



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Case 383 of 2012

Editorial Summary

1. Court Vacation
2. Subject of main suit

LOCAL GOVERNMENT ACT CAP 265

- 3.1 Single Business Permit
- 3.2 1 – 29 applicants/plaintiffs traders.
- 3.3 Authority to 6th plaintiff
- 3.4 Defendant No. 2 Francis Kimani
defendant No. 6 Samwel Njogu
entered premises without authority.
later, defendant No. 2, Teresia Wangui
defendant No. 5 Bernard Mwaura trespassed thereon.
- 3.5 Between 21st June 2012, 25th June 2012, 14th July 2012
25th July 2012 confiscated goods of business.
- 3.6 Defendants 2,3, 5 & 6 on diverse days failed to
produce authority to enter into premises.
- 3.7 All applicants hold single business permit licenses that
is exempted from normal license and therefore not
eligible to the same terms.
- 3.8 Plaintiff/applicant file suit on 30th July

3. *Application dated 30th July 2012*

4.1 *Seeking orders restraining respondents from trespassing and impounding goods.*

4.2 *Seeking orders that goods impounded as per list (i) – (vi) be returned pending hearing of application interparte on the main suit.*

4. *Respondent served – failed to attend court*

Order 12 Civil Procedure Rules applies.

5. *Held:*

- i) *License exempted from requirement of normal business*
- ii) *No rights to impound property without lawful court order.*
- iii) *Rights of traders unlawfully infringed.*
- iv) *Injunction against defendants 2, 3, 5 & 6*

6. *Case Law:*

- i) *Local Government Act Cap 265*
- ii) *Finance Act LN No. 5/1998*

7. *Advocates :*

- i) *James Gacheru Kariuki – 6th plaintiff/applicant*
Margaret Wawira Nyaga – 8th plaintiff/applicant
Florence Nyambura Wangotho – 9th plaintiff/applicant
Joseph Chege Nganga – 13th plaintiff/applicant
John Ngugi Muigai – 28th plaintiff/applicant
present in person.
- ii) *Non-appearance for the defendants.*

GEORGE MBUGUA & 28 OTHERS PLAINTIFFS/APPLICANTS

VERSUS

PAUL NJAU KIRORI 1ST DEFENDANT/RESPONDENT

FRANCIS KIMANI 2ND DEFENDANT/RESPONDENT

TERESIA WANGUI 3RD DEFENDANT/RESPONDENT

THE MUNICIPAL COUNCIL OF KIAMBU 4TH DEFENDANT/RESPONDENT

BERNARD MWAURA 5TH DEFENDANT/RESPONDENT

SAMWEL NJOGU 6TH DEFENDANT/RESPONDENT

RULING

I INTRODUCTION

1. The applicants/plaintiffs No. 1 – 29 are holders of “**single business permits**” issued to them by the Municipality Council of Kiambu. This type of license was in the year 1998, through the Finance Act No. 5 of 1998 excluded from the normal licenses that should be issued.

Section 2 of the Local Government Act Cap 265 defines a license as including a permit but excluding a business permit.

2. With effect from the 1st of January 1999 “**single business permit**” had a specific type of businesses described. The business having 20 employees would pay Ksh. 10,000/-

5 to 2 employees Ksh. 5,000/-

3 employees Ksh. 2,500/-

Kiosk of temporary structures Ksh. 2,000/-

3. A ‘**business permit**’ therefore means “**a permit that allows the conduct of a business or trade including a profession or occupation within the area of a local authority, and includes a single business permit and a consolidated business permit.**”

4. On diverse days between the 21st June 2012 and 25th July 2012 the respondent defendants No. 2 Francis Kimani, No. 6 Samwel Njogu,

No. 3 Teresia Njogu and No.5 Bernard Mwaura raided the premises of some of the plaintiffs and had their premises searched. In the process, some of their tools of trade were confiscated.

5. On the 30th July 2012, the 29 plaintiffs filed this suit in this High Court, under a certificate of urgency praying that the said defendants be restrained from trespassing and intimidating them.

That they would further pray that their tools of trade as particularized in paragraph (i) – (vi) of their application be returned to them.

II APPLICATION DATED 30TH JULY 2012

6. The respondents were served as per court orders directed to the applicants on 6th August 2012 (Korir J). They failed to appear at the interparte hearing on 14th August 2012. The application proceeded in their absence under Order 12 Civil Procedure Rules.

7. The applicants/plaintiffs gave authority to the 6th plaintiff, James Gacheru Kariuki to address the court on their behalf. The applicants were all unrepresented.

8. In their arguments, the applicants stated that the Municipality Council of Kiambu through defendants 2, 3, 5 & 6 were under the misapprehension that the traders had not paid for their licenses as required. They then trespassed upon the properties of the traders and upon failing to show authority to come into the premises, according to the law, the traders' tools of trade were confiscated.

9. The applicants/plaintiffs prayed that they should not be intimidated, nor should the defendants/respondents trespass into their houses. They prayed that the confiscated tools be returned.

III OPINION

10. The applicants/plaintiffs have demonstrated to this court that their license was exempted from the requirements of the normal license issued, as of 1st January 1999. The respondents 2, 3, 5 & 6 erred in coming into their premises and confiscating their tools of trade.

11. A local authority has a right to come into a premises, inspect and or impound goods but this must be done with an order from a subordinate court. The said respondents had no orders given to them by a court of law. They therefore were trespassing into the business premises without colour of right.

12. I would therefore hold that the rights of the traders had been unlawfully infringed. That they indeed demonstrated that they had no lawful permission to raid the said premises and then confiscate the tools of trade.

13. The prayers are directed to defendants/respondents number 2, 3, 5 & 6. I would issue injunctive orders against the officers/persons to restrain them from trespassing and intimidating the said traders until the finalization of the main suit.

14. The orders against defendant No. 4, the Municipality Council of Kiambu is indeed said to have the confiscated goods and should return them forthwith. I would grant these prayers and accordingly order that the confiscated goods as described in paragraph (i) – (vi) of the application be returned.

15. The prayers B & D be and are hereby granted till the determination of the main suit.

16. I would award the costs to be granted to the applicants.

DATED THIS 17TH DAY OF AUGUST 2012 AT NAIROBI

M.A. ANG'AWA

JUDGE

Advocates:

i) *James Gacheru Kariuki – 6th plaintiff/applicant*

Margaret Wawira Nyaga – 8th plaintiff/applicant

Florence Nyambura Wangotho – 9th plaintiff/applicant

Joseph Chege Nganga – 13th plaintiff/applicant

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