



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
JUDICIAL REVIEW DIVISION
MISC. CIVIL APPLICATION NO. 348 OF 2016

**IN THE MATTER OF AN APPLICATION TO INSTITUTE PROCEEDINGS IN THE NATURE
OF JUDICIAL REVIEW FOR ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS**

AND

IN THE MATTER OF THE LAW REFORM ACT, CHAPTER 26

LAWS OF KENYA

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

KENYA NATIONAL HIGHWAYS AUTHORITY.....RESPONDENT

EX PARTE APPLICANT: TANGERINE INVESTMENTS LIMITED

JUDGEMENT

Introduction

1. By a Notice of Motion dated 16th August, 2016, the ex parte applicant herein, **Tangerine Investments Limited**, seeks the following orders:

1. That an order of Certiorari do issue, directed to the respondent to move into the High Court for purposes of quashing the decision/order and or conduct of the respondent albeit informally of arbitrarily removing the applicant's Bill boards located on the Southern Bypass Bridge/overpass situate on Mombasa Road Next to Airtel/Ole Sereni and street pole adverting boards at various locations along Thika Road within Nairobi City County.

2. That an order of Prohibition do issue prohibiting the respondent, its agents, employees, servants county officers or whosoever from enforcing the decision/order of the respondent *in toto* and in particular the removal, defacing, dismantling or interfering in any way with the applicant's Bill boards located on the Southern bypass Bridge/overpass situate on Mombasa

Road Next to Airtel/Ole Sereni and street pole advertising boards at various locations along Thika Road within Nairobi City Count.

3. That an order of Mandamus do issue compelling the respondent to unconditionally re-install any panels, equipment or advertisements belonging to the Applicant that the respondent has removed to its initial state and position.

4. That costs of and incidental to this application be in cause.

Ex Parte Applicant's Case

2. According to the applicant, the Respondent herein in blatant disregard of the applicant's right to fair administrative process removed the applicant's advertisements along various roads in Nairobi. This was despite the fact that the applicant had diligently and dutifully complied with all the statutory and regulatory requirements in the conduct of its business including the payment of all the requisite fees and charges to Nairobi City County.

3. It was the applicant's case that the Respondent failed, neglected and/or refused to give the applicant any notice or communication of the said removal of the street pole advertisement in blatant disregard of Article 47 of the Constitution of Kenya. Further the Respondent never gave any reasons, written or otherwise, to the applicant as to why the street pole advertisements and bill boards were being removed nor was any official communication made by the Respondent regarding the same.

4. It was contended that as a result the applicant suffered immense prejudice and incurred great costs as its clients had paid for a service which it was no longer capable of providing as a result of the Respondent's unconstitutional and unnecessary action. Apart from that the applicant's brand reputation and goodwill suffered irreparable harm as both long term and short term clients, who had established a workable relationship with it no longer trusted the applicant to provide them with advertising services.

5. It was asserted that the Respondent had not followed any statute or regulation in effecting the removal of the applicant's street pole advertisements and that the action was not reasonable and procedurally fair. To the applicant the Respondent violated the fundamental rule of natural justice that no man should be condemned unheard in reaching its unilateral decision.

6. The applicant disclosed it made fervent efforts to know the reason for the continued removal of the street pole advertisements to no avail as no communication or justification was given to the applicant as to why its street pole advertisements and billboards were removed. Accordingly, the Respondent blatantly ignored the applicant's demand letter despite acknowledging receipt thereof. The Applicant averred that it had no luxury of time as its only source of livelihood and that of its employees had been terminated without any notice and its frantic efforts to get justification was futile.

7. To the applicant the Respondent's action were procedurally and substantially unconstitutional, high handed and constitute a breach of the rules of natural justice and were *ultra vires*, thus null and void *ab initio*.

8. It was further averred that the Respondent admitted to dismantling and/or removing of the Applicant's bill board along Mombasa road next to Ole Sereni arbitrarily, without notice and certainly without following the due process of the law. It was contended that it is dubious that the Respondent would adjudge the said advertisement illegal without any process being undertaken to determine the legality or otherwise thereof and without giving reasons for such a decision. According to the deponent, it actually flies on the face of the well-established principles of natural justice and fairness that the Respondent would purport to be the judge in its own cause.

