



REPUBLIC OF KENYA

N THE HIGH COURT OF KENYA AT NAKURU

MISC. CIVIL APPLICATION NO. 126 OF 2011 (JR)

IN THE MATTER OF AN APPLICATION FOR AN ORDER OF CERTIORARI

REPUBLIC.....APPLICANT

VERSUS

MUNICIPAL COUNCIL OF NAKURU.....RESPONDENT

EX-PARTE

FRANCIS GACHIE NDIRANGU.....SUBJECT

JUDGMENT

By a Notice of Motion dated 17th November, 2011, the ex-parte applicant herein seeks the following orders:

- a. **An order of certiorari to bring to the High Court for purposes of being quashed the decision of the Respondent contained in a letter dated 23rd August, 2011 and signed by the Director of Environment to revoke the applicant's sand harvesting licence.**
- b. **An order for costs.**

The said motion is premised on the grounds on the face of the application and supported by the affidavit of **Francis Gachie Ndirangu** (ex-parte applicant) sworn on 17th November, 2011. He averred that vide a letter dated 23rd August, 2011 and signed by the Director of Environment, the Respondent without notice revoked his licence for harvesting sand. He laments that the Respondent neither informed him of the reason nor, afforded him an opportunity to be heard before making the decision for the said revocation. That the said decision was made in total disregard of procedure, and is therefore null and void; that as a result of the Respondent's actions he has suffered and continues to suffer loss and damages in terms of profit.

In opposing the application, the Respondent on 10th July, 2013 filed a replying affidavit sworn by **E. WANJALA**, the Town Clerk, for the Respondent. According to him, due process and diligence was followed to revoke the license and that the same was made in good faith. He averred that in any event, on 4th November, 2011, the applicant obtained orders of stay of execution of the decision of the Respondent contained in the revocation letter dated 23rd August, 2011. The effect of the stay was that the applicant continued harvesting sand and has since completed harvesting sand in the said area and owing to that fact, the application has been overtaken by events.

When the application came up for hearing on 11th June, 2013, Counsel for the parties reiterated the averments in the affidavits save that Mr. Karanja, Counsel for the applicant added that the applicant's main concern is whether the Respondent procedurally made the decision.

Judicial review is a proceeding in which the lawfulness of a decision or action made by a public body or public officer is reviewed. In other words, judicial review challenges the process by which a decision has been made, rather than the merits. The impugned decision is contained in the letter dated 23rd August, 2011 which was exhibited to the affidavit of the applicant as 'FGNVII'. It is clear from the said letter that the decision was made in a committee meeting. There is no evidence that the applicant was notified of the meeting or that he was informed of the meeting in order for him to give his view before it was made. However, it is not denied that the applicant has already completed harvesting sand following the stay orders issued by this court on 4/11/11 when he sought leave to commence these proceedings. Courts do not act in vain. Since the prayers have been overtaken by events. I decline to grant the orders sought. Application is dismissed. Each party to bear its own costs.

DATED and DELIVERED at NAKURU this 26th day of July, 2013.

R.P.V. WENDOH

JUDGE

PRESENT:

N/A for the Applicant

Ms Wambeyi holding brief for Ms Omondi for the Respondent

Kennedy - Court Clerk