



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
JUDICIAL REVIEW NO. 110 OF 2009

**IN THE MATTER OF AN APPLICATION BY JOHN NGENE MUNIU
LEAVE TO
APPLY FOR ORDERS OF JUDICIAL REVIEW ORDERS OF CERTIORARI PROHIBITION AND
MANDAMUS
AND
THE MATTER OF THE CONSTITUTION OF KENYA**

BETWEEN

JOHN NGENE MUNIU.....PLAINTIFF

VERSUS

THE MINISTER FOR LOCAL GOVERNMENT....1ST RESPONDENT

THE PS, LOCAL GOVERNMENT.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

MUNICIPAL COUNCIL OF NYAHURURU.....4TH RESPONDENT

IRENE WACUKA JOHN.....INTERESTED PARTY

RULING

This is judicial review application under **Section 60** of the **Constitution**, **Sections 8** and **9** of the **Law Reform Act**, **Section 3A** of the **Civil Procedure Act** and **Order 53 Rules 1, 2** and **3** of the **Civil Procedure Rules**. It seeks:-

- (a) An order of certiorari do issue to remove into the High Court and quash the Gazette Notice number 5020 dated 22nd May 2009 and published by the Minister for Local Government.
- (b) An order of Mandamus directed at the 1st respondent, the Minister for Local Government to gazette the revocation of gazette notice number 5020 dated 22nd of May 2009 and reinstatement of the applicant as nominated councillor.
- (c) An order of prohibition do issue to prohibit the 4th respondent, the Municipal Council of Nyahururu and/or her officers from proceeding with the swearing in or Irene Wacuka John nominated via Gazette notice number 5021 dated 22nd May 2009 as new nominated councillor for the Municipal Council of Nyahururu.

It is based on the grounds that:-

- (a) The applicant was a bona fide and duly Nominated Councillor in Municipal Council of Nyahururu having been through Gazette notice number 1276 dated 22nd February 2008 until he was de-gazetted on 22nd May 2009.
- (b) The decision and the Gazette notice published by the 1st respondent on 22nd May 2009 effectiely cancelled the nomination of the applicant without him being afforded a chance to be heard.
- (c) The applicant was not given notice in writing by the Minister for Local Government of his intention to revoke nomination of Ex-parte applicant as a councilor of the Municipal Council of Nyahururu as provided by law.
- (d) The decision and the Gazette notice by the 1st respondent dated 22nd May 2009 was made in excess of his powers under the Local Government Act, Chapter 265 of the Laws of Kenya and the past decisions of this Honourable court.
- (e) The decision and Gazette notice by the 1st respondent dated 22nd May 2009 was made and effected ultra vires the Constitution of Kenya and past decisions of this honourable court.
- (f) The decision and Gazette notice by the 1st respondent dated 22nd May 2009 was actuated by improper motives, is devoid of reason and based on irrelevant considerations.
- (g) It is in the interest of Justice that leave be granted to the applicant to challenge the 1st respondent's decision and Gazette notice number 5020 dated 22nd May 2009 and that such leave do operate as a stay.

In the affidavit in support filed at leave stage the ex-parte applicant deponed that by Gazette Notice No. 1276 of 22nd February 2008 he was nominated and on 25th February 2008 was sworn as a councilor in the Municipal council of Nyahururu for a period of 16 months; that on 25th February 2008 he was elected the Chairman of Environment Committee; that on the basis of the monthly allowance of Kshs.30,000/- he is paid he took a loan of Kshs.180,000/- which he is repaying at Kshs.16,000/- per month; that without any notice to him, the Minister for Local Government revoked his nomination vide Gazette Notice No.5020 of 22nd May 2009 and purported to nominate one Irene Wacuka John vide Gazette Notice No.5021 of the same date and that that act is unconstitutional and therefore illegal.

Opposing the application, Mr. Sammy Kirui, the Permanent Secretary in the Ministry of Local Government swore a replying affidavit in which he deposed that the Minister having realized that ex-parte applicant was not sponsored by any political party and that it is Irene Wacuka John, the Interested Party, who had been sponsored by Narc Kenya as required by the Constitution, he, vide Gazette Notice No. 7070 of 5th August 2008 revoked the applicant's nomination and replaced him with the Interested Party vide Gazette Notice No. 7071 of the same date; that in Nairobi HC Misc. App. No. 479 of 2008 the applicant sought an order of certiorari to quash the Minster's said Gazette Notice, prohibition to prohibit him from nominating the Interested Party and mandamus to compel the Minister to reinstate him; that after hearing a test case of similar applications the Minister quashed these Gaztte Notices simply because he had not followed the laid down procedure but declined to issue the orders of mandamus or prohibit and stated that the Minister could go ahead and procedurally revoke the applicant's nomination and replace him with the Interested Party and that is what he did vide Gazette Notice Nos. 5020 and 5021 of 22nd May 2009 after serving the applicant with notice as required by **Section 267** of the **Local Government** and that the applicants present application is not only frivolous and an abuse of the process of court but the matter is also res judicata.

At the haring the parties asked me to determine the matter on these averments and their written submissions.

In his written submissions the applicant contended that even after the ruling in **Nairobi HC Misc. App. No. 480 of 2008, Republic Vs the Minsiter** for Local Government (Ex-parte Paul Mugeithi Joel) he was never served with notice as required by **Section 27(2)** as read together with **Section 267** of the **Local Government Act**.

The respondent on the other hand submits that the applicant's nomination was erroneous as he had not been sponsored by a Parliamentary Political Party. Even if he had this time round the Minister followed the laid down procedure and the applicant was duly served with notice. He concluded that this application is therefore frivolous and should be dismissed with costs.

I have considered these submissions and the averments in both the supporting and replying affidavits. In the case of nomination of councillors to both the Municipal and County Council, the nominating authority is the Minister for Local Government. **Sections 26 and 39** of the **Local Government Act Cap 265** of the **Laws of Kenya** (the **Act**) make that quite clear.

Before such a nomination in the case of nomination to Municipal Councils **Section 28(2A)** of the **Act** as read together with **Section 33** of the **Constitution** requires nominated councillors to be sponsored by Parliamentary Political Parties. The applicant has neither challenged the respondent's submission that his nomination was not sponsored by any Political Party nor has he shown any evidence of such sponsorship. In the circumstances I find that his nomination was illegal.

Annexed to the replying affidavit of Sammy Kirui is a return of service showing that the applicant was served with the requisite notice under **Section 27(2)** of the **Act**. He has not challenged that affidavit of service at all. As a matter of fact he never made mention of it both in his affidavit in support of the application and submissions.

In the circumstances I find that he was duly served with the notice as required by law. So even if the applicant's nomination was legal this application could still not have succeeded. Consequently I dismiss it with costs to the respondent.

DATED, SIGNED and DELIVERED this 10th day of May, 2010.

D. K. MARAGA
JUDGE.