9. It was deposed that the Respondent has not exhibited any evidence to buttress its said averment that the said advertisement was illegal and to exacerbate the situation, when the Applicant wrote to the Respondent regarding the said removal of the advert immediately upon realizing that the same had been

removed, the Respondent did not respond to the said letter and/ or initiate a proper process to adjudicate upon the matter and as such it cannot feign ignorance.

10. The applicant averred that in view of the foregoing, the contents of the Replying Affidavit were outrageous bearing in mind that the Applicant lodged a complaint through a letter dated 1st August 2016 merely 3 days after learning of the dismantling of the bill board which letter was received in the Respondents offices on 2nd August 2016 but did not elicit any response to date. The applicant refuted the position taken by the Respondent that it had restored a Bill board previously removed as unfounded, unsubstantiated, baseless and asserted that to date no legal action has been taken against the Applicant by the Respondent apart from the illegal dismantling.

11. It was averred that the allegations by the Respondent were merely escapist and aimed at depriving of the Applicants their Constitutional rights under Article 47 and 50 together with rights under section 49(4) of the **Kenya Roads Act** without any justifiable reasons. It was further deposed that the conduct of the Respondent was tantamount to a breach of right to fair administrative action as enshrined in Articles 47 and 50 of the Constitution of Kenya, 2010, section 49(4) of the **Kenya Roads Act** Chapter 408 Laws of Kenya and the principles of natural Justice.

12. Based on legal advice the applicant averred that according to section 47(4) of the **Kenya Roads Act** it is not the duty of the Applicant to demand for information about the removal of the billboards but a mandatory obligation of the Respondent to give notice and reasons thereof before removal. However, to date the Applicant has not received any reasons for dismantling and or removal of the said billboard.

13. It was the applicant's case that the Applicant could not have appealed or sought for review of the decision since they were not notified before dismantling of the Bill boards and they were actuary taken by a surprise.

14. The applicant therefore was of the view that in the wider interests of justice this application ought to be allowed.

Respondent's Case.

15. The application was opposed by the Respondent.

16. According to the Respondent, on 10/3/2016 the Asset Protection Unit of the Respondent in conjunction with the Regional Office in Nairobi removed an anonymous illegal sign board placed on both sides of the Southern Bypass interchange bridge on Mombasa Road (A104). The signboard consisted of a 40m fabric screwed and anchored using bars on to a steel supporting structure that had been anchored using raw bolts onto the concrete side wing of the bridge. According to the Respondent, after the removal of the fabric and the steel structure, no one came to claim ownership of the same.

17. It was further averred that on 27/07/2016, the Road Asset Protection officers while on patrol of the Southern Bypass from Mombasa road interchange up to Gitaru identified that the structure had been restored after the above mentioned removal. Such restoration, it was averred contravened clause 491(a) of the **Roads Act 2007**, and section 91(1) of the **Traffic Act** Cap 403, Laws of Kenya and there being no one on site and no visible address on the signboard to give account of the owner of the sign board, the Road Asset officers dismantled and confiscated the fabric from the supporting structure. However, the supporting structure of the same was not brought down and the Respondent liaised with the Chief Mechanical and Transport Engineer to use their equipment and personnel to remove the supporting structure anchored onto the concrete side-wing of the bridge.

18. It was the Respondent's case that some Advertisers take advantage of odd hours of the day and night including weekends to erect illegal sign boards on the road reserve in contravention of clause 491(a) of the **Roads Act**, 2007 and section 91(1) of the **Traffic Act** Cap 403. The Respondent thus fulfills its mandate under the **Roads Act** to manage road side developments and therefore demolishes structures that have been put up without its Authority.

19. According to the Respondent, payment for street light pole adverts to the Nairobi City County on various locations within Nairobi as shown by the evidence of payment annexed to the Verifying Affidavit does not negate the requirements as per the **Kenya Roads Act** in regards to any erection of structures on the road reserve or abutting areas on national roads, which approvals are under the ambit of Respondent. As such Nairobi City County which the Applicant avers gave it the authorization to erect billboards and street pole advertising along the Southern Bypass Bridge/Overpass situate on Mombasa Road next to Airtel/Ole Sereni which road falls within National Roads categorization is null and void *ab initio*. To the Respondent, Nairobi City County only has the sole mandate of approving display of advertisement messages on the billboards on the road reserve. Its role is merely to license advertising and not authorize the erection of billboards or structures on road reserves and/or abutting areas.

