



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MISCELLANEOUS APPLICATION NO. 1 OF 2011**

**IN THE MATTER OF AN APPLICATION BY WILSON NJAU HURUKO FOR LEAVE TO  
APPLY FOR JUDICIAL REVIEW BY WAY OF ORDERS OF CERTIORARI AND  
PROHIBITION TO THE MINISTER FOR LOCAL GOVERNMENT**

**AND**

**IN THE MATTER OF THE LOCAL GOVERNMENT ACT CAP 265 OF THE LAWS OF  
KENYA, THE LAW REFORM ACT CAP 26 OF THE LAWS OF KENYA AND THE CIVIL  
PROCEDURE RULES**

**BETWEEN**

**WILSON NJAU HURUKO.....APPLICANT**

**AND**

**THE MINISTER FOR LOCAL GOVERNMENT.....1<sup>ST</sup>  
RESPONDENT**

**THE HON. THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**RULING**

On 21<sup>st</sup> January, 2011 this court granted leave to the ex parte applicant to apply for an order of certiorari to remove into this court and quash the decision of the 1<sup>st</sup> respondent revoking the appointment of the ex parte applicant as the Government Representative to the Municipal Council of Thika. The court also granted leave to the ex parte applicant to apply for an order of certiorari to remove into this court and quash the decision of the 1<sup>st</sup> respondent of appointing another Public Officer as the Government

Representative to the said Local Authority.

The court directed that the issue as to whether the leave so granted was to operate as a stay of the 1<sup>st</sup> respondent's decision be argued inter partes on 28<sup>th</sup> January, 2011.

Mr. Macharia for the ex parte applicant argued that the Minister's decision was made in contravention of the rules of natural justice because the ex parte applicant had not been given any notice of the impending termination of his services and neither was he called upon to show cause why his services could not be terminated before the axe fell. His appointment was for a period of five years and thus the revocation was premature, he added.

Counsel further submitted that another officer had already been appointed to replace the ex parte applicant. He pleaded with the court to stay the Minister's decision so that the name of the ex parte applicant is not removed from the payroll of the Local Authority, saying that his client's legitimate expectations were going to be dashed by the Minister's decision unless the same is stayed.

Mr. Onyiso for the respondents opposed the application for stay. He submitted that the ex parte applicant had not made out a *prima facie* case with a likelihood of success. He pointed out that the subject matter of the dispute was a contract of employment between the ex parte applicant and the appointing authority. That being the case, his remedy lay in a claim for damages and not judicial review proceedings. He cited the case of **REPUBLIC vs. JUDICIAL SERVICE COMMISSION EX PARTE PARENO, [2004] KLR 203.**

The ex parte applicant conceded that following the revocation of his appointment in December, 2010, the 2<sup>nd</sup> respondent had already appointed another Public Officer as the Government Representative in his place. That being the case, I believe the name of the ex parte applicant has already been removed from the payroll of Municipal Council of Thika and replaced with that of the other appointee. Can the court stay that which has already taken place? I do not think so. If the court were to order stay of the Minister's decision as prayed that would be tantamount to ordering that the ex parte applicant continues to be paid his salaries and allowances even when he is not working as the Government Representative until these proceedings are heard and determined. That would be contrary to the law.

I do not wish to say much regarding the merits or otherwise of the judicial review proceedings since at this stage I am only dealing with the issue of stay.

I am not persuaded that there are sufficient grounds upon which this court can order that the leave that was granted on 21<sup>st</sup> January, 2011 do operate as a stay of the Minister's decision as aforesaid. The ex parte applicant's application for stay is dismissed with costs to the respondents.

**DATED, SIGNED and DELIVERED at NAIROBI 1<sup>ST</sup> DAY OF FEBRUARY, 2011.**

**D. MUSINGA**

**JUDGE**

**In the presence of:**

**Nazi – court clerk**

**Mr. Macharia for the applicant**

**No appearance for the respondents**