



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MACHAKOS

Misc Civil Appli 275 of 2009

**IN THE MATTER OF: AN APPLICATION BY COUNCILLOR GODFREY MUMO KITHAE
AND COUNCIL LENA NDUKU KAMOSU FOR JUDICIAL REVIEW ORDERS OF
CERTIORARI AND PROHIBITION**

AND

IN THE MATTER: THE LAW REFORM ACT, CAP 26, LAWS OF KENYA

AND

IN THE MATTER OF: THE LOCAL GOVERNMENT ACT, CAP 265, LAWS OF KENYA

BETWEEN

COUNCILLOR GODFFREY MUMO KITHAE.....1ST APPLICANT

COUNCILLOR LENA NDUKU KAMOSU.....2ND APPLICANT

VERSUS

THE MUNICIPAL COUNCIL OF KITUI.....RESPONDENT

R U L I N G

On 28th August, 2009, this court granted leave to the Applicants herein to file an application for judicial review, and for that leave to operate as a stay. The Respondents have now come forth applying for a review, especially of the order that the leave to file the application for judicial review should operate as a stay.

O. XLIV rule 2 of the Civil Procedure Rules ordains that such an application as this one “**shall be made only to the judge who ... made the order sought to be reviewed.**” Under rule 4(1) of the said Rules, however, “**If the judge who ... made the order is no longer attached to the court, the application may be heard by any other judge who is attached to the court at the time the application comes for hearing.**”

This matter was filed in the High Court of Kenya at Machakos, and it rightly belongs to that Registry. It ought, in the first place, to have been heard at Machakos. But the court was on vacation when it was filed, and the matter found its way to the Nairobi court which was handling vacation matters on Judicial Review. That court was neither at Machakos, nor within the Judicial Review Division in Nairobi.

In those circumstances, it is my humble view that the application for review ought to be heard along with the main application in order to expedite the entire judicial process, and that the hearing ought to take place at Machakos. However, in view of the circumstances of the matter, I find it more prudent to place it before His Lordship, the Hon. the Chief Justice, for His Lordship's directions under O. XLIV rule 4(2) of the Civil Procedure Rules.

The matter is accordingly referred to the Hon. Chief Justice for His Lordship's directions.

Dated and delivered at Nairobi this 17th day of September 2009.

L. NJAGI

JUDGE