20. It was the Respondent's case that the **Kenya Roads (Kenya National Highways Authority) Regulations, 2013** are very specific and clear that a person who wishes to erect a structure on a road reserve on r the abutting areas of the land reserve shall apply to the Director- General of the Respondent, and shall attach designs prepared by a registered engineering consultant which was never done by the Applicant. Hence its claim against the Respondent for acting *ultra vires*, for disregarding its right to fair administrative process and failing to communicate with the Applicant are preposterous and unfounded.

21. It was averred that the Respondent is required to examine and approve the designs of any such structure before granting the approval to establish the structure, subject to the work being supervised by an engineer from the Respondent and that the Regulations prohibit a person from placing any service or structures on a road reserve without the conditional approval issued by the Respondent and further provide that the structures not permitted by the authority shall be removed by the owner or the Respondent/its authorized agent and the owner is required to reimburse the Respondent in the latter case with the costs of the removal, in addition to paying fifty percent charge to the aforementioned cost of removal.

22. It was therefore the Respondent's case that under the Act and the Regulations, the Respondent acted within its statutory mandate and in true spirit of the legitimate obligations required of it.

23. In the Respondent's view, the Applicants by the instant application seek to short circuit the Regulations in an attempt to acquire an approval to erect the billboards without following the specific laid down procedures in the Act. It was claimed that the Applicant had not produced nor shown nor demonstrated to this court what action it took to involve the Respondent in requesting or demanding such information necessary to facilitate is inquiry, appeal or review of the action taken by the Respondent as highlighted above based on its allegation that it has been materially and adversely affected by the Respondent's administrative action as required under section 6 of the **Fair Administrative Action Act, 2015**.

24. It was argued that the instant application is therefore frivolous, vexatious and an abuse of the court process and should therefore be dismissed with costs.

Determination

25. I have considered the issues raised in this application and this is the view I form of the matter.

26. It must be remembered that the purpose of judicial review is to ensure that the individual is given fair treatment by the authority to which he has been subjected. See R vs. Secretary of State for Education and Science ex parte Avon County Council (1991) 1 All ER 282, at P. 285.

27. With respect to procedural fairness, it was held in **Pastoli vs. Kabale District Local Government Council and Others [2008] 2 EA 300** that procedural impropriety is one of the grounds upon which a Court would be entitled to grant judicial review orders and according to the court:

“Procedural impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-

observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision.”

28. In this application we are not concerned with the merits of the decision to remove the applicant’s billboards and advertisements but my concern is whether that decision was procedural and fair.

29. Article 47 of the same Constitution provides:

(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

30. That the decision taken by the Respondent was an administrative action as defined in section is not in dispute. This must be so because section 2 of the *Fair Administrative Action Act* defines “administrative action” to include:

(i) the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or

(ii) any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates.

31. Clearly the decision to dismantle or remove the billboards erected by the applicant was an action that was bound to affect the legal rights or interests of the applicant herein. The Respondent was therefore under a constitutional duty to ensure that its action was expeditious, efficient, lawful, reasonable and procedurally fair. Procedural fairness necessarily requires that persons who are likely to be affected by the decision be afforded an opportunity of being heard before the decision is taken. Further, it is a Constitutional requirement that that person be given written reasons for the action. It has not been contended that the *ex parte* applicant herein was ever afforded an opportunity to be heard.

32. Therefore the Respondent was obliged to afford the applicant a hearing before it made its decision which decision, undoubtedly, affected the interest of the applicant by depriving it of its rights to the enjoyment of a property to which it lay claim. Apart from the constitutional provisions, **section 49(4)** of the *Kenya Roads Act* states as follows:

Where a person, without the permission required by subsection (1) or contrary to any permission given thereunder, erects, constructs, lays or establishes a structure or other thing, or makes a structural alteration or addition to a structure or other thing, an Authority may by notice in writing direct that person to remove the unauthorised structure, other thing, alteration or addition within a reasonable period which shall be stated in the notice but which may not be shorter than thirty days calculated from the date of the notice. [Emphasis mine].

33. Section 49 (5) of the Act further provides that:

If the person to whom a notice has been issued in terms of subsection (4) fails to remove the structure, other thing, alteration or addition mentioned in the notice, within the period stated therein, such item may be removed by the Authority itself which may recover the cost of the removal from that person.

