



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JR CASE NO. 50 OF 2012

REPUBLICAPPLICANT

VERSUS

MUNICIPAL COUNCIL OF LIMURU.....RESPONDENT

EX-PARTE
KENYA NATIONAL CHAMBER OF COMMERCE &
INDUSTRY LTD (LIMURU BRANCH)
PAUL MBURU MUTHUMBI
PETER NDUNG’U THIONG’O
FRANCIS MBUGUA GIATHI
PATRICIA WANJIRU KIMANI
WAHU BORO
FELISTA WANAJA NDUNG’U

JUDGMENT

According to the statutory statement dated 16th February, 2012 the ex-parte applicants introduced themselves as follows:-

- 1. The 1st Applicant is the KENYA NATIONAL CHAMBER OF COMMERCE AND INDUSTRY, a Company Limited by Guarantee and incorporated under the COMPANIES ACT [Cap 486 LAWS OF KENYA] on the 7th August, 1973. Its objective is to promote commerce and industry and safeguard the rights and welfare of all Traders.**
- 2. The 2nd and 3rd Applicants are the Chairman and Secretary respectively of the 1st applicant at its LIMURU BRANCH and are also businessmen.**
- 3. The 4th and 5th Applicants are members of the 1st Applicant at its LIMURU BRANCH while the 6th Applicant represents small businesses, is a business lady and a member of the 1st Applicant.**
- 4. The 7th Applicant is a business lady in Limuru**

The respondent is the Municipal Council of Limuru.

Through the chamber summons application dated 16th February, 2012 the applicants sought and obtained

leave to commence judicial review proceedings against the respondent. The statutory statement reveals the reliefs sought as follows:-

(a) An Order of Certiorari to remove unto the High Court of Kenya (NBI) and quash the decision of the Respondent to change Single Business Permits from Schedule 8 to Schedule 10 and to increase charges/fees for various Licenses/Permits vide Gazette Notice No. 660 of 20th January, 2012.

(b) An Order of Prohibition to prevent the Respondent from increasing/imposing fees/charges and in particular on;

- **Plot rent on leases.**
- **Permanent/semi-permanent rental residential buildings.**
- **Land Control Board Consent transactions.**
- **Stalls and godowns.**
- **Street parking fees until parking lots are designated, paved and meters installed.**
- **Conservancy and Application forms fees.**
- **Open-air market daily charges.**

After leave was granted the applicants filed the substantive notice of motion dated 20th February, 2012 and sought orders as follows:-

1. THAT this Honourable Court be pleased to remove unto this Court and quash the decision of the MUNICIPAL COUNCIL OF LIMURU, the Respondent herein to change Single Business Permits from Schedule 8 to Schedule 10 and to increase charges/fees for the various Licences/Permits vide Gazette notice No. 660 of 20th January, 2012.

2. THAT this Honourable Court be pleased to grant the ex-parte Applicants the order of prohibition to prevent the Respondent herein from demanding the new fees/charges as set out in the Gazette Notice No. 660 of 20th January, 2012.

3. THAT the leave granted herein on the 16th February, 2012 to operate as a stay of the decision and/or the fees/charges set out in the Gazette Notice No. 660 of 20th January, 2012 until the hearing and determination of this application or further orders of this Court.

4. THAT costs of this application be borne by the Respondent.

The said notice of motion is supported by the application for leave, a statutory statement and a verifying affidavit sworn by Peter Ndungu Thiong'o (the 3rd applicant) all filed in court on 16th February, 2012. The application is further supported by a further affidavit and a supplementary affidavit sworn on 14th March, 2012 and on 23rd March, 2012 respectively by Peter Ndung'u Thiong'o (the 3rd applicant). The application is also supported by annexures to the affidavits.

The respondent opposed the application through a replying affidavit and a further affidavit sworn by its Town Clerk Mr. F Ndirangu Njenga on 5th March, 2012 and 23rd March, 2012 respectively.

Through Gazette Notice No. 660 of 20th January, 2012 the respondent increased fees and charges for various licences within its area of jurisdiction. The applicants argue that the said increases are illegal and

unlawful.

Firstly, the applicants argue that the invoices for the year 2012 sent to traders are illegal as they:-

- (a) were issued before Gazette Notice No. 660 of 20th January, 2012 was published;
- (b) contain charges/levies not provided for in the said Gazette Notice; and
- (c) contravened Section 148(2) of the Local Government Act (Cap 265).

Secondly, the applicants argue that the traders within the jurisdiction of the respondent were not consulted before the charges and fees were increased.

Thirdly, the applicants argue that the parking fees were increased, yet the respondent has not designated, marked or paved the parking lots and neither has it installed parking meters.

Fourthly, the applicants argue that the respondent exceeded its powers by imposing levies/charges on members of the 1st applicant in contravention of the existing laws namely:-

- (a) Imposing an annual tax on all owners of permanent and semi-permanent rental buildings which imposition constitutes double taxation of the property owners;
- (b) Imposing a fee of Kshs.2,500/= for every Land Control Board consent despite the fact that fees for Land Control Board consents are payable to the Central Government through the Ministry of Lands and Settlement; and
- (c) Revising and increasing plot rents in contravention of the law and the conditions set out in leases.

