



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

**Civil Case 655 of 2006**

1. Land and Environmental Law Division
2. Subject of main suit: Environmental law
  - a) Judicial Review
  - b) Impact assessment study license issued to interested party
- Contractor to begin constructed, rehabilitation of road
- c) The residence around the said construction objected
- d) Assessment report license granted
- e) Residence file Judicial Review
- f) Residence file Hcc1026/06 for mandatory injunction

Court struck out the affidavit in order to have fresh suit filed

- g) Ex parte applicant reverts suit Hccc655/06

3. Preliminary Objection

- a) The statutory statement is defective
- b) Order 18 r 5 Civil procedure Rules does not comply
- c) The representative suits not complied will

In reply

4. Objects to the said Preliminary Objection
  - a) Has no merits
  - b) Not given opportunity to rely on the act or say.

5. State supports same

6. Held: Preliminary Objection up held

7. Advocates:

L.M. Mbabu for L.M. Mbabu & Associates Advocates for the plaintiff/applicant - present

R.S. Shairi for Mandla & Sehmi & Co. Advocates for the defendant /respondent - present

**MUCHIRI M'MWIRIA & OTHERS.....APPLICANT**

**VERSUS**

**THE NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY...RESPONDENTS**

**RULING ON A PRELIMINARY OBJECTION**

1: Background

1. The ex parte – application in this judicial review intended to have this court stop the interested party from constructing a road that needed to be rehabilitated along the Thuchi-Nkubu road.

2. The interested party are contractors and appear to have been given a government contract. They had obtained an impact assessment on the averment and were issued with a license. The ex parte applicants are residence along the said Thuchi-Nkubu road area. They had no objection to the rehabilitation of the said road what they objected to was to the activities outside the area in which the construction was taking place including their land.

3. They filed this judicial review. They then filed for orders of an injunction in a subsequent suit being Hccc1026/06. This suit when it came for hearing before this court on 21 March 2007 a Preliminary Objection was raised on the defendants of the replying affidavits and the verifying affidavits. The said preliminary objection was upheld and the suit was struck out.

4. This court had expected that a new suit would be filed with the correction duly taken into account. Instead, the ex parte applicant went back to this suit Mis. Hccc655/06 under judicial review for similar orders.

5. The interested party raised the same issues as to the defectiveness of the statutory statements, the replying affidavit under order XIII r 5 Civil procedure Rules and in effect stated that the said matters be struck out. The state supported this argument.

6. In reply the ex parte applicant objected to this saying that in effect there was no merit to the Preliminary Objection.

II: Finding

7. It is imperative that the correct statement be before court. There are remedies available to the ex parte applicants but herein we find that due to the application not being in compliance with the law, I would up hold the Preliminary Objection and struck out the statutory statements and notice of motion. I ask that the said ex parte applicant to pay costs to the respondents.

Dated this 25<sup>th</sup> day of September 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

R.Mbabu for L.M. Mbabu & Associates Advocates for the plaintiff/applicant - present

R.S. Shairi for Mandla & Sehmi & Co. Advocates for the defendant /respondent - present