



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Miscellaneous Civil Application 251 of 2007**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW FOR THE ORDERS**

**OF CERTIORARI**

**AND**

**IN THE MATTER OF TEACHERS SERVICE COMMISSION ACT CAP 212**

**AND**

**IN THE MATTER OF EDUCATION ACT CHAPTER 211 LAWS OF KENYA**

**AND**

**IN THE MATTER OF TEACHERS SERVICE TRIBUNAL**

**AND**

**IN THE MATTER OF APPLICATION BY JARED MONGARE NYAKUNDI**

**BETWEEN**

**JARED MONGARE NYAKUNDI.....APPLICANT**

**AND**

**TEACHERS SERVICE COMMISSION.....1<sup>ST</sup> RESPONDENT**

**TEACHERS SERVICE TRIBUNAL.....2<sup>ND</sup> RESPONDENT**

**RULING:**

A Notice of Motion was filed on 30<sup>th</sup> March, 2007 by J M Onyancha Advocates for the ex-parte applicant. It was dated the same date. The Notice of Motion is headed as JARED MONGARE NYAKUNDI as applicant, and TEACHERS SERVICE COMMISSION as respondent. It was a Notice of Motion filed under Order LIII rule 3 (1) of the Civil Procedure Rules.

On 30<sup>th</sup> May, 2007 the Attorney – General filed a Notice of Preliminary Objection in the following terms:-

1. That the application offends the provisions of section 9 (3) of the Law Reform Act ( Cap.26 Laws of Kenya) and Order 53 rule 2 of the Civil Procedure Rules Cap 21. Laws of Kenya.
2. That the statutory body whose decision is being complained of has not been made a party to these proceedings.
3. That the application is wrongly entitled.

This matter came before me for the hearing and determination of the above objections.

At the hearing of the preliminary objection, Mr Meso abandoned objection No.2 and stated that this was because the applicant had filed an amended Notice of Motion . In my view, the abandonment would also apply to objection 3 because the REPUBLIC was now named as the applicant. However, the errors on the face of the Notice of Motion are subject to the Court allowing the proposed amendments to the Notice of Motion.

Counsel argued the objection number 1, that the Chamber Summons for leave was not filed within 6 months from the date of the decision sought to be challenged through Judicial review proceedings.

Indeed, there is a time frame of 6 months for applying for certiorari in certain cases. Having considered the wording of that rule, I am of the view that it applies only to a decision of a court or a judicial tribunal. It does not apply to other decisions that are to be challenged through certiorari. Secondly, a decision cannot be made by a person or public officer or institution, and then held in secrecy, and then the same person or institution later claims that time has run out. In my view, the time of the 6 month period, starts running only when the affected person knows or is presumed to know of that decision.

In our present case, the decision challenged does not appear to have been communicated to the applicant in good time. It cannot be a defence to the person or persons who failed to communicate the same to the applicant to claim a time bar. I therefore find no merits in the objection.

Consequently, and for the above reasons, I find no merits in the objection and dismiss the same on time bar and 6 months. The issue of other defects of the Notice of Motion will be determined later, as I have not seen the amended motion.

Dated and Delivered at Nairobi this 27<sup>th</sup> day of October 2009.

George Dulu

JUDGE.

In the presence of David Court Clerk.

None attendance for parties.