



**REPUBLIC OF KENYA**  
**HIGH COURT OF KENYA AT KAKAMEGA**

**MISC CIV APPL 37 OF 2003**

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

**I. CERTIORARI**

**II. PROHIBITION**

**IN RELATION TO THE JUDGEMENTS RULINGS AND ORDERS ARISING IN THE  
KAKAMEGA CHIEF MAGISTRATE'S COURT CIVIL SUIT NO. 485/2000 AS OF 22/07/2002  
APPERTAINING TO THE LAWFUL OWNERSHIP OF PLOTS NO. 2 AND 18 OF IKOLI  
MARKET OF KAKAMEGA COUNTY COUNCIL**

**REPUBLIC**

**EX PARTE NATHAN KUTOTO:: PPLICANT/RESPONDENT**

**=VERSUS=**

**SENIOR EXECUTIVE OFFICER**

**THE CHIEF MAGISTRATE'S COURT AT KAKAMEGA ::::::::::::::::::::::: RESPONDENT**

**AND**

**SAMSON CHAPIA ::::::::::::::::::::::::::::::::::INTERESTED PARTY/APPLICANT**

**RULING**

On 7.5.2007, Mr. Khalwale, the learned counsel for Samson Chapia, the Interested party/Applicant, urged the court to grant the orders prayed for in the Notice of Motion dated 1<sup>st</sup> November, 2004 including an order for reconstruction of the court file.

The prayer for reconstruction of the court file cannot be considered simultaneously with an order for striking out of Notice of Motion or the vacation of the order for leave. Although the court has power to order reconstruction of the court file and to decline to give the other orders sought in the application, there must be a case made out for reconstruction. But in the affidavit in support of the application, there is not a whimper about efforts to have the court file traced or located. There is not a scintilla of evidence to

show that any efforts have ever been made to trace the court file. As there is no material before the court to support the prayer for reconstruction of the file, I am disinclined to grant the application which seems to have focused only on the prayer for striking out of the Motion and vacation of the leave to apply for the orders of certiorari and prohibition. I dismiss the application.

*Dated at Kakamega this 8<sup>th</sup> day of November, 2007.*

**G. B. M. KARIUKI**

**J U D G E**