



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS CIVIL APPLICATION NO. 122 OF 2011

**IN THE MATTER OF AN APPLICATION BY TIMWOOD PRODUCTS LIMITED, TIMCO
CHEMICAL INDUSTRIES LIMITED, METLEX INTERNATIONAL LIMITED,**

**OIL SEALS & BEARINGS CENTRE LIMITED, NITRO CHEMICALS LIMITED,
AGRICULTURAL TRACTOR SPARES LTD, UNITED ENGINEERING SUPPLIES**

**LTD, HEXAGON AGENCIES LIMITED, FLYING HORSE LIMITED, ESSAJEE AMIJEE &
SONS (RIVER ROAD) LIMITED, ENGINEERING & HYDRAULICS,**

**KENYPLY TIMBER & HARDWARE LIMITED, SUPERIOR CONSTRUCTION COMPANY
LIMITED AND STEELVICOM ENTERPRISES (K) LIMITED FOR LEAVE**

TO APPLY FOR JUDICIAL REVIEW ORDERS OF PROHIBITION AND MANDAMUS

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA, ARTICLES 23 & 47

AND

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

AND

IN THE MATTER OF THE TRAFFIC ACT, CAP 403 LAWS OF KENYA

AND

IN THE MATTER OF THE LAW REFORM ACT, SECTIONS 8 AND 9

**TIMWOOD PRODUCTS LIMITED &
OTHERSAPPLICANTS**

VERSUS

**MINISTRY OF NAIROBI METROPOLITAN.....1ST
RESPONDENT**
**CITY COUNCIL OF NAIROBI2ND
RESPONDENT**

RULING

On 23rd May, 2011 this court granted leave to the ex parte applicant to apply for, *inter alia*, an order for prohibition to prohibit the Minister for Nairobi Metropolitan Development in conjunction with the City Council of Nairobi from continuing with the digging and/or sinking of trenches and/or hiving of the parking lots and zones of the ex parte applicant's premises along Dar es Salaam Road in Industrial Area in a manner likely to deny the applicants and their customers' vehicles access to their premises situated along the said road.

Prayer 6 of the said application is as follows:

“That leave granted herein do operate as a stay in that the respondents do fill in the trenches dug and restore parking lots/loading bays in view of granting the applicants access to their business during the rehabilitation of Dar es Salaam Road”.

The court directed that the said prayer be argued inter partes on 27th May, 2011 upon service of the application. When the matter was called out on that day Mr. Kakoi for the respondents sought an adjournment saying that the Attorney-General was yet to be given appropriate instructions by the Minister. The application for adjournment was granted and the hearing of the application was adjourned to 30th May, 2011. Come that day Mr. Mwendwa for the respondent told the court that he had not been given any instructions.

Under **Order 53 rule 1(4)** where a court directs that the question of whether grant of leave should operate as a stay be argued inter partes, the application should be heard and determined within seven (7) days. The court could not therefore adjourn hearing of the application any further.

In the affidavit sworn by Vallabh Dilip Bakrania, the Chief Executive Officer of Timwood Products Limited, one of the applicants, he stated that the applicants are business entities involved in the manufacture, importation and distribution of various industrial products in Kenya and are all situated in Industrial Area within Nairobi. His company imports a majority of its products which are usually in bulk. In order to facilitate delivery and supply of its goods to its premises and to customers, his company has paid for parking zones and loading zones along Dar es Salaam Road for the year ending 31st December 2011. The Minister for Nairobi Metropolitan Development has contracted Gichocho Building

Contractors Limited to rehabilitate Dar es Salaam Road. The City Council of Nairobi is the supervisor of the said contract.

Among the requirements for undertaking such works include issuing notices prior to the commencement of the works setting out the nature and extent of the works and providing for the alternative roads, parking zones and loading zones to ensure minimum disruption of services. The respondents had however failed to do so and the said contractor has unearthed sections of Dar es Salaam Road in such a way that he has destroyed the parking and loading zones, the deponent stated. That act has adversely affected the ex parte applicants' businesses.

The ex parte applicants are not opposed to the rehabilitation of the said road which they admit is dilapidated but their contention is that the works should be done in an orderly manner without occasioning them unnecessary losses. Prior to filing this matter Timwood Products Limited had written to Kenya Urban Road Authority with a copy to the City Council of Nairobi and the Minister requesting that a solution to the complaint be found but no action was taken.

Section 182 of the **Local Government Act** grants every Municipal Council or Town Council general control and care of all public streets situate within its jurisdiction. Such a Council may construct, alter or temporarily close or divert any road or street within its jurisdiction provided that before doing so it has given notice of its intention in the Kenya Gazette at least 14 days before the date for which it is intended to commence the appropriate works. This is necessary so that persons who are likely to be affected by the proposed works can make their representations. The Council is also required to provide alternative routes where it closes any road or street. The ex parte applicants stated that they had not been given such notice and none had been published in the Kenya Gazette. The Minister and the City Council have also failed to provide alternative parking, loading bays or side walks, the applicants contended.

I have seen photographs that are annexed to the applicants' affidavit. It is evident that parking bays along the said roads have largely been blocked by building materials that have been placed on the edges of the road. Access to some of the ex parte applicants' premises has been rendered impossible. While it is desirable that rehabilitation works be done on the said road, the respondents should have ensured that there was full compliance with the provisions of **Section 182** of the **Local Government Act** before embarking on the rehabilitation works.

However, this court is concerned that if it grants the orders as sought by the applicants in prayer 6 as quoted hereinabove without taking into consideration the logistical difficulties that may arise in implementing the same, that may cause the rehabilitation works to come to a standstill. That would not be beneficial to the ex parte applicants and the public generally. In that regard, I direct that this application as well as the ruling herein be served upon Gichocho Building Contractors Limited so that the contractors' representative does appear before this court on 6th June, 2011 at 2.30 p.m. for purposes of making its representations before the court makes a final order.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF MAY, 2011.

D. MUSINGA

JUDGE

In the presence of:

Nazi – Court Clerk

Mr. Karanu for the Applicants

Mr. Kuria for Mr. Mwendwa for the Respondent