



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**

**MISC JUDICIAL REVIEW NO. 20 OF 2013**

**IN THE MATTER OF AN APPLICATION BY NANCY WATHIBA KIMOO FOR LEAVE TO  
APPLY FOR ORDERS OF JUDICIAL REVIEW**

**AND**

**IN THE MATTER OF LAND DISPUTES TRIBUNAL ACT NO. 18 OF 1990**

**AND**

**IN THE MATTER OF PROCEEDING IN KERUGOYA PRINCIPAL MAGISTRATE’S COURT  
L.D.T NO. 16 OF 2010**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**THE PRINCIPAL MAGISTRATE’S COURT KERUGOYA.....1<sup>ST</sup> RESPONDENT**

**THE CENTRAL LAND DISPUTES TRIBUNAL .....2<sup>ND</sup> RESPONDENT**

**TABITHA W. MURIUKI .....3<sup>RD</sup> RESPONDENT**

**AND**

**NANCY WATHIBA KIMOO .....EX-PARTE APPLICANT**

**RULING**

On 8th December 2014 this Court delivered a ruling allowing the applicant time within which to file the substantive Judicial Review Motion to quash the award of the Central Lands Disputes Tribunal. The Court, in allowing that application, made the following order:-

***“I accordingly grant the applicant an extension of time for the filing of the Notice of Motion to the effect that the said Notice of Motion be filed within 21 days of the delivery of this ruling”***

That Notice of Motion was filed. However, there was no compliance with the provisions of **Order 53 Rule 4 (1) of the Civil Procedure Rules** and this Court therefore, on the application of the 3rd respondent, struck out the Notice of Motion on 13th October 2015.

I now have before me, another application by the applicant dated 9th November 2015 and filed

herein on 17th November 2015 in which she seeks the following substantive orders:-

**1. Spent.**

**2. That the Honourable Court be pleased to extend time and allow the ex-parte applicant to file the substantive application for Judicial Review out of time.**

The application is supported by the affidavit of **NANCY WATHIBA KIMOO** the applicant herein in which she depones, inter alia, that the 3rd respondent was in fact served with the ex-parte Chamber Summons, the statement of facts and the verifying affidavit on 31st March 2015 and duly signed and stamped the same as per annexure **NWK 3**. It was the contention of the 3rd respondent's counsel that in fact contrary to the provisions of **Order 53 Rule 1 (2) and Rule 4 (1) of the Civil Procedure Rules**, the application was not accompanied by a statement setting out the name and description of the applicant. Upon perusal of the record herein, this Court found as a fact that the affidavit of service of **JACKLINE W. KIRAGU** advocate dated 19th January 2015 did not indicate that the statement accompanying the application for leave was served upon the 3rd respondent as required by the provisions of **Order 53 Rule 4 (1) of the Civil Procedure Rules**. This Court therefore struck out the Notice of Motion dated 9th December 2014.

The 3rd respondent now depones in paragraph 8 (a) of her replying affidavit as follows:-

***"That there is an error apparent on the face of the record in that the 3rd respondent was served with documents but gave the Court the impression that she was not served"***.

This Court was not given any wrong impression by the 3rd respondent. Following the grounds of opposition filed by her counsel that the application was not accompanied by a statement of the applicant as required by the provisions of **Order 53 Rule 4 (1) of the Civil Procedure Rules**, this Court could only go by the affidavit of service of **JACKLINE W. KIRAGU** advocate dated 19th January 2015. That affidavit is self explanatory. It states in paragraph 2, which is relevant, as follows:-

***"That sometime on 15th January 2015 within Nyeri town while under employment of MAGEE WA MAGEE & CO. ADVOCATES, I served the firm of GORI OMBONGI & CO. ADVOCATES with a Hearing Notice for the application dated 9th December 2014 dated 15th January 2015 indicating that the matter is coming up for hearing on 19th March 2015 by tendering them a copy of the same and requiring their signature"***

Where service of any particular document is denied, the Court can only look at the affidavit of the process server to find out what was served. In this case, the affidavit of **JACKLINE W. KIRAGU** is clear as to what was served upon the 3rd respondent. Annexure **NWK 3** of the applicant's supporting affidavit does not really aid her cause because it is simply a copy of the Notice of Motion dated 9th December 2014 which states that it ***"is based on the grounds set out in the Chamber Summons dated 15th June 2010, statement of facts and the verifying affidavit filed therein and on the grounds and submissions to be adduced at the hearing"***. In my ruling dated 13th October 2015, I was clear that the Notice of Motion shall be served with the statement accompanying the application. That was not done as is clear from the affidavit of service of **JACKLINE W. KIRAGU** dated 19th January 2015. Even the copy of the Notice of Motion annexed to the application only has a copy of the Chamber Summons dated 15th June 2010 stamped as having been received by the firm of **GORI OMBONGI ADVOCATES** on 31st March 2015. The supporting affidavit of the applicant which is annexed to that Chamber Summons is not stamped by the said firm. In any case, that supporting affidavit is not a ***"statement accompanying the application for leave"*** as envisaged under the provisions of **Order 53 Rule 4 (1) of the Civil Procedure Rules**.

In the circumstances, I find no merit in the applicant's Notice of Motion dated 9th November 2015. The same is accordingly dismissed with costs to the 3rd respondent.

**B.N. OLAO**

**JUDGE**

**4<sup>TH</sup> NOVEMBER, 2016**

Ruling delivered, dated and signed in open Court this 4<sup>th</sup> day of November 2016.

Mr. Miano for Mr. Magee for the Applicant present

No appearance for the Respondents

**B.N. OLAO**

**JUDGE**

**4<sup>TH</sup> NOVEMBER, 2016**