



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**JUDICIAL REVIEW CASE NO. 323 OF 2010**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF**

**CERTIORARI, MANDAMUS & PROHIBITION**

**AND**

**IN THE MATTER OF THE TRAFFIC ACT, CAP 403 & THE LOCAL GOVERNMENT ACT,  
CAP 265**

**AND**

**IN THE MATTER OF PART VIA OF THE TRAFFIC ACT, CAP 403**

**AND**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDER**

**BETWEEN**

**CITY COUNCIL OF NAIROBI.....1<sup>ST</sup> RESPONDENT**

**THE MINISTER FOR LOCAL GOVERNMENT.....2<sup>ND</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**AND**

**MATATU WELFARE ASSOCIATION.....1<sup>ST</sup> INTERESTED PARTY**

**KENYA LOCAL GOVERNMENT WORKERS UNION.....2<sup>ND</sup> INTERESTED PARTY**

**NAIROBI CENTRAL BUSINESS DISTRICT ASSOCIATION.....3<sup>RD</sup> INTERESTED PARTY**

**THIKA ROAD TRANSPORTERS SACCO SOCIETY LIMITED.....4<sup>TH</sup> INTERESTED PARTY**

**LIKANA ROUTE 114/115 MATATU CO-OPERATIVE SOCIETY LIMITED....5<sup>TH</sup>  
INTERESTED PARTY**

**GITHIGA TRAVELLERS SAVINGS & CREDIT CO-OPERATIVE SOCIETY LIMITED...6<sup>TH</sup>**

## INTERESTED PARTY

NYAKATI MATATU INVESTORS SACCO SOCIETY LIMITED.....7<sup>TH</sup> INTERESTED PARTY

2NK CO-OPERATIVE SAVING CREDIT SOCIETY LIMITED.....8<sup>TH</sup> INTERESTED PARTY

LOPHA MULTIPURPOSE COOPERATIVE LIMITED.....9<sup>TH</sup> INTERESTED PARTY

EXCLOOSIVE LIMITED.....10<sup>TH</sup> INTERESTED PARTY

BROOMS LIMITED.....11<sup>TH</sup> INTERESTED PARTY

JUST STUFF LIMITED.....12<sup>TH</sup> INTERESTED PARTY

PORTA LOOS KENYA.....13<sup>TH</sup> INTERESTED PARTY

UNIQUE LOOS LIMITED.....14<sup>TH</sup> INTERESTED PARTY

AND

KAKA TRAVELLERS CO-OPERATIVE SAVINGS & CREDIT SOCIETY LIMITED...EX-PARTE APPLICANT

## RULING

On 22<sup>nd</sup> February, 2012 the Ex-parte Applicant and the 4<sup>th</sup> to 9<sup>th</sup> interested parties filed a notice of motion dated 21<sup>st</sup> February, 2012 in which the main prayer is that:-

**“PHILIP KISIA, the Clerk of the 1<sup>st</sup> Respondent, be held to be in contempt of court for acting, and being in Contempt of Court, having deliberately and blatantly disobeyed this Court’s Judgment and Order of 8<sup>th</sup> February, 2012 in these proceedings issued in favor of the Ex-parte Applicant and he be thereupon committed to jail for such term as the Court shall impose, or under such sanction as the Court shall impose.”**

Philip Kisia who shall henceforth be referred to as the Cited Person and the City Council of Nairobi (the 1<sup>st</sup> Respondent) have filed a notice of preliminary objection dated 27<sup>th</sup> February, 2012 in objection to the said notice of motion.

The grounds of objection contained in the said notice of preliminary objection are:-

- 1. Leave to institute contempt proceedings was improperly obtained and the said leave should be set aside.**
- 2. No order of this Honourable Court has been lawfully and/or properly extracted arising out of the court’s judgment of 8<sup>th</sup> February, 2012.**
- 3. The Applicant has not complied with Mandatory or vital requirements of law as regard institution and presentation of contempt proceedings and applications.**
- 4. No proper or any service at all has been effected on the 4<sup>th</sup> Respondent of a Court Order terms whereof the 4<sup>th</sup> Respondent has disobeyed.**

**5. The issue before the Court was the increase of parking fees and as it affected the Applicant members as per the impugned gazette notice and in its Judgment of 8<sup>th</sup> February, 2012, the court did not and could not direct that unless parking meters were installed, the City Council of Nairobi could not at all charge any parking fees.**

