

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Judicial Review 71 of 2009

ESTHER CHERONO CHENDU.....APPLICANT
VERSUS
NAKURU LAND DISPUTES TRIBUNAL.....1ST RESPONDENT
CHIEF MAGISTRATE NAKURU.....2ND RESPONDENT
AND
KIPSABO CHILGONG.....INTERESTED PARTY

RULING

This is a Judicial Review application brought under **Order 53 Rule 3(1) & (2)** of the **Civil Procedure Rules**. Kipsabo Chilgong, the Interested Party has challenged its competence on the ground inter alia that has taken out and drawn, it is incompetent, bad in law and fatally defective.

Judicial Review orders are issued in the name of the Republic at the instance of the applicant and are directed to the person or persons who are to comply with them. The Republic cannot therefore be the applicant and respondent in the same matter. After obtaining leave, the substantive applications should be made in the name of the Republic-**Farmers Bus Service & Others Vs The Transport Licensing Appeals Tribunal, [1959] EA 779**. Failure to bring such an application in the name of the Republic is not a mere error of form but goes to the substance of the matter-**Ndete Vs Chairman Land Disputes Tribunal, [2002] KLR 392** and **District Tribunal Koibatek & Others, Nakuru H.C. J.R. No. 7 of 2009**.

This application having been brought in the name of the applicant is therefore fatally defective. In the circumstances, I uphold this preliminary objection and strike it out with costs to the Interested Party.

DATED and delivered this 20th day of July, 2010

D. K. MARAGA

JUDGE.