



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Judicial Review 57 of 2009

**REPUBLIC APPLICANT
VS.
COUNTY COUNCIL OF KIAMBU RESPONDENT**

**EX-PARTE APPLICANT
WAINAINA MUNGAI
RULING**

The ex-parte applicant obtained leave to file an application by way of judicial review for an order of mandamus directed to the respondent to compel the respondent to demolish and remove structures on some plots adjoining his property. The applicant is a lessee of the property known as Karai/Kamangu/T212/30 granted by the respondent.

The plots upon which some illegal structures have been erected are known as lockup plots Nos.78 and 79 Kamangu Market. These plots are directly in front of a building erected by the applicant on his plot aforesaid.

The structures have completely blocked access to his property and it is his case that the respondent has a public duty to demolish the said structures. The substantive application was subsequently filed, a statement and affidavit annexed and a reply made by the respondent.

I have taken some time to go through the record before me. It is true that the applicant holds the lease aforesaid. From the evidence, it is also clear that some structures have been erected in front of his premises. The photographs annexed to his affidavit as annexure WM.5 confirm this. There is also evidence that at some stage the respondent issued notices to demolish the temporary structures alongside the applicant's property. This has not been done prompting the applicant to move the court for the order sought.

There is however, a new development. The respondent admits that there existed plot Nos.78 and 79 in Kamangu Market which blocked the access to the applicant's building. However, following the upgrading of Thogoto/Mutarakwa road, the said plots ceased to exist because they were on a road reserve and now became subject to the Ministry of Roads thereby dislodging the respondent from any jurisdiction or authority thereon.

The said averment has not been contradicted by the applicant, and since it is the duty of the applicant to attribute jurisdiction upon the respondent, I find that, that duty has not been discharged. Going by the said observation, if the two plots no longer exist, then with equal measure, no public duty exists on the part of the respondent to discharge in favour of the applicant as sought.

My observation is that the action sought by the applicant lies in private law and not public purview. It is clear therefore that, whereas there has been infringement on the part of the applicant, by erection of illegal structures in front of his property, this cannot be attributed to the respondent, but to the people responsible for such infringement. Therefore, his cause of action lies not against the respondent, but those people.

Judicial Review is a jurisdiction especially reserved for situations where no provisions exist to address an injury. As private law specifically gives the applicant room to pursue a claim against those infringing against his rights, judicial review does not exist in his favour. With respect therefore, I find that, this application is misplaced and therefore must be dismissed with costs to the respondent.

Orders accordingly.

Dated, signed and delivered at Nairobi this 26th day of January, 2010.

A. MBOGHOLI MSAGHA
JUDGE