



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**  
**Misc Civil Appli 97 of 2003**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**  
**(CERTIORARI) PROHIBITION AND MANDAMUS BY BOOKER ONYANGO,**  
**MESHACK OMONDI AGENG’O AND JOHN KWAMBAI ROTICH**

**IN THE MATTER OF THE DECISION OF ELDORET WATER AND SANITATION**  
**COMPANY LIMITED TERMINATING THE SERVICES OF BOOKER ONYANGO,**  
**MESHACK OMONDI AGENG’O AND JOHN KWAMBAI ROTICH**

**REPUBLIC.....APPLICANT**

**=VERUS=**

**ELDORET WATER & SANITATION COMPANY LIMITED.....RESPONDENT**

**EXPARTE : BOOKER ONYANGO**

**MESHACK OMONDI AGENG’O**

**JOHN KWAMBAI ROTICH**

**RULING**

The Applicant ‘s have applied for leave to file a further affidavit in support of the Application under the provisions of Order 53, of the Civil Procedure Rules, Rule 4 (2).

Counsel for the Applicant submitted that they wish to introduce evidence to show that the Minister of Local Government never consented to transfer of the Eldoret Council’s employees to the Respondent.

The Application is opposed. Order 53, Rule 4 (2), inter alia, provides that:-

“ **The High Court may on the hearing of the motion allow the said statements to be amended, and may allow further affidavits to be used if they deal with new matters arising out of the affidavits of any other party to the application .....** ”

The Applicant does not state how the question or issue of the lack of Consent of the Minister arose from the affidavit of the Respondent for the first time. I have carefully looked at Notice of Motion and the Statutory Statement. The application is, inter alia, grounded on the allegation that the Minister did not accede to the formation of the Respondent Company and / or transfer of Staff to the Company. Paragraph 21 of the Statutory Statement states:-

**“ (2) That to date the Minister of Local Government has not acceded to the formation of the Company and / or the transfer of Staff to the Company but the Municipal Council of Eldoret has gone ahead and formed the Company and transferred Civil Servants to the “Limited Liability Company.”**

In view of the foregoing, I do hereby hold that the aforesaid issue is not a new issue and in any event does not arise from the Respondent’s affidavit.

Application for leave is rejected with costs to the Respondent.

**DATED & DELIVERED AT ELDORET ON THIS 18TH DAY OF DECEMBER 2007**

**M.K. IBRAHIM,**

**JUDGE.**