



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
Misc Civ Appli 112 of 2002**

**IN THE MATTER OF AN APPLICATION BY NDIWA NAMUNYU FOR AN
ORDER OF CERTIORARI**

AND

IN THE MATTER OF THE LAND DISPUTES TRIBUNALS ACT NO.18 OF 1990

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

**THE HON. ATTORNEY GENERAL (FOR AND ON BEHALF OF THE SITIKHO
LAND DISPUTES TRIBUNAL).....RESPONDENT**

AND

SAMUEL SAMITA NAMUNYU.....INTRESTED PARTY

Exparte

NDIWA NAMUNYU

RULING

Ndiwa Namuyu, the applicant herein filed a summons under Order VIA rules 3 and 4 of the Civil Procedure Rules seeking to amend the motion dated 4th November 2002. The summons was served upon the interested party who in turn opposed the motion by filing a preliminary point of law, which had to be disposed of first before considering the merits of the summons.

Before considering the arguments for and against the preliminary points raised let me set out the background of the nature of dispute which is before this Court.

In the year 2001 Samuel Simiyu Namunyu, the interested party herein filed a claim against the applicant over L.R.NO.NDIVISI/MUCHI/339 before the Sitikho Land disputes Tribunal in which he claimed for the recovery of 12 acres. The Land disputes Tribunal heard that dispute and finally made an award on 22nd October 2001 in which the interested party was given 12 acres. The award was adopted on 15th October 2002. Being aggrieved by the decision the applicant filed the motion dated 4th November 2002 under Order LIII rule 3 of the Civil Procedure whereby he applied for an order of certiorari to bring into this Court the aforesaid award for quashing. The applicant raised various grounds in the motion. The

applicant has now realized some inadequacy of the motion. He has invoked the provisions of Order VI A rules 3 and 4 of the Civil Procedure rules as the basis of the summons dated 3rd June 2004.

The subject matter of this ruling is the preliminary objection dated 1st November 2004. The main ground raised against the summons is that the motion cannot be amended by invoking the provisions of the Civil Procedure Act and the rules therein. The applicant's advocate was of the view that this Court can invoke its inherent jurisdiction to allow the amendment because the objection raised was a mere irregularity which was basically technical.

It is not denied that Order LIII is a special jurisdiction promulgated under section 9 of the Law Reform Act. The provisions of the Civil Procedure Act and the rules therein do not apply. Consequently, the summons before this court is incompetent because it is improperly premised. The provisions of the Law Reform Act or in the alternative Order LIII of the Civil Procedure Rules can be cited in matters dealing with judicial Review Proceedings. In the absence of any provisions then the inherent jurisdiction of this court may be invoked.

In the end, I am satisfied that the preliminary objection has merit. It is upheld with a consequential order that the summons dated 3rd June 2004 is ordered struck out with costs to the interested party.

Dated and delivered this 16th day of Nove. 2005.

J. K. SERGON

JUDGE

In the presence of Mr. Khakula for the applicant and Were for the interested party.