



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
 Miscellaneous Civil Application 85 of 2011

IN THE MATTER OF THE LOCAL GOVERNMENT ACT CAP. 265 OF THE LAWS OF KENYA

AND

IN THE MATTER OF AN APPLICATION BY RICHARD KWOBA NABIBIA FOR JUDICIAL REVIEW, ORDERS OF MANDAMUS, CERTIORARI & PROHIBITION

BETWEEN

REPUBLIC.....
.....APPLICANT

~VRS~

HON. MUSALIA MUDAVADI, DEPUTY PRIME MINISTER & MINISTER FOR LOCAL GOVERNMENT.....1ST RESPONDENT

THE HON. ATTORNEY

GENERAL.....2ND
RESPONDENT

EX-PARTE

RICHARD KWOBA

NABIBIA.....EX-PARTE
APPLICANT

JUDGMENT

By Legal Notice no.2951 of 11/4/2009 the *ex-parte* Applicant was on 9/4/2008 appointed under the Local Government Act (Cap.265) by the then Minister for Local Government Hon. Uhuru Kenyatta to represent the Government in the Municipal Council of Kimilili. He was to serve for a period of five years. On 21/6/2011 he received a letter dated 10/6/2011 from the Deputy Prime Minister and Minister for Local

Government Hon. Musalia Mudavadi (1st Respondent) notifying him that his:

“services as government representative have been terminated”

and thanked him for his contribution. By Legal Notice no.6990 of 24/6/2011 the 1st Respondent formally revoked the appointment as from 22/6/11. In both the letter and the Legal Notice no reasons were given for the revocation of appointment . In Legal Notice no.2991 the 1st Respondent appointed one Maurice Makokha Khutekha in the place of the *ex-parte* Applicant.

The *ex-parte* Applicant filed a chamber application on 29/6/2011 under Order 53 of the Civil Procedure Rules and obtained leave to file Judicial Review proceedings in the nature of *Certiorari*, *Mandamus* and *Prohibition* to challenge the revocation on the basis that it was illegal, in excess of jurisdiction, unconstitutional and had offended the rules of natural justice. The application had been served but had not elicited any response.

On 26/7/2011 the *ex-parte* Applicant filed the present motion seeking the following orders:

- a) an order of *Certiorari* to remove into this court and quash the decision of the 1st Respondent to terminate the services of the *ex-parte* Applicant’s services as a public officer within the Municipal Council of Kimilili as communicated vide letter dated 10/6/2011 and Legal Notice no.6990 of 24/6/2011;
- b) an order of *Mandamus* directed at the 1st Respondent compelling him to revoke the Legal Notice no.6991 of 24/6/2011 appointing another person in place of the *ex-parte* Applicant; and
- c) an order of *Prohibition* to prohibit the 1st Respondent from appointing another person to take the place of the *ex-parte* Applicant in the council.

The application was served on the Respondents who, again, did not file any response to it. It follows that the factual basis of the application was not challenged. It is accepted as true.

Mr. Makali for the *ex-parte* Applicant addressed the court on the application and put at my disposal various decisions to persuade me that his client had a meritorious claim. The decisions were **Robert Gathinji Kamat v. The Minister of Local Government, H. C. Misc. Civil Application no.427 of 2004 at Nairobi, Republic v. Maitha and Another ex-parte Waudi [2004] 1 EA 306, Kariuki v. Attorney [1992] KLR 8, and Onyango v. Attorney General [1987] KLR 711**. I have considered these authorities.

The *ex-parte* Applicant was appointed by Legal Notice no.2951 of 11/4/2008 to serve for a period of five years at Municipal Council of Kimilili. He was duly sworn in and took up the appointment. He had not served the five years when the appointment was revoked by Legal Notice no.6990 of 24/6/2011. The 1st Respondent had not questioned his performance, and he did not have any disciplinary case. He was not heard before his appointment was revoked and neither was he given the reasons for the revocation.

The 1st Respondent knew that the action was going to adversely affect the *ex-parte* Applicant by cutting short the period he had been appointed to serve. It is certain that any appointment to serve in public office brings with it benefits to the appointee. I find that the rules of natural justice applied to the action to revoke the appointment so far as it affected the rights of the *ex-parte* Applicant and his legitimate expectation to benefit from the appointment. (**Onyango v. Attorney General (above)**). The rules of natural justice command that those who make decisions that affect others should act fairly. Before the decision is made they should afford the person to be affected an opportunity to be heard. In **George Philip M. Wekulo v. The Law Society of Kenya and Another, H. C. Misc. Civil application no.29 of 2005 at Kakamega**, Justice G. B. M. Kariuki cited with approval the decision in **R. v. Electricity Commissioners [1924] 1 K.B 171** that, whenever any person or body of persons have legal authority to make decisions in public law which affect the common law or statutory rights of other persons as individuals, it is amenable to the remedy of Judicial Review of its decision either for error in so acting or for failure to act fairly towards the person who will be adversely affected.

Mr. Makali further relied on Article 47 (1) and (2) of the Constitution of Kenya 2010 which provides as follows:

“47 (1) Every person has the right to administrative actions that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given reasons for the action.”

All that I want to say is that the denial of the rules of natural justice to the *ex-parte* Applicant rendered the revocation and/or termination of appointment by the 1st Respondent null and void. This is the reason why the letter dated 10/6/2011 and the Gazette Notice no.6990 of 24/6/2011 are removed into this court by Order of *Certiorari* and quashed. The 1st Respondent is compelled by an order of *Mandamus* to revoke Gazette Notice no.6991 of 24/6/2011 appointing Maurice Makokha Khuteka in the place of the *ex-parte* Applicant and is further compelled to re-appoint and re-gazette the *ex-parte* Applicant as public officer of the Municipal Council of Kimilili. The 1st Respondent is, lastly, by order of *Prohibition* prohibited from revoking the appointment of the *ex-parte* Applicant until he has served the five years, or until such revocation has followed due process. The costs of the motion shall be paid by the Respondents.

Dated, signed and delivered at Bungoma this 26th day of July 2012.

A. O.MUCHELULE
JUDGE