

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

JR. NO. 28 OF 2012

REPUBLIC

VERSUS

KISUMU MUNICIPAL COUNCIL

EX-PARTE

JOHN OUKO LIECH

JUDGEMENT

On 3-2-2010 the ex-parte applicant was permitted by the respondent to keep seven (7) heads of cattle at his residence within Nyalenda estate of the Municipality. The permit allowed the ex-parte applicant to graze the cattle within the Peri-urban areas of the Municipality. The permission was subject to the provisions of the Municipal Council of Kisumu (Stabling, Keeping and Grazing of Domestic Animals and Poultry By-Laws 2008). The by-laws provide that no person shall keep or graze cattle within the Municipality without the Town Clerk's permit and such permit would prescribe conditions upon which it was issued. That include the number of cattle to be kept. The council had the discretion to cancel such permit. Any cattle kept or grazed without permit, or kept or grazed outside the conditions, would be subject to impounding. Lastly, the ex-parte applicant was to pay for the permit.

The letter written by the respondent revoking the permit was dated 13-4-2012. It referred to the permit and stated that although the ex-parte applicant had been allowed to keep 7 cattle at his Nyalenda residence, he had been found with about four times the number of cattle in Milimani estate. Further, that he had not paid for the permit. These were the reasons why the permit was being revoked.

In short, it does appear true that the ex-parte applicant kept 21 heads of cattle within the Municipality. He was found with the cattle in Milimani estate. He had not paid for the permit for the 7 cattle allowed. He breached the conditions in the permit and therefore the respondent was not only entitled to revoke the permit but also to impound the cattle.

This is not to say that the respondent was at liberty to disobey a court order. The ex-parte applicant has before the subordinate court an application for contempt in respect of the injunction. It is pending. The subordinate court will have to determine if its order was disobeyed by the respondent.

In short, I do not find that the respondent did anything wrong, unlawful, or exceeded its powers when it revoked the permit given to the ex-parte applicant or when it impounded his cattle. The result is that the prayers for Certiorari and Prohibition cannot issue. The motion is dismissed with costs.

Delivered on 22nd July 2013

JUDGE

A. MUCHELULE