



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MERU

Misc Appli 129 of 1999

ABDULURAHMAN A. PERERA APPLICANT

VERSUS

REPUBLIC

EX-PARTE

ISIOLO COUNTY COUNCIL RESPONDENT

RULING ON A PRELIMINARY OBJECTION

1. The Preliminary Objection by the Respondent, Isiolo County Council is as to the competence of the Notice of Motion dated 1.9.1999. It is said that the same is bad in law in that:-

- i. It is brought by Abdulrahman Perera as opposed to the Republic as “**Applicant**”
- ii. It has no grounds on which it is founded and the Statement of Facts has no reliefs sought contrary to the requirements of order 53 Rule 4 of the Civil Procedure Rules.

2. I did not hear any strong answer to the objection and for my part the objection is otherwise merited.

3. On the first ground, I have seen the Motion under attack. It is partly headed thus;

4. “**Abdulrahman A. Perera Applicant**

versus The Republic

Ex-Parte

Isiolo County Council.....Respondent”

5. It has been said time and time again that Judicial Review Proceedings are special in nature and by their history originally brought in the name of the Crown but in our times must always be brought in the name of the Republic(see Farmers Bus Service and others – vs – The Transport Licensing Appeal Tribunal(1959) E.A 779 per Forbes Ag.P).

6. Ringera J, in Ndete -vs –Chairman Land Disputes Tribunal & Ano(2002)KLR 392 held and I wholly agree with him that even if the failure to intitule the motion in the name of the Republic was an error of form curable by Under Order 6 Rule 12 of the Civil Procedure Rules, which it is not, the prayer for a prerogative writ or order as the case may be is not an error of form but one of substance. I sympathize with Miss Bii Advocate who neither drafted the Motion nor at the time in the firm of Advocates who drafted it but her attempts at mitigating the error as one of form cannot be sustained and I will uphold the objection in that regard.
7. **On the second ground, I have seen the Statement of Facts purportedly filed under Order 53 Rule 2 of the Civil Procedure Rules. It is unsigned and it is unclear who drew it. It is in any event expected that a Statement of Facts in Judicial Review Proceedings should in the words of the Supreme Court Practice 1976 Vol.1 Para.53/1/7, “contain nothing more than the name of and description of the Applicant, the relief sought, and the grounds on which it is sought. It is not correct to lodge a statement of all the facts”. This passage was upheld as expressive of the correct law by our Court of Appeal in Commissioner General, Kenya Revenue Authority through the Republic – vs – Silvano Onema Owaki t/a Marenga filling station C.A NO.45/2000.**
8. **The Statement of Facts is in any event by its being unsigned, a loose document in the court file without use. Without a Statement of Facts, a Notice of Motion under Order 53 without being accompanied by a Statement of facts properly filed under Order 53 Rule 1(2) of the Civil Procedure Rules(a mandatory Provision) cannot stand and I must uphold the objection in its second limb.**
9. **The objection being soundly on its fact in the law and meeting the expectations of a preliminary Objection as enunciated in Mukisa Biscuits Manufacturing Co.Ltd – vs – West End Distributors Ltd(1969) EA 696 must and is hereby upheld.**
10. **The Notice of Motion dated 1.9.1999 is hereby struck out with costs to the Respondent.**
11. **Orders accordingly.**

Dated, signed and delivered at Meru this 14th . Day of June 2006

ISAAC LENAOLA

JUDGE

In the Presence of:

Mr. Ombachi Advocate for the Applicant

N/A Advocate for the Respondent

ISAAC LENAOLA

JUDGE