**Njuguna v Minister for Agriculture**

**Division:** Court of Appeal of Kenya at Nairobi

**Date of judgment:** 5 January 2000

**Case Number:** 144/00

**Before:** Omolo, Shah and O’Kubasu JJA

**Sourced by:** LawAfrica

**Sourced by:** LawAfrica

**Summarised by:** W Amoko

*[1] Judicial review – Application for leave to institute judicial review proceedings – Jurisdiction of the*

*Court – Test for whether leave to institute proceedings should be granted.*

**Editor’s Summary**

The Applicants sought from the High Court leave to institute judicial review proceedings for orders of *certiorari* to quash the Tea (Elections) Regulations 2000, and the Tea Elections Programme, as well as orders of prohibition to stop the carying out of the Tea Elections Programme. The High Court refused to grant leave principally on the ground that the acts of the Minister complained of were not amenable to judicial review as they were, or were done in terms of, subsidiary legislation. The Applicants appealed.

**Held** – The test as to whether leave should be granted to an applicant for judicial review is whether, without examining the matter in any depth, there is an arguable case that the reliefs might be granted on the hearing of the substantive application. As the High Court had gone beyond its limited jurisdiction at the stage of application for leave to institute judicial review proceedings and considered the merits of the case, its order would be reversed and as the Applicants had demonstrated that they had an arguable case, leave would be granted. Appeal allowed. *Per curiam*: The appropriate procedure for the challenging of leave which has already been granted is to apply under the inherent jurisdiction of the Court, to the Judge who granted leave, to set it aside.

**No cases referred to in judgment**