



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**JUDICIAL REVIEW APPLICATION NO. 3 OF 2013**

**REPUBLIC.....PLAINTIFF/APPLICANT**

**=VERSUS=**

- 1. KAHINDI NYAFULA**
- 2. CHENGO BAYA**
- 3. SAFARI KITI KADUNGUNI**
- 4. AMIR RAMADHAN.....DEFENDANTS/RESPONDENTS**

**AND**

**KILIFI SOUTH EAST FARMERS CO-OPERATIVE.....EX PARTE APPLICANT**

**RULING**

1. What is before me is the Interested Parties' Notice of Preliminary Objection dated 26<sup>th</sup> June 2013.
2. In the Preliminary Objection, the Interested Parties have averred that the *Ex-parte* Applicant filed its Notice of Motion for Judicial review orders of Certiorari and Prohibition 14 days after the expiry of twenty one (21) days and the said Motion should be struck out for being fatally defective.
3. In response to the Preliminary Objection, Mr. Shujaa, counsel for the *Ex-parte* Applicant submitted that it was true the Notice of Motion seeking for Judicial Review orders was filed out of time. However, it was submitted, that act does not render the Motion a nullity, the motion is only improperly before the court. According to counsel, the court should give the *Ex-parte* Applicant an opportunity to regularise the anomaly considering that it has filed an Application seeking for enlargement of time.
4. Mr. Kenga, counsel for the Interested Party submitted that while dealing with an Application for prerogative orders, the court exercises a special jurisdiction which is neither civil nor criminal.
5. The Interested Parties' counsel submitted that the court cannot invoke the provisions of the Civil Procedure Rules to extend time within which the *Exparte* Applicant should file its Notice of Motion.
6. Analysis
7. On 19<sup>th</sup> March, 2013, this court granted to the *Ex-parte* Applicant leave to commence Judicial Review proceedings for orders of Certiorari and Prohibition. The court, while reminding the *Ex-parte* Applicant the requirements of the provisions of order 53 of the Civil Procedure Rules directed that the substantive Notice of Motion should be filed within 21 days. The substantive Notice of Motion was however filed on 23<sup>rd</sup> April, 2013, more than 14 days after the lapse of 21 days.

8. Judicial Review proceedings under Order 53 of the Civil Procedure Rules are a special procedure. A party, other than invoking the provisions of Order 53 cannot invoke the provisions of the Civil Procedure Act and the Rules made thereunder. (see *Welamudi vs The Chairman Electoral Commission of Kenya KLR (2002) 285* and *R vs Kenya Bureaus of Standards & Others (2006) EA 345*).
9. The law provides that the substantive Motion seeking for prerogative orders must be filed within 21 days. The Law Reform Act, which is the substantive law dealing with prerogative orders, does not provide for the enlargement of time within which a party should file the Motion. In the case of *AKO -vs- Special District Commissioner Kisumu & Another (1959) KLR 163*, the Court of Appeal held as follows:

**“The Prohibition is statutory and absolute and is not therefore challengeable under procedural provisions of the Civil Procedure Rules, more specifically order 49 Rule 5 (now order 50 Rule 6) which makes provision for the enlargement of time.”**

10. Consequently, the provisions of Order 50 Rule 6 of the Civil Procedure Rules which allows the enlargement of time by the court for doing of a particular act does not come to the *Ex-parte* Applicant's aide, neither does Article 159 (2) of the Constitution.
11. For the reasons I have given above, I strike out the Notice of Motion dated 26<sup>th</sup> March, 2013 for having been filed out of time with costs.

Dated and delivered in Malindi this 8<sup>th</sup> day of May, 2014.

**O. A. ANGOTE**

**JUDGE**