In opposing the application, the respondent argues that the same lacks merit since it is based on a deliberate distortion/misrepresentation of facts. The respondent argues that the 1st applicant is a non-existent body and as such the application brought by it is fatally defective. The respondent submits that it revised the fees and charges lawfully, procedurally and with due notice to the public and after making consultations. Its case is that it complied with the rules of natural justice. The respondent argues that it did not impose charges it is not allowed to levy and it therefore did not act *ultra vires*. The respondent also argues that when reviewing the fees and charges it took into account among other things the services needed by the public, the ability of the traders to pay, the fees and charges of similar local authorities, the last date of review and the high cost of rendering the services.

In the further and supplementary affidavits the 1st applicant adduced evidence to confirm its existence. The applicants also annexed a memo dated 20th January, 2012 from the Respondent's mayor Councillor Samwel Mwangi Waweru in which he suspended the proposed increment of business permits from Schedule 8 to Schedule 10.

Looking at the evidence placed before the court, I find that this application will turn on two issues namely:-

- (a) Whether the respondent had powers to levy the fees and charges in question; and
- (b) Whether the respondent complied with the law in levying the said fees and charges.

I will start by first considering the competency of the application. The respondent submitted that the 1st applicant lacks locus standi since it has not demonstrated that it has a branch at Limuru. This issue was, however, clearly clarified through the supplementary affidavit sworn on 23rd March, 2012 by Peter Ndun'gu Thion'go. He attached a letter as evidence of its existence. The respondent cannot however be blamed for raising this issue since its submissions having been filed on 15th March, 2012 predated the

supplementary affidavit. It is therefore clear that 1st applicant is properly before this court.

Section 148 of the Local Government Act Cap 265 Laws of Kenya provides that:-

“148. (1) A local authority may—

(a) charge fees for any licence or permit issued under this Act or any other written law or in respect of any person or matter, premises or trade, whom or which the local authority is empowered to control or license;

(b) impose fees or charges for any service or facility provided or goods or documents supplied by the local authority or any of its officers in pursuance of or in connexion with the discharge of any duty or power of the local authority or otherwise.

(2) All fees or charges imposed by a local authority shall be regulated by by-law, or if not regulated by by-law, may be imposed by resolution of the local authority with the consent of the Minister and such consent may be given either in respect of specified fees or charges or may be given so as to allow a specified local authority to impose fees or charges by resolution in respect of a specified power or a particular matter.

(3) Save where the contrary is expressly or by necessary implication in any written law provided, a local authority may authorise the remission in whole or in part of any fees due to it or charges imposed by it under this Act or any other written law.”

The above quoted Section authorizes local authorities to impose fees and charges for services which they provide. The respondent cannot be said to have imposed the charges outside the law.

In order for a local authority like the respondent to impose fees and charges, it must follow certain procedures. The fees and charges should be regulated by by-laws or may be imposed by resolution of the local authority with the consent of the Minister. In the case before me, the respondent has produced evidence to show that the fees and charges were approved through resolution and later consented to by the Minister.

The applicants also fault the respondent for not consulting them. The respondent has however produced minutes to show that it consulted other stakeholders. In my view, the 1st applicant is a key stakeholder and it ought to have been consulted. It is not clear what means the respondent used to reach the stakeholders. The respondent would have assisted the court by producing evidence of how it notified the stakeholders about the stakeholders’ meeting. The respondent cannot however be accused of failing to make consultations. It has produced detailed minutes relating to the consultations which took place. It is therefore clear that the respondent complied with the law in revising the fees and charges.

Judicial review remedies are discretionary in nature. The court will exercise its discretion in favour of an applicant who approaches the court with utmost good faith. There is something disturbing about the application before this court. According to the reliefs sought the applicant is asking this court for an Order of Prohibition to prevent the Respondent from increasing/imposing fees and charges and in particular on:-

- Plot rent on leases
- Permanent/semi-permanent rental residential buildings
- Land Control Board consent transactions.
- Stalls and godowns
- Street parking fees until parking lots are designated, paved and meters installed.

- Conservancy and application forms fees
- Open-air market daily charges

A perusal of the Gazette Notice in question reveals that there is no mention about plot rent on leases, Land Control Board consent transactions, fees on stalls and godowns and open air market daily charges. The application is therefore not grounded on correct facts. Even if the orders were deserved the court would not have been inclined to grant the orders in such circumstances.

The respondent should in future endeavor to reach all the relevant stakeholders before revising fees and charges. The 1st applicant should always be consulted since it represents the interests of the local traders.

Otherwise the application fails and the same is dismissed with no orders as to costs.

Dated, signed and delivered at Nairobi this 8th day of March, 2013

W. K. KORIR

JUDGE