34. These provisions were the subject of the decision of **Majanja, J** in **Ikon Prints Media Company Limited vs. Kenya National Highways Authority & 2 Others [2014] eKLR** where the Learned Judge expressed himself as hereunder:

“Section 49(4) of the *Kenya Road Act* requires a written notice to be given directing the person to remove the unauthorised structure. Between the time of the judgment was delivered and the time the gantry was demolished, there was no communication with IKON regarding any breaches identified by KeNHA... KeNHA argues that IKON’s conduct of proceeding with construction without express authority to resume work meant that its rights were not violated. Counsel for KeNHA submitted that a person cannot be allowed to benefit from its own breach of contract as the petitioner seeks to do. Counsel cited the case of *Cheal v Association of Professional Executive, Clerical and Compute Staff* [1983] ALL ER 1130, *Alghussenin Establishment v Eton College* [1991] 1 All ER 267 and *Dynamic Institute of Management and Accountancy (DIMA) Ltd v Apollo Insurance Company Ltd* [2004]eKLR. This position asserted by KeNHA is inconsistent with section 49(4) of the *Kenya Roads Act* which requires that a notice must be issued even in cases, “where a person, without permission or contrary to any permission establishes a structure or thing ...” The right to receive a written notice is a statutory right. It is a condition precedent to the exercise of the right to remove unauthorised structures. Thus, even where there is breach of the conditions of approval, a written notice cannot be wished away.”

35. The Learned Judge continued to hold that:

“Section 49(4) of the *Kenya Roads Act* is an amplification of the right to fair administrative action protected by Article 47(1) of the Constitution. The right of a person to receive a fair notice of alleged breach before adverse action has been anchored in the ancient prerogative writs which are the cornerstone of modern judicial review. The right to receive fair notice as a requirement for fair administrative action has been emphasised in several cases predating the Constitution among them *David Onyango Oloo v Attorney General* [1987] KLR 210 and *De Souza v Tanga Town Council* [1961] EA 377. The Constitution has however brought about a transformation of the legal system. The rules of natural justice including the requirement of notice are no longer left within the realm of common law principles, they are now anchored in the Constitution whose intent is to promote the rule of law as a national value under Article 10(2) of the Constitution and to cure the culture of arbitrariness inherent in our administrative processes. Therefore, even in the absence of an express statutory requirement for notice, such a right to receive notice must be implied.”

36. In arriving at his decision the Learned Judge cited with approval the decision of the Court of Appeal in **Geothermal Development Company Limited vs. Attorney General & 3 Others, NRB Petition 352 of 2012 [2013] eKLR**, where the court noted that a key component of due process is notice and observed that:

“As a component of due process, it is important that a party has reasonable opportunity to know the basis of allegations against it. Elementary justice and the law demands that a person be given full information on the case against him and given reasonable opportunity to present a response. This right is not limited only in cases of a hearing as in the case of a court or before a tribunal, but when taking administrative actions as well..... *Hilary Delany* in his book, *Judicial Review of Administrative Action, Thomson Reuters 2nd edition*, at page 272, notes that, “Even where no actual hearing is to held in relation to the making of an administrative or quasi-judicial decision, an individual may be entitled to be informed that a decision which will have adverse consequences for him may be taken and to notification of the possible consequences of the decision.”

37. Just like **Majanja, J** in the above matter, I hold the view that due process is also implicit in the provisions of Article 40 of the Constitution which prohibits arbitrary taking of property and that this case, is firmly founded on violation of Article 47(1) which provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

38. The Respondent seems to justify its action on the ground that the action of the ex parte applicant was illegal anyway hence the applicant ought not to reap from such illegality. However the Court of Appeal in

Onyango Oloo vs. Attorney General [1986-1989] EA 456 held that:

