



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MACHAKOS

Miscellaneous Application 273 of 2006

**IN THE MATTER OF AN APPLICATION BY JOHNSON NDUYA MUTHAMA FOR LEAVE
TO APPLY FOR AN ORDER OF PROHIBITION**

BETWEEN

REPUBLIC

VERSUS

1. THE MINISTER FOR ROADS AND PUBLIC WORKS

2. THE ATTORNEY GENERAL RESPONDENTS

AND

COASTAL KENYA ENTERPRISES LTD. INTERESTED PARTY

JOHNSON NDUYA MUTHAMA *EX-PARTE* APPLICANT

RULING

Before me is a Notice of Preliminary Objection to the Notice of Motion for judicial review of the applicant, filed by the Attorney General on behalf of the respondent. It was dated 18th July 2011. The objections are in the following terms:-

- 1. The Notice of Motion commencing the proceedings herein is not properly on record.**
- 2. The Notice of Motion commencing the proceedings offends the provisions of Order 53 of the Civil Procedure Rules.**
- 3. The entire proceedings are unprocedural.**
- 4. In the circumstances, the entire proceedings are an abuse of the court process and the 1st and 2nd respondents shall seek that the same be struck out.**

When the Preliminary Objection came up for hearing, Ms Abdul, for the 1st and 2nd respondents emphasized that Order 53 of the Civil Procedure Rules required that the Notice of Motion in judicial review proceedings should be filed within 21 days of the date leave was granted. Leave was granted on 18/12/2006. The Notice of Motion was filed on 15/1/2007. Counsel argued that the Notice of Motion was outside the 21 days period allowed by law.

Mr Mutia, for the *ex-parte* applicant submitted that Order 49 rule 3 (a) of the then existing Civil Procedure Rules, provided that between 21st December and 6th January, time did not run. Therefore, the Notice of Motion herein was filed within 21 days.

Indeed, Order 53 Rule 3 (1) of the Civil Procedure Rules provides that the Notice of Motion should be filed within 21 days from the date leave to file judicial review proceedings is granted. The words in the rule are mandatory. Therefore, there can be no extension of time.

There is no dispute that leave was granted on 18/12/2006 and that the Notice of Motion was filed on 15/1/2007. On the face of it, this appears to be more than 21 days. However, Order 49 rule 3A of the Civil Procedure excludes the days between 21st December and 6th of January from computation of time. It provides:-

3A. Except where otherwise directed by a judge for reasons to be recorded in writing, the period between the twenty-first day of December in any year and the sixth day of January in the year next following both days included, shall be omitted from any computation of time (whether under these Rules or any order of the court) for the amending, delivering or filing any pleading or the doing of any other act, provided that this rule shall not apply to any application in respect of a temporary injunction.

With the above provisions of the Civil Procedure Rules in mind, I am of the view that the Notice of Motion herein was filed within the 21 days allowed by law. This is because of the exclusion from computation of time, the days between 21st December and 6th January, inclusive.

Consequently, the objection is dismissed. It is unmerited. I find that the Notice of Motion herein was filed within the time provided by law. Costs in the cause.

Dated and delivered at Machakos this 3rd day of **July** 2012.

George Dulu
Judge

In presence of:-

Court clerk – Nyalo

N/A for the parties