



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**  
**CIVIL APPEAL CASE NO. 13 OF 2008**

COUNTY COUNCIL OF MURANG'A.....APPELLANT

VERSUS

DOUGLAS KARIUKI MUCHOKI.....RESPONDENT

*(Being an appeal from the ruling of A. K. Ndungu, Principal Magistrate, in Principal Magistrate's Civil Case NO. 612 of 2007 delivered on 26<sup>th</sup> March 2007 at Murang'a)*

**JUDGMENT**

This judgment is the result of the appeal against the ruling of A. Ndungu, learned Principal Magistrate, delivered on 26<sup>th</sup> March 2008, vide **Murang'a P.M.C.C. No. 612 of 2007**. The record shows that Douglas Kariuki Muchoki, the respondent herein, filed an action against the County Council of Murang'a, the appellant herein, vide the plaint dated 7<sup>th</sup> December 2007 in which he prayed for judgment in the following terms:

- (a) A declaration that the actions of the defendant and its servants in impounding, towing and detaining the plaintiff's motor vehicle registration number KAY 394 M were wrongful and unlawful;***
- (b) Special damages as per paragraph 8 and 8 (a) hereof plus interest;***
- (c) Costs of this suit plus interest;***
- (d) Such further or other relief as is just.***

It would appear the Respondent at the same time he took out the Summons dated 7<sup>th</sup> December 2007 in which he sought for the following orders:

- (a) This application be certified urgent and be heard ex-parte in the first instance;***
- (b) The defendant and its servants be ordered to release the plaintiff's motor vehicle registration no. KAY 394 M forthwith pending the hearing and disposal of this suit;***
- (c) A permanent injunction do issue restraining the 1<sup>st</sup> defendant from seizing the plaintiff's motor vehicle aforesaid without lawful cause and without at the same time preferring charges against the plaintiff;***

**(d) The costs of this application be borne by the defendant;**

**(e) Such further or other orders be made as the justice of the case demands.**

The aforesaid application was heard and determined on 27<sup>th</sup> March 2008 giving rise to the following orders:

**(a) Prayer number (c) of the application be and is hereby allowed;**

**(b) The defendant/respondent be and is hereby restrained from seizing the plaintiff's motor vehicle registration no. KAY 394 M until the hearing and final determination of this suit.**

**(c) The costs of this application shall be borne by the defendant.**

The Appellant was unhappy with the aforesaid orders hence this appeal.

On appeal the Appellant put forward the following grounds:

- 1. The Learned Magistrate erred in law in holding that as at the time of the impounding of the motor vehicle the appellant did not have valid by-laws.**
- 2. The Learned Magistrate erred in law in holding that the appellant was under duty to produce the said by-laws in that the same were duly gazetted and those observations influenced him in arriving at an erroneous decision.**
- 3. The learned Magistrate misdirected himself in law by misconstruing the legal implications of Act No. 17/06 and thus granted the injunction.**
- 4. The Learned Magistrate erred in law in granting the injunction the effect of which was to control the appellant in discharging its mandate.**

When the appeal came up for hearing this court gave directions to the effect that the appeal should be determined by written submissions. I have considered the written submissions filed by both sides. Let me set out in brief the facts which gave rise to this appeal. By legal notice no. 71, the Appellant published in Kenya Subsidiary Legislation 2004, the County Council of Murang'a (omnibus/Bus/Matatu/Taxis By-Laws. The Kenya Gazette Supplement Act 2006, introduced the Licensing Laws (Repeals and Amendments) Act 2006 which came into effect on 15<sup>th</sup> November 2007 vide Legal Notice No. 390 of 30<sup>th</sup> November 2007. *Section 19* amended the Local Government Act by inserting *Section 201A* which *inter alia* provided for re-submission of all the By-laws for new approval by the Minister. It is the submission of the Appellant that the question as to whether or not the said By-law had been re-submitted to the Minister for the new approval could only have been determined in the main trial. It is further submitted that the court is enjoined under 60(1) of the Evidence Act to take judicial notice of the County Council of Murang'a (omnibus/Bus/Matatu/Taxis By-laws 2004 in which the Appellant had applied in impounding and detaining the Respondent's motor vehicle. According to the Appellant, the legal notice did not nullify the by-laws. The Appellant is of the view that the order issued to restrain the Appellant permanently from seizing the Respondent's motor vehicle was made without lawful cause. It is said that the order has interfered with the Appellant's independence in exercising its statutory mandate. The trial Magistrate was said to have erred when he decided a substantive issue via an interlocutory application. It is argued that the trial Magistrate was influenced by the finding that as at the time of impounding the Respondent's motor vehicle, the Appellant did not have valid by-laws but at the time of delivering, it is said that the trial Magistrate acknowledged the existence of valid By-laws. In a nutshell, the Respondent filed an interlocutory application before the trial court in which he sought for injunctive orders against the Appellant who had seized the Respondent's motor vehicle. The Appellant countered the application claiming the Respondent had breached its By-laws. After receiving arguments from both sides the

subordinate court found the application in favour of the Respondent thus the Appellant was ordered to release the impounded motor vehicle forthwith and to refrain from impounding it again without lawful excuse. The Appellant was also restrained from preferring any charges against the Respondent until the suit is heard and determined.

On the first ground of appeal, it is argued that the learned trial Magistrate erred when he held that the Appellant impounded the Respondent's motor vehicle yet it did not have valid By-laws. I have carefully examined the recorded proceedings and the annexures presented before the trial Magistrate. The Appellant does not deny that it was challenged by the Respondent to justify its action to seize the Respondent's motor vehicle. The Appellant was enjoined to show the trial Magistrate that it had obtained approval of the relevant By-laws from the Minister. It is not in dispute that the Appellant had impounded the Respondent's motor vehicle registration No. KAY 394 M on 28<sup>th</sup> November 2007 when *Section 201 A* of the Local Government Act was already in operation. There was no evidence presented by the Appellant to the trial Magistrate that it had resubmitted its By-laws to the Minister for fresh approval. On this score, the trial Magistrate cannot be faulted. The Appellant did not produce a copy of the By-laws nor did it cite the gazette notice or any official publication indicating the approval of the By-laws.

The second major ground argued on appeal is to the effect that the injunctive order had the effect of preventing the Appellant from discharging its statutory mandate. With respect, such a submission should not lie in the mouth of the Appellant. The Appellant did not show to the trial court that it acted within the law. It did not show that the By-laws it was relying on to impound the Respondent's motor vehicle had been re-submitted and approved by the Minister. Had it shown that, then its submission would have stood but it did not discharge that burden.

In the final analysis, I have come to the conclusion that on the basis of the above reasons, the appeal must fail. The same is ordered dismissed with costs to the Respondent.

***Dated and delivered at Nyeri this 18<sup>th</sup> day of March 2011.***

**J. K. SERGON**  
**JUDGE**

In open court in the absence of the parties with notice.