It is true that there is no provision in **Order 53** of the **Civil Procedure Rules** for the reinstatement of a dismissed Judicial Review application. That, however, does not mean it cannot be done. This is a mere procedural issue. As I understand the law, it does not mean that in the absence of provision covering a particular situation ties the court’s hands. Under its inherent jurisdiction conferred by **Section 3A** of the **Civil Procedure Act** the court is authorized by to ignore procedural technicalities or lapses and do substantive justice to the parties.

In this case I am satisfied that counsel's absence when the application was dismissed has been explained. Consequently, I allow this application but with costs to the Respondents.

DATED and DELIVERED at Nakuru this 13th day of May 2010.

D. K. MARAGA

JUDGE.