REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

J.R. MISC. CASE NO. 187 OF 2009

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW AND FOR ORDERS OF CERTIORARI AND PROHIBITION

REPUBLIC.....APPLICANT

VERSUS

RUIRU MUNICIPAL COUNCIL.....RESPONDENT

EX-PARTE

ALPHA KNITS LTD .....1ST APPLICANT

KIRANKUMAR C. MALDE.....2ND APPLICANT

R.C. MALDE & S.C. MALDE

JETLAK FOOD LTD .....3RD APPLICANT

JUDGEMENT

By way of a notice of motion dated 5th February, 2010 which was filed in court on 9th February, 2010 the ex-parte applicants led by Alpha Knits Ltd seek orders against Ruiru Municipal Council (the respondent) as follows:-

1. AN ORDER OF CERTIORARI do issue to remove into the High Court and quash the decision of the Municipal Council of Ruiru to publish the draft valuation roll for the year 2004 and to levy fresh rates for the year 2009 and previous years back dated to the year 2004.

2. AN ORDER OF PROHIBITION to prohibit the Municipal Council of Ruiru from levying rates under the said draft valuation roll for the year 2004 for Ruiru Municipality.

3. That cost of this application be provided for.

The application is supported by a statutory statement dated 31st March, 2009 and a verifying affidavit sworn by Ashvin Jethalal Bid on the 31st March, 2009.

According to the papers presented in court by the applicants, the applicants own parcels of land within the jurisdiction of the respondent. In January, 2009 the applicants received notices from the respondent demanding rates backdated to the year 2004. The applicants learned that the respondent was relying on a

2004 Valuation Roll. It is the applicants' case that the said valuation roll was never placed before a council meeting for public inspection. They argue that the valuation roll was not properly published. The applicants further argue that the valuation roll was not prepared by valuers approved by the Minister of Local Government. They further argue that no notice of the revised rates was personally served on the applicants as provided by section 30(2) of the Valuation for Rating Act, Chapter 266.

The respondent opposed the application by way of a replying affidavit sworn by Joseph W Kangethe the clerk of the respondent on 12th October, 2009 and filed in court on the same date. It is important to state in detail the contents of the said replying affidavit for the purpose of this judgment.

It is the respondent's case that by a letter dated 3rd December, 2004 the respondent applied to the Minister for Local Government (hereinafter simply referred to as the Minister) to be allowed to appoint valuers for the purposes of valuing the land within its jurisdiction for rating purposes. By a letter dated 16th February, 2005 the Minister approved the respondent's request and also approved that the respondent adopts 31st December, 2003 as the date for valuation. On 4th July, 2005 the respondent applied to the minister to sign the notices advertising the draft valuation roll instruments and the minister approved this through a letter dated 22nd August, 2005. Through the same letter the Minister also approved the form of rating proposed by the respondent. The Minister also "further ..... again appointed S. Wanyande and Wanjiku Ng'anga as valuers in accordance with the Act." On 6th September, 2005 the respondent applied for the gazettement of the notices and this was done in the Kenya Gazette on 9th September, 2005 through notices numbers 7043, 7044 and 7045. The draft valuation roll was laid before the respondent on 3rd November, 2008 and on 14th November, 2008 the respondent published in the Daily Nation newspaper a notice to the effect that the draft valuation roll was ready and invited objections thereto as required by law. On 2nd December, 2008 the respondent duly published a notice of valuation of rateable property and further invited the rateable owners to collect notices from the respondent's offices if none had been sent to them. The applicants filed objections on 9th December, 2008. It is the respondent's case that it has not revised the rates but the values upon which the said rates are based. It is also the respondent's case that it has used public money in the exercise and the said public money will go to waste if the application is allowed.

The applicants, in support of their case, relied on the following authorities:-

1. JACQUELINE RESLEY VS THE NAIROBI CITY COUNCIL, NAIROBI H.C. MISC. APPL. NO 1517 OF 2001, and

2. JACQUELINE RESLEY VS. THE CITY COUNCIL OF NAIROBI, NAIROBI H.C. MISC CIVIL APPLICATION NO. 1654 OF 2004.

On its part the respondent relied on the case of **TOM WAMBUA REUBEN & 96 OTHERS VS. THE MUNICIPAL COUNCIL OF NAKURU, NAKURU H.C. JUDICIAL REVIEW NO. 49 & 31 OF 2009 (CONSOLIDATED)** in support of its case.

The best way to go about this case is to frame the issues using the grievances raised by the applicants. The issues will then come out as follows:-

1. Whether the valuation roll was placed before the council.

2. Whether the valuation roll was properly published.

3. Whether the valuation roll was prepared by valuers approved by the Minister.

4. Whether the applicants were served with the notices of the revised rates in accordance with section 30(2) of the Valuation for Rating Act.

