



**REPUBLIC OF KENYA**

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

**MISC APPLICATION NO. 28 OF 2015**

**IN THE MATTER OF IRRIGATION ACT AND RULES CAP 347 LAWS OF KENYA**

**AND**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

**BETWEEN**

**CHUBI KANGANGI.....APPLICANT**

**VERSUS**

**MWEA IRRIGATION SETTLEMENT .....RESPONDENT**

**AND**

**FELICITA MICERE CUBI.....1<sup>ST</sup> INTERESTED PARTY**

**SYMON MUTHEE CUBI.....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

The ex-parte applicant has move this Court by his Chamber Summons application dated 19<sup>th</sup> August 2015 seeking the following orders:-

- 1. That leave be granted to institute Judicial Review proceedings of certiorari and prohibition against the decision of the respondent herein dated 9<sup>th</sup> July 2015.***
- 2. That leave once granted do operate as a stay of the said decision.***

The application is supported by the statement of facts and affidavit verifying the same.

From the said statement, it is the ex-parte applicant's case that whereas he is the licensee of rice holding No. 1972 Mwea Section Unit M15 for which he has a tenant card, the manager of Mwea Irrigation Settlement summoned him to appear before the Disputes Arbitration Committee on 9<sup>th</sup> July 2015 where he was informed that the interested parties were demanding a share of the said rice holding. He did not agree to that demand which was an ambush to him and he did not hear from the Committee again until a few days later when one SAMSON KINYUA KATHANGU entered the rice

holding and started cultivating one acre having leased the same from the interested parties herein. He therefore moved to Wanguru Court in Civil Case No. 84 of 2015 seeking injunctive orders and it was then

that he learnt that the respondent had divided the said rice holding into three portions being 1972 (A) (B) and (C) yet he had never breached any of the regulations governing the same. That gave rise to this application.

I have considered the application and I am satisfied, prima facie, that the applicant is entitled to the orders sought therein and I grant the same.

In accordance with the provisions of ***Order 53 Rules 3 (1) and (2) of the Civil Procedure Rules***, I direct that the applicant shall file the Notice of Motion within 21 days from the date hereof and serve the same upon the respondent, the interested parties and any other person as are affected by it within 14 days of filing.

I further order that the leave granted herein shall operate as a stay of implementation of the said decision pending the hearing and determination of the application.

Costs shall be in the application.

**B.N. OLAO**

**JUDGE**

**4<sup>TH</sup> DECEMBER, 2015**

COURT: Ruling delivered, dated and signed this 4<sup>th</sup> day of December, 2015 in open Court.

Mr. Macharia for Mr. Kagio for Applicant present.

**B.N. OLAO**

**JUDGE**

**4<sup>TH</sup> DECEMBER, 2015**