“The principle of natural justice applies where ordinary people would reasonably expect those making decisions which will affect others to act fairly and they cannot act fairly and be seen to have acted fairly without giving an opportunity to be heard...There is a presumption in the interpretation of statutes that rules of natural justice will apply and therefore the authority is required to act fairly and so to apply the principle of natural justice...To “consider” is to look at attentively or carefully, to think or deliberate on, to take into account, to attend to, to regard as, to think, hold the opinion... “Consider” implies looking at the whole matter before reaching a conclusion...A decision in breach of the rules of natural justice is not cured by holding that the decision would otherwise have been right since if the principle of natural justice is violated, it matters not that the same decision would have been arrived at...It is improper and not fair that an executive authority who is by law required to consider, to think of all the events before making a decision which immediately results in substantial loss of liberty leaves the appellant and others guessing about what matters could have persuaded him to decide in the manner he decided...In the course of decision making, the rules of natural justice may require an inquiry, with the person accused or to be punished, present, and able to understand the charge or accusation against him, and able to give his defence. In other cases it is sufficient if there is an investigation by responsible officers, the conclusions of which are sent to the decision-making body or person, who, having given the person affected a chance to put his side of the matter, and offer whatever mitigation he considers fit to put forward, may take the decision in the absence of the person affected. The extent to which the rules apply depends on the particular nature of the proceedings...It is not to be implied that the rules of natural justice are excluded unless Parliament expressly so provides and that involves following the rules of natural justice to the degree indicated...Courts are not to abdicate jurisdiction merely because the proceedings are of an administrative nature or of an internal disciplinary character. It is a loan, which the Courts in Kenya would do well to follow, in carrying out their tasks of balancing the interests of the executive and the citizen. It is to everyone’s advantage if the executive exercises its discretion in a manner, which is fair to both sides, and is seen to be fair...Denial of the right to be heard renders any decision made null and void *ab initio*.” [Emphasis added].

39. Therefore in arriving at its decision to remove or dismantle the applicant’s bill boards and street poles, the Respondent was constitutionally and statutorily obligated to follow the due process of the law and not to consider such extraneous issues as expediencies. Such a decision ought not to be arbitrarily made without affording the persons to be affected thereby an opportunity of being heard and any purported action which does not comply with the law must be set aside based on the three “I’s” i.e. Illegality, irrationality and impropriety of procedure.

40. The Respondent has however contended that these proceedings were instituted prematurely and relied on section 67 of the ***Kenya Roads Act*** which states that:

Where any action or other legal proceeding lies against an Authority for any act done in pursuance or execution, or intended execution of an order made pursuant to this Act or of any public duty, or in respect of any alleged neglect or default in the execution of this Act or of any such duty, the following provisions shall have effect—

(a) the action or legal proceeding shall not be commenced against the Authority until at least one month after written notice containing the particulars of the claim and of intention to commence the action or legal proceedings, has been served upon the Director-General by the plaintiff or his agent; and

(b) such action or legal proceedings shall be instituted within twelve months next after the act, neglect, default complained of or, in the case of a continuing injury or damage, within six months next after the cessation thereof.

41. In Mike J. C. Mills & Another vs. The Posts & Telecommunications Nairobi HCMA No. 1013 of 1996 the Court dealt with the requirement of the notice prior to commencement of judicial review proceedings and expressed itself as hereunder:

“Judicial review matters are commenced by a notice to the Registrar under Order 53 rule 1(3) of the Rules. This is a Notice which the Registrar is supposed to and ought to be dispatching to the Attorney General or the intended Respondent to come and oppose the application for leave if he or it so wish and that is the only Notice required to be given on account of intended Judicial Review applications...Section 109 of the Kenya Posts & Telecommunications Act Cap. 411 has no application to judicial review as the application for leave does not commence judicial review until such permission is granted to institute appropriate Judicial Review application...Judicial Review aims at providing justice at minimum delays and therefore a multitude of Notices to be given before an application for judicial review is made is contrary to that spirit of judicial review...Public institutions cannot afford luxuries of bad manners.”

42. I only wish to add that even the requirement for notice to the registrar is no longer required in judicial review proceedings.

43. The requirement of notice to sue before commencement of legal proceedings has been the subject of litigation in this country. In Pradhan vs. Attorney General & Another [2002] 1 KLR 1, the Court was of the opinion that provisions of *Government Proceedings Act*, Cap 40 [which require that the Government be served with a notice before institution of a suit] did not override the then section 3 of the Constitution which provided that the provisions of the Constitution shall prevail over all other provisions of the law all over the Republic. No requirement of any notice was required under section 84 of the retired Constitution and in any case the Court was prepared to find that the Attorney General had been given adequate notice by the Applicant that the Applicant was intending to take legal action against the Government.

44. In my view the provision for notice is meant to give the authority concerned an opportunity to remedy the situation in order to avoid unnecessary litigation. It is not meant to afford the authority an opportunity of evading to deal with an otherwise merited complaint. In my view the use of the word “shall” does not always necessarily connote that the matter is mandatory. That word must be construed in the context in which it is applied. In David Kayondo vs. The Co-Operative Bank (U) Ltd SCCA No. 10 of 1991 the Supreme Court of Uganda was of the view that the mere use of the word “shall” cannot oust the jurisdiction of the High Court because the word is not necessarily mandatory. This was the position adopted by Ringera, J (as he then was) in Standard Chartered Bank Ltd. vs. Lucton (Kenya) Ltd. Nairobi (Milimani) HCCC No. 462 of 1997 when he held that:

“The use of the word “shall” in a statute only signifies that the matter is *prima facie* mandatory and its use is not conclusive or decisive and it may be shown by a consideration of the object of the enactment and other factors that the word is used in a directory sense only.”

