

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
CIVIL CASE NO.902 OF 2000**

**DAVID MINJA.....APPLICANT
-VERSUS-
MANAGEMENT COMMITTEE OF LOCAL GOVERNMENT OFFICERS SUPERATION
FUND.....DEFENDANT**

RULING

Mr. Odera has raised a preliminary objection that the motion subsequently filed after obtaining the leave was not accompanied by the Statement as required by Order 53 Rule 4 of the Civil Procedure Rules. He pointed out that the Statement which was accompanied the Motion could not have been the Statement which accompanied the application for Leave. The Leave to file the proceedings was granted on 23.8.2000 while the notice of motion was filed on 7.9.2000.

Mr. Lumumba, the Learned Counsel for the Respondent explained what happened by pointing out that the advocate on record appear to have filed two statements, one at the time of applying for the leave and another at a later date for some reasons not explained.

The rules were designed to ensure that parties articulate their pleadings to enable the party sued understand the claim he has to face. This besides what else may be said about the rules is the basic reason for their existence. Although the present proceedings are brought under Order 53 of the Civil Procedure Rules which deals with Judicial Review, nevertheless such proceedings are governed and guided by the Civil Procedure Rules.

In this instant case there is presumption that there was a statement as required by Order 53 Rule (2) when the application for leave was made and granted. I am inclined to accept the explanation by the Learned Counsel for the applicant Mr. Lumumba that for some reasons the statement accompanying the summons was a reproduction of the statement which was filed with the application for leave. There is no complaint that the contents of this statement are different. The only difference between the two are the dates. Under these circumstances the irregularity would not be fatal and I overrule the Preliminary Objection since the statements fault is the dates I direct that it be deemed to have been filed in time.

Dated and delivered this 7th day of March, 2001.

KASANGA MULWA

JUDGE