



REPUBLIC OF KENYA

High Court at Mombasa

Judicial Review 24 of 2008

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW
AND FOR ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION**

IN THE MATTER OF: THE CONSTITUTION OF KENYA

**IN THE MATTER OF: THE LAND ADJUDICATION ACT CHAPTER 284 OF THE
LAWS OF KENYA**

**IN THE MATTER OF: THE REGISTERED LAND ACT, CHAPTER 200 OF THE LAWS
OF KENYA**

IN THE MATTER OF: THE REPUBLIC

VERSUS

THE CHIEF LAND REGISTRAR.....1ST RESPONDENT

THE DIRECTOR OF LAND ADJUDICATION & SETTLEMENT2ND RESPONDENT

THE DISTRICT LAND REGISTRAR,TAITA/TAVETA DISTRICT.....3RD RESPONDENT

THE HONOURABLE MINISTER FOR LANDS AND SETTLEMENT ...4TH RESPONDENT

THE DISTRICT COMMISSIONER TAITA/TAVEA5TH RESPONDENT

**THE DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER, TAITA/TAVETA
OFFICER, TAITA/TAVETA6TH RESPONDENT**

EX PARTE

HUMPHREY KIGOMBE1ST APPLICANT

ROPHUS MWAMBURI2ND APPLICANT

WISDOM MWAMBURI3RD APPLICANT

INTERESTED PARTIES

1. JACOB MWALUKUKU

2. HENRY MWANYUMBA

ORDER

1) As parties may be aware I was redeployed to Busia High Court with effect from 1st March 2013. That re-deployment affected my work programme and for this reason I was unable to deliver judgment herein on 21st March 2013 as I had planned. I apologize to all involved. The parties will be further disappointed to learn that I am yet to prepare a judgment . This is the reason.

2) Both at the leave stage and on filing the substantive motion, the Applicants cited two persons as interested parties; 1) JACOB MWALUKUKU 2) HENRY MWANYUMBA. These are the people who are said to have unlawfully benefited from the decision sought to be impeached by these proceedings. Order LIII Rule 3(2) of the previous version of the Civil Procedure Rules (reproduced as order 53 Rule (3) of CPR, 2010) requires a substantive motion to be served on all persons directly affected. Jacob Mwalukuku and Henry Munyumba are such persons.

3) In the course of preparing the judgment I came across the Affidavit of service sworn by Rophus Mwamburi on 1st November 2004 in respect to service of the Notice of Motion on the interested parties. This is what he said in respect of the 1st Interested party.

“4. THAT I also served the document on the two sons of the deceased 1st interested party who are Bernard Babu Nyambu and Joseph Mbanda Nyambu and who are the legal representatives of the deceased. The said sons signed the back of the documents and dated them 3rd October 2004”.

Before proceeding any further this Court requires to satisfy itself that

- i) Jacob Mwalukuku is indeed dead
- ii) and if so that Benard Babu Nyumbu and
Joseph Mbanda Nyambu are personal
Representatives to his estate.

These is important because the two have never participated in these proceedings notwithstanding evidence that they have been served on several occasions. The Court must satisfy itself that, as required by law, all persons directly affected have been served with the substantive motion.

- 4) I invite parties to move this court for a mention for purpose of addressing this concern.

F. TUIYOTT

J U D G E

DATED AND DELIVERED THIS 10TH DAY OF MAY, 2013

IN THE PRESENCE OF:

JUDGE