



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MISC. CASE NO. 1511 OF 2001**

**KIAMBU NYAKINYUA FARMERS**

**CO. LTD ..... APPELLANT**

**VERSUS**

**THE HON. ATTORNEY GENERAL ..... RESPONDENT**

**RULING**

Leave was sought herein by Kiambu Nyakinyua Farmers Co. Ltd (the Company) on 20. 12. 2001 to take out Judicial Review Proceedings for orders of Certiorari, Prohibition and Mandamus against the Attorney General on behalf of the Registrar of Companies. They wanted the court to prohibit the Convening of a Annual General Meeting scheduled for 21. 12. 2001. The matter landed before the Duty Judge Visram J. who granted leave on the same day and made a further order that the grant of leave would operate as a stay. The substantive application was to be filed and served on the Respondent's and any affected party.

Under Order 53 Rule 3 Civil Procedure Rules the substantive application ought to have been filed within 21 days. By the 30th April 2002, however no Notice of Motion had been filed and so, some 31 interested or affected parties came to Court and sought the setting aside of the order granting leave and for the application for leave to be dismissed. That application was served on the Company's Advocate's but they neither responded to it nor attended Court at the hearing thereof.

Learned Counsel for them Mr. Agina submitted that the leave granted was spent and therefore the order granted for stay ought to be set aside. For the Attorney General, Learned Counsel Mr. Jabane thought the application was misconceived in law as it was seeking review by way of Judicial review. An order of a Judge cannot be reviewed by another Judge in that way.

I am afraid I did not understand Mr. Jabane's submissions. Even if this was an application for Review, Visram J. was no longer in this station and the matter would thus fall on any other Judge to determine. I do not think the application is a Judicial review application seeking review. It does not state the procedural Rule relied on but that cannot prevent the Court from considering the substance of the application if there is no prejudice caused to the other parties. The proposition made is fairly simple. That leave was granted by this Court on 20. 12. 2001 and that the law requires in Mandatory terms under order 53 Rule 3 (i) not only that the application be filed within 21 days by Notice of Motion, but also that it shall be served 8 clear days before hearing on all persons directly affected. None of this happened within 21 days. Consequently the leave granted dissipated and with it the order for stay. The Application for leave is now stale and is of no consequence as it has been dealt with. In reality it should be struck out and I proceed to do so with costs to the interested parties.

Dated this 12th day of June, 2002.

P. N. WAKI

JUDGE

12. 06. 2002

Waki J.

Murage for A. G.

N/A for Appellant

C. C. Mulinge

Ruling delivered, dated and signed in Chambers.

**P. N. WAKI**

**JUDGE**