



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**JUDICIAL REVIEW NO. 43 OF 2009**

**REPUBLIC.....APPLICANT**

**VERSUS**

**COUNTY COUNCIL OF KIRINYAGA.....1<sup>ST</sup> RESPONDENT**

**CHAIRMAN WORKS TOWN PLANNING  
MARKETS AND HOUSING COMMITTEE.....2<sup>ND</sup> RESPONDENT  
JOHN WAWERU KARANI.....3<sup>RD</sup> RESPONDENT**

**GEOFFREY MUHINDI CHEGE.....EX-PARTE APPLICANT**

**RULING**

This Applicant filed a Notice of Motion dated 19/8/2009 under Order LIII Rule (3) (1) of the Civil Procedure Rules and Section 8 and 9 of the Law Reform Act for an order of Certiorari to remove in the High Court and quash findings and/or decision of Works Town Planning Markets and Housing Sub-Committee of County Council of Kirinyaga made on 7<sup>th</sup> May 2009 and its consequent adoption on 28/5/2009.

The Exparte applicant avers that he is the legal owner of Plot No. 404 Wanguru having bought it from one Grace Wangiri Karimi (GMC1234). And that when the above decision to subdivide the plot was discussed the Applicant was never given an opportunity to be heard hence breaching rules of natural justice.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents did on 17/10/2011 concede to the Applicant's prayers. In his Replying Affidavit the 3<sup>rd</sup> Respondent avers that there is a problem concerning this plot because he owns Plot No. 0329 Wanguru which happens to be the same plot No. 404 Wanguru which the Exparte Applicant is claiming. He also produced receipts showing he had been paying rates (WKI –XI).

The 3<sup>rd</sup> Respondent here is an interested party. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents are the offices dealing with plot allocations in the Towns and Markets. They are the ones who made the decisions that the expare applicant is complaining about.

There is no way plot 404 and plot No. 0329 can be one and the same market plot at Wanguru. There is somebody at the County Council Kirinyaga who is not doing his or her job. The Application before this court is not for the determination as to who owns or does not own the plot in issue. The county council allocated these plots to two Kenyans who have been faithfully paying rates which the council has been receiving. It's therefore the duty of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents who made the decisions complained of have owned up to the breach of natural justice and said they do not oppose the Notice of Motion.

I therefore grant the order prayed for as follows:-

**1. *An order of Certiorari to remove into the High Court and quash the report, findings, remarks and decision of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent made on 7<sup>th</sup> May 2009 and its consequent adoption on 28<sup>th</sup> May 2009.***

**2. *Costs to the Applicant and 3<sup>rd</sup> Respondent.***

**DELIVERED, SIGNED AND DATED AT EMBU THIS 2<sup>ND</sup> DAY OF NOVEMBER 2011.**

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