



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

JUDICIAL REVIEW NO. 42 OF 2009

GITUKU PETER KAREITHI & OTHERS.....APPLICANTS

VERSUS

MUNICIPAL COUNCIL OF MURANG'A.....1ST RESPONDENT

MINISTER FOR LOCAL GOVERNMENT.....2ND RESPONDENT

RULING

The subject matter of this ruling is the Motion dated 14th April 2009 in which Gitutu Peter Kariithi and 56 others, the applicants herein, sought for the following orders:

- 1. That an order of certiorari do issue to bring into this Honourable Court and quash the decision of the respondent as contained in the year 2009 Single Business permit bill.***
- 2. That an order of prohibition do issue to prohibit the respondent from charging/levying the applicants the annual fees as contained in the year 2009 Single business Permit bill.***
- 3. That an order of mandamus do issue to compel the respondent to publish a notice as per the rule 9 of the Local Government Act (Single business Permit) rules 2008 published vide legal Notice no. 147 of 14.11.08 by the Local Government Minister.***
- 4. That costs of this Application be awarded to the ex-parte applicants.***

The Municipal Council of Murang'a, the 1st Respondent, filed the affidavit of its Town Clerk to oppose the Motion. When the Motion came up for hearing, learned counsels appearing in the matter recorded a consent order to have the Motion disposed of by written submissions. It is convenient at this stage to state that the Minister for Local Government who was enjoined to this Motion as the 2nd respondent, has not deemed it fit to file any response to the Motion.

I have considered the grounds set out on the face of the statement of facts and the facts deponed in the rival affidavits. It is the exparte applicants' submission that the single Business Permit (SBP) bill for the year 2009 shows that the Applicants are supposed to pay a conservancy and application fee amounting to Ksh.1,200/= over and above Ksh.5000/= they are supposed to pay for the Single Business Permit itself. They also complained that the conservancy and application fees which were lumped together with SBP and thus amounts to SBP fees increment. is illegal and irregular as they were imposed against the law. That increment or increments on fees Applicants further complained that the Respondent has not published a notice calling for a stakeholders meeting to discuss the increment before reviewing the SBP upwards. The applicants alleged that according to their business category in the schedule attached to the local Government (SBP) rules of 2008 they ought to pay Ksh.1000/=. The 1st respondent on its part urged

this Court to dismiss the Motion because the same lacks merit. It is argued that the 1st Respondent has not implemented a decision which is new let alone being in excess of the law. It is pointed out that the Applicants have been paying Ksh.5000/= for the single business permit since 2005. The 1st Respondent stated that the conservancy and application fee charged was imposed after due process of the law was followed and gazetted. It is argued that the fee does fall under the schedule released by the Minister for Local Government. The 1st Respondent also accused the Applicants for misunderstanding the importance of the gazette notice. The 1st Respondent further alleged that the Applicants have not explained to what extent of the excess the 1st Respondents exceeded in charging the fees.

After considering the rival submissions, I have come to the following view of the matter. I am convinced the decision by the Respondents as contained in the Single business Permit Bill of 2009 is unlawful because the same is contrary to the Local Government (Single Business Permit) Rules of 2008 which clearly states that no local authority should base its fees and charges on a range higher than that specified for in the relevant schedule. In this case the applicants have shown that the Maximum amount payable to the 1st respondent is Ksh.1,000/= since their businesses fall under brim code 100. I am also convinced that the decision by the 1st respondent to impose conservancy and application fee thus pushing upwards the Single business Permit fees goes against the provisions of *Section 148(2)* of the Local Government Act. The Applicants have been able to show that no by-law or resolution was passed before the increment and no consent was given by the Minister before the fees were imposed. The 1st respondent also failed to publish a notice calling for the stakeholders meeting to discuss the proposed increment. The act is in breach of *Sections 9 (1) and 11* Local Government Act (Single business Permit) rules of 2008.

In the end I find the Motion dated 14th April 2009 to be well founded. It is allowed as prayed.

Dated and delivered at Nyeri this 18th day of November 2011.

J. K. SERGON
JUDGE

In open court in the presence of Mr. Wairoma for the 2nd respondent Ombongi holding brief for Kangata for the Applicant and Mr. Kingori Holding brief Kimwere for the 1st Respondent.