

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

IN THE MATTER OF JUDICIAL REVIEW UNDER ORDER LIII OF THE CIVIL
PROCEDURE RULES

AND

IN THE MATTER OF THE MINISTRIES APPEAL CASE NO. 256 OF 2001

BETWEEN

NJUE KIRIRU APPLICANT

VERSUS

PERSON NJERU 1ST RESPONDENT

THE MINISTER FOR LANDS & SETTLEMENT.....2ND RESPONDENT

RULING

This ruling relates to a preliminary objection dated 10th May 2006. The only point for determination is whether leave was applied for within the period stipulated for certiorari orders, namely 6 months. The objector claims that leave was obtained 9 months after the decision.

I have perused the record and the record supports the applicant's position that the challenged decision was made on 29th October, 2003 and the application for leave was filed on 16th April 2004. This adds upto 5 months and 18 days which period is well within 6 months.

Order 53 rule 2 provides:

“In the case of an application for an order of certiorari to remove any judgment, order, decree, conviction or other proceedings for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of the judgment, order, decree, conviction or other proceedings or such short period as may be prescribed under any written law.

It is clear to my mind that it is the application for leave which must be filed within 6 months. The objector has clearly misdirected himself on this, and also on my brother, Justice Serگون's ruling in *MICHAEL OYUGI & 4 OTHERS v BUNDALANGI LANDS DISPUTES TRIBUNAL & ANOTHER* (2005) e KLR HCCC 8 of 2002 because the learned judge reproduces what the rule says.

The other objection that the Republic is not an applicant is not factually correct because the heading does describe the Republic as the applicant in the Notice of Motion.

For the above reasons the objection is dismissed with costs to the applicant in any event.

It is so ordered.

DATED and delivered at Nairobi this 15th day of December, 2006.

J.G. NYAMU

JUDGE