

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
Misc Appli 51 of 2002

SAMUEL NJIRU KANJI.....APPLICANT

VERSUS

1. WILSON MBOGO.....1ST RESPONDENT
2. JANE MUTITU NJERU.....2ND RESPONDENT
3. MARGARET KARIGI MOSES.....3RD RESPONDENT
4. KELLEN MUTHONI NJIRU.....4TH RESPONDENT
5. PENINA WANGINDA.....5TH RESPONDENT

RULING

This is a Judicial Review application under order 53 CPC. A Preliminary Objection has been taken by the Respondent in the **Misc. Application No. 81/2002** it was held that objections in *limine* may be taken to judicial Review proceedings.

From submissions of the Respondent it is clear that the complainant is that the form of the application is not in order. It should be headed “**Republic Vs**” instead of the “**Applicant Vs**” quoting the case of **Ndete Vs Chairman Land Disputes Tribunal and another KLR at 392.** Where the court held that Application for Judicial Review should be made in the name of “**Republic**”. In the same case **Ringera Judge** as he then was held that the failure to institute the motion in the Republic was not an error of form curable. It is an error of substance in that relief excluded by statute is ex- precisely sought. In that case the motion was struck off. The Judge did consider the case of **Farmers Bus Service Vs Transport Licensing Board [1959] E.A** in which the court demonstrated how application should be set out and that an amendment could cure the error. The court distinguished the two cases on the ground that the latter was after Kenya became independent. I do not agree with the learned Judge on the point of distinction of the two cases. I am of the view that the error can be cured by amendment.

I therefore dismiss the Preliminary Objection.

Dated this 8th June, 2006.

J.N. KHAMINWA

JUDGE

8/6/2006

Khaminwa – Judge

Njue C.C

Mr. Nthiga H/B for Kathungu

N/A

Ruling read in his presence in open court.

J.N. KHAMINWA

JUDGE