The first question to be answered is whether the valuation roll was laid before the council. From the material placed before the court it is hard to say whether the valuation report was properly laid before the council. What we have before the court is the word of the respondent as contained in the notice in the Daily Nation newspaper of 14th November, 2008. That notice claim the Draft Valuation Roll was laid before the council on 3rd November, 2008. There being no evidence to the contrary, it is only fair that the respondent is believed when it claims that the valuation roll had been properly laid before the council.

The 2nd and 4th issues will be addressed together. What then happens after the draft valuation roll is laid before a meeting of the local authority? The answer is found in section 9(3) & (4) of the Valuation for Rating Act which states that:-

"9(3) The town clerk shall publish notice in respect of every draft valuation roll and draft supplementary valuation roll that it has been so laid and may be inspected, and such notice shall state the manner in which and the latest date by which objections to the same may be made.

(4) Every Local authority shall within twenty one days after the laying before a meeting of the local authority of a draft valuation roll or draft supplementary valuation roll, send to every rateable property comprised in the roll a notice of the valuation thereof inserted in the roll, whether or not the new valuation makes any change."

Section 30 (1) of the same Act provides that

"Except where otherwise provided by this Act, any notice required to be published under this Act by a local authority shall be published by advertisement once in the Gazette and in one or more newspapers circulating in the area of jurisdiction of the local authority."

Section 30(2) goes on to provide how a notice, demand or other document is to be sent or served.

Looking at the provisions of the law it is clear the respondent did not publish the draft valuation roll in the Kenya Gazette as required by section 30(1) of the Valuation for Rating Act. It however partly complied with the section by publishing the laying of the draft valuation roll before the council in the Daily Nation of 14th November, 2008 and 2nd December, 2008. Failure to give notice in the Kenya Gazette was however in total breach of the law.

The applicants also said they were not served as required by section 9(4) of the Valuation for Rating Act. The respondent claims the advertisement in the Daily Nation newspaper on 14th November, 2008 was good service. That cannot be true because Section 30(2) clearly provides that any notice, demand or other document may be served or sent either

"(a) by delivering it to the person to or on whom it is to be sent or served; or

(b) by leaving it at the usual or last known place of abode or business of that person, or, in the case of a company, at its registered office;

(c) by ordinary or registered post; or

(d) by delivering it to some person on the premises to which it relates, or, if there is no person on the premises to whom it can be delivered, then by fixing it on or to some conspicuous part of the rateable property; or

(e) by any method which may be prescribed."

The respondent did not challenge the applicants' claim that they did not receive any notice in the manner prescribed. It is clear therefore that the applicants were not given a notice of the valuation thereof inserted

in the roll.

On the third issue, Section 7 of the Rating Act provides that :-

"The council shall, with the approval of the Minister, by resolution appoint one or more persons to value land for purposes of preparing every draft valuation roll under and in accordance with the Valuation for Rating Act."

It is clear from the said section that the Minister must approve the appointment of valuers. Looking at the letters dated 16th February, 2005 and 22nd August, 2005 from the Minister to the respondent it is clear that the Minister approved the appointment of S.Wanyande and Wanjiku Nganga as valuers. The claim by the applicants that the appointment of the valuers by the respondent was not approved by the Minister cannot be allowed to stand.

I have already demonstrated that the respondent failed to comply with the law in that it did not publish the draft valuation roll in the Kenya Gazette and neither did it give the applicants notices of the revised rates. The respondent claims it has used public money in the exercise and the money will go to waste if the application is allowed. The answer to that claim is found in the words of Alnashir Visram and M. K. Ibrahim JJs (as they then were) in the case of **JACQUELINE RESLEY VS. THE CITY COUNCIL OF NAIROBI, NAIROBI H.C. MISC. CIVIL APPL. NO. 654 OF 2004** when they stated that:-

"It is our humble view that in this case there is an apparent disregard of statutory provisions by the respondent, which are of a fundamental nature. The Parliament has conferred powers on public authorities in Kenya and has clearly laid a framework on how those powers are to be exercised. Where that framework is clear there is an obligation on the public authority to strictly comply with it to render its decision valid".

Fidelity to the law is not negotiable. It is incumbent upon those given responsibilities to perform their duties in accordance with the spirit and the letter of the law. A public authority cannot be allowed to get away with non compliance with the law on the lame excuse that public money will go to waste. Where the law is clear, like in the case before me, whoever fails to comply with the law can be surcharged for the money lost from the public coffers.

The only logical conclusion to this matter is therefore to allow the applicants' notice of motion dated 9th February, 2010 with costs to the applicants. It is so ordered.

Dated and signed at Nairobi this 7th Day of February,2012.

W. K. KORIR
JUDGE