

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Misc Appli 155 of 2006

**KENYA COMMERCIAL BANK LTD.....
.....APPLICANT**

Versus

**TOWN CLERK – MERU COUNTY COUNCIL.....1ST
RESPONDENT**

**PERMANENT SECRETARY MINISTRY OF LOCAL GOVERNMENT.....2ND
RESPONDENT**

RULING

Before me is the Notice of Motion dated 2nd June 2006 brought under Section 3A and 95 of the Civil Procedure Act, Order XLIX Rule 5 and order L Rule 1 of the Civil Procedure Rules.

The applicant, KCB Ltd seeks orders that the court be pleased to extend time for the compliance with the court order made on 4th March 2005 by the Hon. Justice Makhandia and that the substantive Notice of Motion dated 17th March 2005 be deemed to be property filed on record. He asks that costs of the application be in the cause.

The application is supported by the affidavit of Kairu Timothy Waweru.

The gist of the application is that the applicant was granted the leave of this court by Justice Makhandia to commence Judicial Review proceedings against the Town Clerk Meru County Council and the Permanent Secretary Ministry of Local Government on 4th March 2005. The court ordered that the substantive Notice of Motion should be filed and served within 21 days. They managed to file the Notice of Motion on 29th March 2005 but have failed to serve it.

Even without going into the merits of the application, these are Judicial Review proceedings brought under Order 53 Civil Procedure Rules. Section 8 (2) of the Law Reform Act donates power to the court to grant prerogative orders under order 53 Civil Procedure Rules. The jurisdiction donated by Section 8 (2) of the Law Reform Act is neither Civil nor criminal and therefore the Civil Procedure Act and Rules do not apply in this case. See the case of **COMMISSIONER OF LANDS V KUMSTE HOTEL LTD CA 224/1995** where the Court of Appeal held that Judicial Review is a special jurisdiction and the Civil Procedure Act and Rules do not apply.

Accordingly I do find that the applicant has not properly invoked the jurisdiction of this court and the order sought would not be available to the applicant.

The application dated 2nd June 2006 is hereby struck out with the applicants bearing their own costs.

Dated and delivered this 20th day of July 2006.

R.P.V. WENDOH

JUDGE