

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW 7 OF 2009

REBECCA KIMOI BIWOTT.....APPLICANT

VERSUS

LAND DISTRICT TRIBUNAL KOIBATEK.....1ST RESPONDENT

THE RESIDENT MAGISTRATE'S COURT

AT ELDAMA RAVINE.....2ND RESPONDENT

AND

JOSPHINE TERIKI KIPTUIGENY.....INTERESTED PARTY

RULING

This is a Judicial Review application brought under **Order 53 Rule 3(1) & (2)** of the **Civil Procedure Rules**. Josphine Teriki Kiptuigeny, the Interested Party has challenged its competence on the grounds that it has not invoked **Sections 8** and **9** of the **Law Reform Act** and that the substantive application has been brought in the name of Rebecca Kimoi Biwott, the ex-parte applicant instead of that of the Republic.

Raising the preliminary objection on behalf of the Interested Party, Mr. Kirugi argued that the jurisdiction to issue the Judicial Review orders is donated by **Sections 8** and **9** of the **Law Reform Act**. As the Notice of Motion herein has not cited those sections the same is incompetent. He also contended that instead of deposing the facts relied on in the affidavit in support of the application, the ex-parte applicant has stated them in the accompanying statement. She has also brought the application in her name instead of that of the Republic. He cited several authorities in support of his submissions which I will refer to in a moment. Mr. Ogonda who held brief for the applicant's counsel did not submit on this preliminary objection as he said his instructions were limited to only applying for adjournment.

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. That is why, 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**.

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 13th day of October, 2009.

D.K. MARAGA

JUDGE.