



REPUBLIC OF KENYA

HIGH COURT OF KENYA AT NAIROBI (MILIMANI LAW COURTS)

MISC CIV APPLI 157 of 2006

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF JUDICIAL REVIEW BY WAY
OF CERTIORARI AND PROHIBITION**

BETWEEN

REPUBLIC APPLICANT

AND

THE PERMANENT SECRETARY

THE DIRECTOR OF HOUSING,

MINISTRY OF HOUSING RESPONDENTS

EX-PARTE FOUNTAIN ENTERPRISES

RULING

The facts of this aspect of the matter is that the ex-parte applicant filed a Notice of Motion dated 30th March 2006 seeking judicial review orders. The Motion was opposed by the respondents. A hearing was set down for 27th October 2006 but on this date the applicants' Counsel did not attend court. Consequently the Notice of Motion was dismissed by the Court.

On 30th October, 2006, about 3 days after the dismissal the applicant filed an application to set aside the dismissal order.

The respondents have raised a preliminary point of law in objection to the Motion to wit:-

- 1) The Honourable Court has no jurisdiction to entertain the Notice of Motion by reason of the statutory ouster of jurisdiction imposed by section 8(5) of the Law Reform Act (Cap 26) and
- 2) An order issued by the honourable Court pursuant to the jurisdiction conferred upon it by virtue of Sections 8 and 9 of the Law reform Act (Cap 26) is not amenable to review.

The respondents contend that the Court has no jurisdiction to entertain the Motion in the view of the

provisions of section 8(3) and 8(5) of the Law Reform act.

I have considered the filed written submission including the authorities cited by the parties.

The nature of the order granted on 27th October, 2006 by this court is in the nature of a default order and was only final before any successful challenge by the party in default. As per holdings in ***PAUL KIKEMOI v THE CAPITAL MARKETS AUTHORITY HC Misc 1523 of 2003 (unreported)***, a default order can be set aside upon good cause being shown by the defaulting party.

On the other hand S 8(3) and (5) of the Law Reform Act, only applies to final orders made on merit and default and ex-parte orders are not contemplated or embraced by the provisions. The challenge to final orders if any is by way of an appeal under the Law Reform Act. As a result this Court's inherent jurisdiction can successfully be invoked by a party.

For this reason the preliminary objection is dismissed with costs to the respondents in any event. The applicant is now at liberty to prosecute the application to set aside.

DATED and delivered at Nairobi this 14th day of December, 2007.

J G NYAMU

JUDGE