**6. The Applicant has otherwise not discharged the burden of demonstrating that the 1<sup>st</sup> or 4<sup>th</sup> Respondents are in contempt.**

**7. The application is overtly vexatious and frivolous.**

Mr. Kinyanjui for the Ex-parte Applicant and the 4<sup>th</sup> to 9<sup>th</sup> interested parties and Mr. Monari for the 1<sup>st</sup> Respondent and the Cited Person complied with my request and filed substantive submissions on the preliminary objection. I have looked at the submissions and the authorities cited and I find that I will save precious judicial time by addressing only one of the issues raised in the preliminary objection.

The issue is whether the Cited Person has disobeyed this court's judgment delivered on 8<sup>th</sup> February, 2012. It is agreed by all parties that the Cited Person and the 1<sup>st</sup> Respondent have not imposed the parking charges revised by Gazette Notice No. 12582 of 2010. In the judgment delivered on 8<sup>th</sup> February, 2012 this court allowed prayers 1, 2 and 3 of the Ex-parte Applicant's notice of motion dated 4<sup>th</sup> November, 2010. Prayer 3 of the said notice of motion read as follows:-

**“THAT by way of Judicial Review, an order of prohibition do issue, prohibiting the 1<sup>st</sup> and 2<sup>nd</sup> Respondents or any person acting under their behest, direction and authority, from demanding, or imposing parking charges levied contrary to, and imposed contrary to the provisions of Part VIA of the Traffic Act, Chapter 403 of the Laws of Kenya, in respect of the Applicant's members specified vehicles operated in and parked at any time within the City of Nairobi.”**

It is important to note that the Ex-parte Applicant's said application was premised on Gazette Notice No. 12582 of 2010 published on 15<sup>th</sup> October, 2010. The court was not concerned with the parking charges that were in force prior to the revision of charges through the challenged Gazette Notice. The parties never addressed the court on the charges that were in force prior to the publication of the Gazette Notice. This court did not therefore address itself to the parking charges that were in place prior to the revision of the charges by Gazette Notice No. 12582 of 2010. Prayer No. 3 cannot be read in isolation. It has to be read together with prayers No. 1 and 2 of the application. Prayers 1 and 2 specifically targeted Gazette Notice No. 12582 of 2010. The court was not asked to decide whether the charges that were in place before Gazette Notice No. 12582 of 2010 were legal. The court could not therefore make a decision on an issue that was not placed before it for determination. Whether the parking charges that were in place before Gazette Notice No. 12582 of 2010 were legal is a different matter altogether and those charges were never ever the subject of these proceedings. The 1<sup>st</sup> Respondent is therefore correct when it says it is entitled to collect the parking charges that were in place before the revision of charges through Gazette Notice No. 12582 of 2010. One can even say the prohibition granted through prayer 3 was superfluous because even if the City Council of Nairobi was to attempt to revise parking charges without compliance with the law, any person aggrieved by such revision can still move the court by way of judicial review and have those charges quashed. Let me remind the parties herein and in particular the Ex-parte Applicant and the 4<sup>th</sup> to 9<sup>th</sup> interested parties, that this court in its judgement of 8<sup>th</sup> February, 2012 held that a local authority could only impose parking charges by installing parking meters or making by-laws in accordance with the Local Government Act, Cap 265, Laws of Kenya. The absence of parking meters in a local authority area is not in itself sufficient evidence that a local authority has not complied with the Traffic Act.

As of now it is clear that the Cited Person and the 1<sup>st</sup> Respondent have not acted in contravention of the judgement delivered by this court on 8<sup>th</sup> February, 2012. Hearing the Ex-parte Applicant and 4<sup>th</sup> to 9<sup>th</sup> interested parties' notice of motion dated 21<sup>st</sup> February, 2012 will therefore be a waste of this court's valuable time. The preliminary notice of objection dated 27<sup>th</sup> February, 2012 is therefore sustained and as

a consequence the Ex-parte Applicant and the 4<sup>th</sup> to 9<sup>th</sup> interested parties' notice of motion dated 21<sup>st</sup> February, 2010 is dismissed with costs to the Cited Person and the 1<sup>st</sup> Respondent.

Dated and signed at Nairobi this 28th day of March , 2012.

**W. K. KORIR**  
**JUDGE**