



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT MERU**

**Miscellaneous Application 29 of 2008**

**IN THE MATTER OF AN APPLICATION BY**

**(1) JOSEPH MURITHI IMATHIU**

**(2) ALDSON B.K. KARITHO**

**(3) STEPHEN KABERIA**

**(4) JEREMIAH MUGAMBI M'TUARUCHIU –**

**FOR LEAVE TO APPLY FOR ORDERS OF CERTIORARI AND PROHIBITON AND IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA**

**AND**

**IN THE MATTER OF URINGU “1” ADJUDICATION SECTION AND IN THE MATTER OF AR OBJECTION NO. 832 PARCEL NOS. 161, 1740, 1601, 1821, 1276, 1939 AND 1173.**

**AND**

**IN THE MATTER OF THE ADJUDICATION ACT, CAP 284 LAWS OF KENYA**

**JOSEPH MURIITHI IMATHIU ..... 1<sup>ST</sup> APPLICANT**

**ALDOSON B.K. KARITHO ..... 2<sup>ND</sup> APPLICANT**

**STEPHEN KABERIA ..... 3<sup>RD</sup> APPLICANT**

**JEREMIAH MUGAMBI M'TUARUCHIU ..... 4<sup>TH</sup> APPLICANT**

**VERSUS**

**LAND ADJUDICATION OFFICER IGEMBE/TIGANIA DISTRICT .....RESPONDENT**

**RULING**

The *ex parte* applicants have filed this matter against the respondent and interested party seeking Judicial Review Orders. In their application *ex parte* applicant by a verifying affidavit listed the parcels of land which are the subject matters of this action one of which was No. 1939. The interested party in his replying affidavit stated that the *ex parte* applicants had failed to include parcel No. 1940 in their application. As a result of that reply *ex parte* applicant have sought by Notice of Motion dated 5<sup>th</sup> December 2008 to amend the statement of facts and to use further verifying affidavit. The application is brought under Order LIII Rule 4 (2) of the Civil Procedure Rules. That rule in part is in the following terms:-

***“The High Court may on the hearing of the motion allow the said statement to be amended, and may allow further affidavits to be used if they deal with new matter arising out of the affidavits of any other party to the application, .....*”**

The *ex parte* applicants annexed to the application for amendment the proposed amended statement of facts and a further verifying affidavit. In each of those documents there is an amendment crossing out parcel No. 1939 and introducing parcel No. 1940.

In submissions learned counsel for the *ex parte* applicant stated that the amendment became necessary after he obtained instructions from his clients following the depositions in the interested parties replying affidavit in respect of the correct parcel of land to be included in these proceedings. Learned counsel for the interested party opposed the application on the ground that there were no new issues raised in the replying affidavit to merit an amendment as sought being granted. That opposition is rejected. The interested party by his replying affidavit brought into focus in this action parcel No. 1940. That was the first time in this action that that parcel was mentioned and hence was a new matter. It therefore follows that the *ex parte* applicant have brought themselves squarely within the provisions of Order LIII Rule 4(2). They are therefore, in my view, entitled to the prayers they seek. The court grants orders as sought in prayer No. (a) of Notice of Motion dated 5<sup>th</sup> December 2008. Costs shall be in the cause.

Dated and delivered at Meru this 3<sup>rd</sup> ....day of July. 2009.

**MARY KASANGO**

**JUDGE**