45. What emerges from a consideration of various decisions is that while the word ‘*shall*’ is ordinarily interpreted as mandatory, it will be considered as directory depending on the text and context thereof; and that a statute will be deemed as directory or mandatory having regard to the purpose and object it seeks to achieve. See M/S. Sainik Motors, Jodhpur and Others vs The State of Rajasthan 1961 AIR 1480, 1962 SCR (1) 517; C. Ramasamy vs The Assistant Engineer W.P. No. 18868 of 2013; State of U.P. v. Baburam Upadhyaya AIR 1961 SC 751, and F. A. R. Bennion Statutory Interpretation, A Code, Fourth 4th Edition, Page 34. Failure to comply with a mandatory requirement invalidates the act done; where it is merely directory, the thing done will be unaffected though there may be sanctions imposed on the person affected.

46. In my view where the action complained of has the potential to immediately infringe upon the rights of an individual, Article 258(1) of the Constitution entitles the said individual to invoke the supervisory powers of the Court before the threatened action is taken. To argue that such a person ought to wait until

the lapse of one month would defeat the letter and spirit of the Constitution. It is therefore my view that in such circumstances the word “shall” as used in section 67 of the **Kenya Roads Act** would be construed as being merely directory.

47. In this case the ex parte applicant contends that it had no luxury of time as its only source of livelihood and that of its employees had been terminated without any notice and its frantic efforts to get justification were futile. In the circumstances, section 67 of the **Kenya Roads Act** cannot be relied upon to defeat the mandatory provisions of the Constitution.

48. From the only evidence on record, it is clear that the decision to dismantle or remove the billboards erected by the applicant was tainted with procedural impropriety and ought not to stand. As was held by **Emukule, J** in **Republic vs. Kombo & 3 Others Ex Parte Waweru Nairobi HCMCA No. 1648 of 2005 [2008] 3 KLR (EP) 478**:

“The rule of law has a number of different meanings and corollaries. Its primary meaning is that everything must be done according to the law. Applied to the powers of government, this requires that every government authority which does some act which would otherwise be wrong (such as taking a man’s land), or which infringes a man’s liberty (as by refusing him planning permission), must be able to justify its action as authorised by law – and nearly in every case this will mean authorised directly or indirectly by Act of Parliament. Every act of government power that is to say, every act which affects the legal rights, duties or liberties of any person, must be shown to have a strictly legal pedigree. The affected person may always resort to the Courts of law, and if the legal pedigree is not found to be perfectly in order the Court will invalidate the act, which he can safely disregard.”

49. In the premises I find the Notice of Motion dated 16th August, 2016, merited and grant the following orders::

1) An order of Certiorari removing into this Court for purposes of quashing the decision/order and or conduct of the respondent removing the applicant’s Bill boards located on the Southern Bypass Bridge/overpass situate on Mombasa Road Next to Airtel/Ole Sereni and street pole adverting boards at various locations along Thika Road within Nairobi City County which decision is hereby quashed.

2) An order of Prohibition prohibiting the respondent, its agents, employees, servants county officers or whosoever from enforcing the decision/order of the respondent for the removal, defacing, dismantling or interfering in any way with the applicant’s Bill boards located on the Southern bypass Bridge/overpass situate on Mombasa Road Next to Airtel/Ole Sereni and street pole advertising boards at various locations along Thika Road within Nairobi City Count unless otherwise lawfully undertaken.

3) That an order of Mandamus compelling the respondent to unconditionally re-install any panels, equipment or advertisements belonging to the Applicant that the respondent has removed to its initial state and position.

4) The costs of and incidental to this application are awarded to the applicant to be borne by the Respondent.

50. Orders accordingly.

Dated at Nairobi this 24th day of October, 2017

G V ODUNGA

JUDGE

Delivered in the presence of:

Mr Mugo for Mr Kago for the applicant

Miss Nakato for Mr Ligunya for the Respondent

CA Ooko