



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

JUDICIAL REVIEW NO. 67 OF 2011

PATRICK WARUI - CHAIRMAN.....	1ST
APPLICANT	
ROBINSON MUNYI – SECRETARY.....	2ND
APPLICANT	
DIONISIA M. NJOGU – TREASURER.....	3RD
APPLICANT	
MATATU OWNERS ORGANIZATION – EMBU CHAPTER.....	4TH
APPLICANT	

VERSUS

MUNICIPAL COUNCIL OF EMBU
RESPONDENT

RULING

On 11/10/2011 the Exparte Applicant came before this court under certificate of urgency seeking leave to file judicial Review for two orders viz:

- 1. Prohibition to prohibit the Respondent from forcefully relocating the Applicants transport business from Bus Park 1 and 2 to Bus Park 3.***
- 2. Mandamus to compel the Respondents to comply and enforce it's By- Law number 22 (1) 2006 on parking places.***
- 3. Leave to operate as stay of the intended relocation until the main application is heard and determined.***

The court granted the leave sought but directed that the parties be heard on the issue of the leave operating as stay. The two counsels agreed to file submissions on the issue which they did.

The purpose of stay is usually to prevent any more harm or damage before a decision is given by the court on any given matter. In this particular case, a decision has been made by the Respondent to re-organize its transport operations in Embu town in order to create an orderly manner of parking of Public transport vehicles. The Applicants are opposed to this arrangement and the reason is that the decision was made unilaterally without them being involved.

I have read through the submissions of both counsels and I have also gone through the annexure. My Ruling is not on the main Application but the issue of the leave granted operating as stay.

In the Application is a letter dated 18/4/2011 by the Permanent Secretary, Ministry of Local Government to all Town Clerks, County Clerks of the municipal councils and county councils and Embu being one of the Councils. The contents are very clear. The councils are mandated to establish management systems to cater for the various categories of public transport service providers i.e. matatus, probox taxis, Tuk tuk and motor bikes. The minutes of meetings have been annexed in the responses. I have read through the names and representations of those who participated. In this whole exercise who will be inconvenienced? Is it the commuters, matatu owners, tuk tuk owners, probox owners or motorcycle owners? The respondent has been given a mandate to carry out and they should be given an opportunity to do it!

It has not ever been implemented for the Applicants to experience what they are talking about. Their fears are neither here nor there. The letter by the Permanent Secretary acknowledges that there has been a sharp increase in the use of taxi cabs and they must be catered for. This means there have to be changes.

The issue of forceful removal does not arise because directions will be given on what ought to be done. It's only the applicants through resistance who may create an atmosphere of forceful relocation. Change is here with us and we must all embrace it. The Matatu Owners must appreciate from the letter of the Permanent Secretary that there are other transporters who have been recognized and space must be created and all of us for the sake of peace, and order must work together. Let not there be any unnecessary incitement. If there is found to have been any breaches of Natural Justice after the hearing of the main application the court will deal with the remedies for the aggrieved party. I therefore find it inappropriate to order stay pending the hearing and determination of the main Application. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU THIS 8TH DAY OF NOVEMBER 2011.

**H. I. ONG'UDI
JUDGE**