



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

JUDICIAL REVIEW APPLICATION NO. 46 OF 2011

IN THE MATTER OF VALUATION FOR RATING ACT

AND

IN THE MATTER OF PLOT NOS. 17, 24, 64, 79, 132, 193 AND 793 TOWN COUNCIL OF NAROK

AND

IN THE MATTER OF DECISION BY TOWN COUNCIL OF NAROK TO INCREASE LAND RATES EXORBITANTLY

AMIR SULEMAN.....APPLICANT

VERSUS

THE CLERK TOWN COUNCIL OF NAROK.....RESPONDENT

RULING

By a Notice of Motion dated and filed on 21st April 2011 (*the Application*) the *ex parte* Applicant sought the following orders -

- (i) An order of Certiorari to bring to the High Court for purposes of being quashed the Respondent's decision to increase rates as demanded in the letter dated 16th June, 2010 in respect of the Applicant's Parcel Numbers - Block 11/17, Block 5/24, Block 4/64, Block 5/79, Block 5/132, Block 5/193 and Block 5/793 within the Town Council of Narok.
- (ii) An order of prohibition to prohibit the Respondent from demanding the purported new rates in respect of the Applicant's Parcel Numbers:- Block 11/17, Block 5/24, Block 4/64, Block 5/79, Block 5/132, Block 5/193 and Block 5/793 within the Town Council of Narok.
- (iii) An order of *mandamus* to compel the Respondent to:-
 - (a) Show the Applicant the location of Plot No. 11/17.
 - (b) Issue the Applicant with new letters of allotment as per its letter dated 10th June, 2010 in respect of the Applicant's Plot Numbers:- Block 11/17, Block 5/24, Block 4/64, Block 5/79, Block 5/132, Block 5/193 and Block 5/793, Town Council of Narok.

(iv) Costs be provided for.

The Motion was based upon the grounds set out in the face thereof and upon the Statement of Facts and Affidavit Verifying the Facts attached to, and in support of the Chamber Summons dated and filed on 11th April, 2011.

The Motion together with the Statement of Facts, Affidavit Verifying the Facts, and the annexures were served on the Respondent on 29th April 2011. I note from the court record that the hearing date for the Motion was taken on 21st April 2011 the same date when the Motion was filed. The Affidavit of Service sworn by Erastus Kirui sworn on 29th April 2011 but filed on 14th October 2011, does not refer to the Hearing Notice or Hearing Date. However as of the date of hearing of the Motion no Replying Affidavit or grounds of opposition were filed in reply to the Motion. So the hearing herein proceeded ex parte.

The *ex parte* Applicant's case, Mr. Kurgat submitted, is this. The ex Applicant owns 7 properties within the Town Council of Narok. He however pleads that he lost the allotment letters for these properties, but has copies of rates receipts evidencing payment of rates for the seven properties. He obtained a Police Abstract showing that he reported the loss of the Letters of Allotment to the Police. That is the first part of the Applicant's case.

The second and main part of the Applicant's Motion is that the Respondent has come up with exaggerated figures for rates back-dated to the year 2008, and that the Respondent has issued notices for issue of New Letters of Allotment but that the Applicant has not received such new Letters of Allotment.

The ex Applicant contends that the notice of increase of rates was issued without reference to the Applicant with regard to the revaluation of those properties, and that this is both a breach of the rules of natural justice and the provisions of the Valuation for Rating Act, (*Cap. 266, Laws of Kenya*).

The ex p. Applicant also complains that despite the notice dated 16th June 2010 that plot owners with old Letters of Allotment should obtain new ones having the Council's Logo, no new such letters have been issued.

The ex parte Applicant therefore prays that unless the orders sought are granted the Applicant stands a real and great risk of losing his properties. The Applicant also prays that although he has been paying rates for a Plot No. 17 the Respondent has failed to show the Applicant the situation of the plot.

For all those reasons the Applicant prays that the court grants all the orders sought, that is orders of certiorari prohibition and mandamus. The question is when may these orders be granted?

In brief, an order of certiorari is an order issuing from the High Court of Justice to the lower court or inferior tribunal, body of persons, or authority, exercising any judicial or quasi-judicial function, and calling up its record or decision for quashing on the grounds of either absence or lack of or excess of jurisdiction, (*which is summed up in the principle of ultra vires or illegality*), and today includes, breach of rules of natural justice, and generally operates in the past or to remedy actions which have been done or like in this case, decisions made.

On the other hand the order of prohibition operates in the future, that is to prohibit a person body or body of persons from performing or perpetuating an illegality.

The order of mandamus is in the nature of a command to an authority person or body of persons to do that which it is supposed to do as it's a public or statutory duty.

On the prayer for an order of certiorari, the ex applicant's case is based upon the Valuation for Rating Act, which requires public participation by way of objection to a Valuation Roll before a new set of rates is implemented under the Valuation for Rating Act.

Section 9 of the Valuation for Rating Act requires that -

- (1) when a draft valuation roll or draft supplementary valuation roll has been completed, the valuer shall sign the roll and insert the date of completion of the roll and transmit it to the Town Clerk;*
- (2) the Clerk is required to lay the roll before a meeting of the local authority for public inspection, and any person may, during ordinary business hours, inspect it and take copies or extracts from it;*
- (3) the Town Clerk 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 also state the latest date by which objections to the same may be made;*
- (4) to send notice to every rateable owner of a rateable property comprised in the roll a notice of valuation thereof inserted in the roll, whether or not the new valuation makes any change.*

Section 10 of the Act donates to every rateable owner of a rateable property, and the local authority itself, the power to object to the inclusion of any rateable property in or omission of any rateable property from, any draft valuation roll or draft supplementary valuation roll to any rateable property, or by any other statement made or omitted to be made in the same with respect to any rateable property within 28 days of the publication of the notice under Section 9(3) above.

Unless a rateable owner of a rateable property raises objection within the said 28 days, it is prohibited from raising any objection before a valuation court.

I have examined the various Gazettes Notices published under the hand of the Deputy Prime Minister and Minister for Local Government (Nos. 2246 -2249 inclusive all dated 10th November 2009), and none of them quite rightly address the requirements of Section 9 of the Valuation for Rating Act as to notice by the Town Clerk, calling for objections within 28 days. That omission is not only a serious breach of the requirements of the Act, but also a breach of the rules of natural justice.

The Respondent could not increase rates without reference to owners of rateable properties as required by Sections 9 and 10 of the Valuation for Rating Act.

For those reasons, there shall be called for purposes of being quashed the decision of the Respondent increasing rates payable by rateable owners of rateable properties until the requirements of the Valuation for Rating Act are fulfilled.

An order for prohibition will not lie once an order for certiorari is issued. There is nothing to prohibit once a decision is quashed. The prayer for prohibition is therefore declined.

The Respondent has a duty imposed on it by law that once it has issued Letters of Allotment, and decides to replace them with others which presumably, cannot be duplicated or forged, it must issue such letters as a matter of course. The Applicant is also bound to show every allottee who fulfills the condition of allotment the physical location of the plot allotted to that allottee. Having allotted the Applicant Plot 17 Block 11, and for which the Applicant continues to pay rates, the Respondent is bound to show the allottee the physical location of the plot. The order of mandamus is therefore granted in terms of prayer 2 (iii) of the Motion aforesaid.

Having been the cause of the Motion herein, the Respondent shall also bear the costs herein.

There shall be orders accordingly.

Dated, signed and delivered at Nakuru this 3rd day of February, 2012

M. J. ANYARA EMUKULE

JUDGE