



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**JUDICIAL REVIEW NO.113 OF 2009**

**JAMES GITHINJI MBUGUA  
JOHN KIMUHU GACHENGA  
AYUB WANGONDU KIBII  
MURURI KING'ORI  
JECINTA NDUTA MUTHEE (on their own behalf and on  
behalf of 67 members of Kinangop Residents Association  
(KINARA).....APPLICANTS**

**VERSUS**

**THE PERMANENT SECTRETARY, OFFICE OF THE DEPUTY**

**PRIME**

**MINISTER AND MINISTRY OF LOCAL GOVERNMENT.....1<sup>ST</sup>**

**RESPONDENT**

**COUNTY COUNCIL OF NYANDARUA.....2<sup>ND</sup>**

**RESPONDENT**

**RULING**

This is a motion for prohibition and mandamus against the Permanent Secretary, Office of the Deputy Prime Minister and Ministry of Local Government (the P.S.) and the County Council of Nyandarua (the Council). The motion seeks to prohibit the PS from releasing funds from the Local Authorities Transfer Funds (LATF) to the Council for the financial year 2009/2010; that further, the Council be prohibited from expending any more funds from LATF and finally that the PS be directed to receive from the council audited allocations for the financial year 2003/2004, 2007/2008 and 2008/2009 and in future to adhere to the Ministry of Local Government guidelines in the implementation of LASDAP Projects.

The 5 applicants on their behalf and on behalf of 67 members of Kinangop Residents Association (KINARA) contend that:

- i) the council has failed to comply with the terms and conditions set under LASDAP, the regulations governing the use of LATF funds;

- ii) the council has failed to account for funds allocated to it by the PS for community based projects in Magumu Ward;
- iii) the council has filed a false expenditure report with the PS;
- iv) the council has failed to account to the residents of Kinangop how funds allocated have been utilized;
- v) despite the foregoing and reports of misappropriation of funds made to the PS by the applicant, the PS has failed to investigate the allegations.

In reply to these averments, the council's clerk has deposed that the application is incompetent and amounts to an abuse of the court process; that it was filed outside the mandatory period provided for under **Order 53 of the Civil Procedure Rules**; that the council has complied with the budget process under LASDAP and LATF, certificates of compliance issued and the community involved and satisfied with the project implementation through the elected steering committees; that the applicants have no role under the LATF Act and cannot expect the council to account to them; that LASDAP projects in Magumu and Nyakio Wards have been implemented to the satisfaction of the community, the steering committee and the PS; that before this application was made, the council had held consultative meetings with the community, technical evaluation completed and the PS had allocated LATF funds to the council.

I have considered these arguments, the authorities relied on and the submissions. I reiterate that the application seeks orders of prohibition and mandamus. As was stated by the Court of Appeal in **Kenya National Examination Council and Republic Exparte Geoffrey Gathenji Njoroge & others**, Civil Appeal No.266 of 1996, prohibition:

**“.....is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice.”**

It was incumbent upon the applicants herein to demonstrate that the respondents either has no jurisdiction in doing or failing to do the acts complained of; that the respondents contravened the laws of the land in doing or not doing the acts complained of; or that they departed from the rules of natural justice. Under the Public Audit Act, the PS as the accounting officer is empowered to disburse funds to the council. By disbursing the funds in the manner he did, the PS did not contravene any law or exceed his powers. On the other hand, the **Public Audit Act, the Local Government Act, the Local Authorities Transfer Fund Act** as well as the **Local Authority Transfer Fund Regulations, 1999**, spell out the process of accounting for funds allocated to local authorities. It involves the local authority concerned, the Minister, the Controller and Auditor General and the National Assembly. It is not the applicants' case that any of the above institutions have complained about the manner in which funds meant for Magumu and Nyakio Wards projects have been appropriated. As a matter of fact the respondents have shown that the council has been issued with certificates of compliance by the Controller and Auditor General.

Without evidence that the council was bound to consult the applicants and without proof that the respondents are breach of any law or that they had no jurisdiction to do the acts complained of, the orders of mandamus and prohibition cannot issue.

The matters complained of appear to suggest a commission of a criminal offence. The applicants having made formal reports to the Head of Public Service and Secretary to the Cabinet, the Kenya Anti-Corruption Commission and the Provincial Local Government Officer it was not open to them (the applicants) who clearly have no *locus standi* in this matter to seek the reliefs sought in this application, the council having stated without being challenged, that the local residents of the two wards were consulted through the steering committee.

The application, for all the foregoing, must fail and is dismissed with costs.

**Dated, Delivered and Signed at Nakuru this 13<sup>th</sup> day of June, 2011.**

**W. OUKO  
JUDGE**