



REPUBLIC OF KENYA

IN THE HIGH COURT

AT BUNGOMA

Miscellaneous Application 104 of 2011

**IN THE MATTER OF AN APPLICATION TO APPLY FOR LEAVE FOR JUDICIAL
REVIEW ORDERS CERTIORARI BY PATRICK WAFULA KABURU**

AND

**IN THE MATTER OF CHAPTER FOUR SECTION 22 (1) OF THE CONSTITUTION OF
KENYA**

AND

**IN THE MATTER OF PROCEEDINGS OF THE CHIEF MAGISTRATE'S COURT AT
BUNGOMA IN BUNGOMA CM CRIMINAL CASE NO.1664 OF 2010 ON 20/06/2010 AND
20/07/2011 AND ANY ORDERS MADE THERE AFTER**

BETWEEN

REPUBLIC..... APPLICANT

~VERSUS~

CHIEF MAGISTRATE BUNGOMARESPONDENT

ATTORNEY GENERAL.....RESPONDENT

AND

PATRICK WAFULA KABUR.....EXPARTE APPLICANT

AND

JAPHETHER WAMALWA KILUI.....1ST INTERESTED PARTY

JACKSON WETOSI.....2ND INTERESTED PARTY

ANDREW MOITA SIMIYU.....3RD INTERESTED PARTY
PETER WAFULA KITUYI.....4TH INTERESTED PARTY
ROSE NANG'UNDA.....5TH INTERESTED PARTY
WILLIAM WAFUBWA KHAEMBA.....6TH INTERESTED PARTY
SOLOMON WEPUKHULU.....7TH INTERESTED PARTY
JOHN WAFULA KHISA.....8TH INTERESTED PARTY

RULING

There is an application for leave to bring into this court and quash the proceedings in Bungoma Chief Magistrates Criminal Case no.1664 of 2010 (formerly Kimilili SRM Cr. Case no.1139 of 2008). In the proceedings the accused Moses Khaoya Kaburu was convicted on his own plea of guilty and sentenced to four years in jail. The charges in question were burglary and stealing contrary to section 304 (2) and 279 (b) of the Penal Code and the complainant was the *ex-parte* Applicant herein. The complainant sought to be given back the items that had been stolen from his house. The application was before the court at Kimilili. For some reason, he successfully asked the court at Kimilili to disqualify itself. It referred the matter to the Chief Magistrate's Court at Bungoma. His complaint is that the court at Bungoma has kept adjourning the application without making a decision on it.

The eight Applicants seek under Order 53 rule 6 of the Civil Procedure Rules to be joined in the chamber application for leave because what was stolen included a bag containing green cards for their parcels of land.

Under rule 6 one can be allowed to appear and oppose the substantive motion after it is filed and has come for hearing. Order 53 does not provide for a party being joined at this stage of the chamber application for leave. The application is therefore premature and is declined. Each party will bear his own costs.

Dated, signed and delivered at Bungoma this 9th day of July 2012.

A. O. MUCHELULE
JUDGE