



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KISUMU**  
**Miscellaneous Application 32 of 2006**  
**NIZABA INT. TRADING CO. LTD.....APPLICANT**  
**VERSUS**  
**THE KENYA REVENUE AUTHORITY.....RESPONDENT**

**R U L I N G**  
**RULING ON PRELIMINARY OBJECTION**

The ex-parte applicant is the respondent in this objection while the respondent is the applicant.

On the 2<sup>nd</sup> February 2006, the ex-parte applicant took out a chamber summons for a leave to apply for orders of certiorari, prohibition and mandamus against the respondent Kenya Revenue Authority.

The chamber summons was filed herein on the 2<sup>nd</sup> March 2006 and was listed for hearing on several occasions but to no avail.

As the position stands, there has been no leave granted to the ex-parte applicant to facilitate judicial review of the action taken against the ex-parte applicant by the respondent.

Applications for necessary leave are normally filed and heard ex-parte. Thereafter, an applicant is granted a period of 21 days within which to file the substantive application by way of a notice of motion.

Surprisingly, the application for leave was herein served for inter-parties hearing and this is what has prompted the present objection which in the opinion of this court would not lie at this juncture because leave is yet to be granted and the substantive application is yet to be filed and served if leave is granted.

If anything, the preliminary objection is rather premature and ought to have been raised at the time of the hearing of substantive motion.

The fact that there is an application for leave does not necessarily mean that there will be an automatic grant of leave to apply for the orders of certiorari prohibition and mandamus.

This preliminary objection being immature, the ex-parte applicant has all the time to correct and .....all the procedural defects that may be accruing either by way of necessary amendments or by withdrawing the cause with a view to instructing a fresh one while giving cognizance to limitations of time.

Otherwise, the respondent had a genuine complainant in raising this objection since an application for leave is by way of chamber summons which normally contains a statement setting out the name and description of the applicant, the relief sought, the orders sought and the grounds on which the orders have sought. The application must be accompanied by an affidavit verifying the facts relied upon (See Order 53 Rule 1 (1) and (2) of the Civil Procedure Rules).

Herein, in the chamber summons dated 6<sup>th</sup> February 2006 does not appear to be compatible with the set procedural requirements.

However, there may still be room for necessary corrections.

In sum, the preliminary objection is dismissed. The costs will be in the cause.

**Delivered, dated and Signed at Kisumu this 28<sup>th</sup> day of September 2010.**

In the presence of Mr. Twahir and Mr. Odhiambo h/b for K'opot.

**J.R. KARANJA**

**J U D G E**