



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Miscellaneous Civil Application 40 of 2009

IN THE MATTER OF AN APPLICATION FOR ORDERS OF PROHIBITION AND
CERTIORARI
IN THE MATTER OF: MUKUYU TRANSPORTERS SELF HELP GROUP
AND
IN THE MATTER OF: THE LOCAL GOVERNMENT ACT CAP. 265 LAWS OF KENYA
AND
IN THE MATTER OF: FEES AND CHARGES
AND
IN THE MATTER OF: GAZETTE NOTICE NO. 4785 OF 2009
PUBLISHED BY ORDER OF COUNTY COUNCIL OF MURANG'A AND TITLED THE
COUNTY COUNCIL OF MURANG'A FEES AND CHARGES.
REPUBLICAPPLICANT
Versus
COUNTY COUNCIL OF MURANG'A.....RESPONDENT

EX PARTE

- MUKUYU TRANSPORTERS SELF HELP GROUP.....1ST APPLICANT
- PETER KIUNJURI NJUGUNA.....2ND APPLICANT
- JOSEPH KAMAU GATHENGE.....3RD APPLICANT
- STEPHEN KIMWAKI THIONGO.....4TH APPLICANT
- PETER THIONGO GICHERU.....5TH APPLICANT
- PAUL KAMBO.....6TH APPLICANT
- JADIEL GITHINJI MAINA.....7TH APPLICANT
- HARUN MUIRURI MWAURA.....8TH APPLICANT
- EDWARD NGUNJIRI WAITHAKA.....9TH APPLICANT
- AGNES NJERI.....10TH APPLICANT
- PAUL KIMANI MUNA.....11TH APPLICANT
- JOHNSON MAINA NDERITU.....12TH APPLICANT
- MAINA KIMARU.....13TH APPLICANT
- DANCAN B. WACHIRA.....14TH APPLICANT
- PETER MACHARIA.....15TH APPLICANT
- FREDRICK MWANGI.....16TH APPLICANT
- JOHN GITHUA WAHOME.....17TH APPLICANT

NELSON MBUTHIA CHEGE.....	18 TH APPLICANT
JAMES MUTHUI.....	19 TH APPLICANT
PETR M. KIHIA.....	20 TH APPLICANT
CHARLES MAINA MACHARIA.....	21 ST APPLICANT
JOHN KAGWI MWANGI.....	22 ND APPLICANT
MARGARET GACHAMBI.....	23 RD APPLICANT
FRANCIS GITHINJI.....	24 TH APPLICANT
FRANCIS MAGOCHI.....	25 TH APPLICANT
PATRICK MUNENE.....	26 TH APPLICANT
SAMUEL KARIUKI MWANGI.....	27 TH APPLICANT
AMOS NJOROGE NGOCHO.....	28 TH APPLICANT

RULING

The subject matter of this ruling is the motion dated 26th October 2009 and amended on 8th December 2009 in which the exparte applicants herein are seeking for the following orders:

1. *The proceedings and decision by the council offends the Provisions of Section 18 Cap 265 as this section deals with declaration of acceptance of mayor and Deputy Mayor and not fees and charges, therefore the fees and charges are illegal and members should not be asked to pay.*
2. *The decision of the council were effected without consultation, publication and/or consideration of the persons affected as set out by rules 8 and 9 of Local Government (Single Business permit) rules 2008.*
3. *The decision by the Respondent and subsequent approval offends the principle of reasonableness.*
4. *The council askaris are busy harassing applicants, their agents and drivers in paying these illegal fees.*

The motion is verified by the affidavit of Peter Kiunjuri Njuguna sworn on 28th September 2009. It is also accompanied by a statement of facts. County Council of Murang'a, the Respondent herein, filed the replying of its clerk Joseph Kuria Kiruthi sworn on 9th December 2009 to oppose the motion.

It is the submission of Mr. Gacheru, learned advocate for the applicants that the Respondent increased fee charges in respect of transport under S. 18 of the Local Government Act (Cap. 265 Laws of Kenya) yet that section did not deal with such charges. The exparte applicants further accused the Respondent of flouting rules 8 and 9 of the Local Government (Single Business Permit) Rules of 2008. It is said the Respondent did not consult nor publicize its intention. For the above reasons it is said that the fees were not legally advertised.

Mr. Wamae, learned advocate for the Respondent on his part opposed the motion on the ground that the same is defective for failure to annex the decision or proceedings sought to be quashed. Secondly it is said that there is no order sought to quash the Minister's decision to approve the increased charges. Thirdly, it is Mr. Wamae's submission that the application was filed out of time since the decision complained of was made on 14th January 2009 yet the application for leave was filed on 8th October 2009. It is also the argument of Mr. Wamae that the

Respondent had exercised a discretion given by the Bylaws backed by council resolution which did not require it to seek for consultation.

I have considered the oral submissions of both learned counsels plus the material placed before me. Mr. Wamae has raised some preliminary points which merits consideration first before considering the merits of the motion. It is said the decision and or proceedings sought to be impugned has not been annexed to the verifying affidavit as required under order LIII rule 7(1) of the Civil Procedure Rules. A careful perusal of the orders sought in the motion will reveal that the applicants seek to quash two proceedings.

i *The decision of the County Council of Murang'a to impose revised charges and fees published in Kenya Gazette Notice No. 47 85 of 8th May 2009.*

ii *The decision of the Minister for Local Government to impose revised fees effective from April 2009.*

It is obvious that the gazette notice in respect of (i) above was annexed to the verifying affidavit. What is lacking is the decision of approval by the Minister of Local Government. On this account I find the applicants have contravened order LIII rule 7(I) of the Civil Procedure rules. Therefore prayer 2 of the motion will not be available. It is admitted by the Respondent that it erroneously quoted S.18 of the Local government Act. Instead of S. 148. It is the publication was in compliance of the resolution made by the Respondents council on 13th January 2009. On the basis of this assertion the Respondent averred that motion was time-barred. I do not think that is the correct exposition of the law. The decision became official upon the publication of the Kenya Gazette Notice of 8th May 2009. There was no way the applicants could have known the council resolution to increase fees. The main argument of the applicants is that the Respondent had no discretion to increase fees under S. 18 of the Local Government Act. It is also stated that the Respondent did not consult the applicants as required under rule 8 and 9 of Local Government (Single Business Permit) Rules, 2008. With Respect, I agree with the submissions of Mr. Gacheru. The Respondent purported to exercise discretion under the wrong provisions of the law. In should the Respondent had no jurisdiction to do so under S. 18 of the Local Government Act. It acted outside the law. The best thing the Respondent could have done was to withdraw the gazette notice. But it opted to soldier on. Consequently on this account alone the motion is found to be with merit. I grant prayers 1, 3 and 4 as sought in the motion. Prayer 2 is refused since the applicants did not comply with order LIII rule 7(I) of the Civil Procedure Rules.

Dated and delivered this 19th day of February 2010.

J.K. SERGON

JUDGE

In open court in the presence of Mr. Wamae for Respondent, and Mr. Gacheru for the Applicant.

J.K. SERGON

JUDGE