



IN THE HIGH COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW NOS. 93 AND 94 OF 2011

MUNICIPAL COUNCIL OF NAKURU.....APPLICANT

VERSUS

CHIEF MAGISTRATE'S COURT

NAKURU)

DISTRICT COMMISSIONER NAKURU).....RESPONDENTS

JOSEPH OMONDI.....INTERESTED PARTY

RULING

Before me is an application seeking leave of the court to cite the Town clerk to the Municipal Council of Nakuru for contempt of the court's order issued to the applicants on 10/8/2011 in JR 93/2011.

On 10/8/2011 the applicants in JR 93/2011, that is, Councilor John Kitilit and 7 others moved the court seeking leave to commence Judicial Review proceedings against the Municipal Council of Nakuru, and the Town Clerk of the Council. After hearing counsel ex-parte, the court granted prayers 1 to 4 of the Chamber Summons. At prayer 2 the applicants sought the leave of the court to institute Judicial Review application in the nature of certiorari to quash the proceedings and deliberations and decisions of the Council in its Annual General Meeting held on 4/8/2011, which included election of the Mayor, the Deputy, Committee Chairperson and Board Members. At prayer 3, the applicants sought that the leave so granted do operate as stay and the Town Clerk was to enforce the said order. It means that the court stayed the proceedings and decisions of the Annual General Meeting of 4/8/2011.

It seems that on the same date, the Municipal Council of Nakuru, came to court under certificate of urgency in JR 94/2011 seeking Judicial Review orders against the order of Chief Magistrate's Court Nakuru, the Provincial Commissioner Nakuru made in CMCC 677/2011. In the Chamber Summons in JR 94/2011 the applicants sought leave to commence Judicial Review proceedings in the nature of certiorari to remove into the High Court to quash proceedings made in CMCC 677/2011 and prohibition to restrain the respondent from acting upon the orders made in CMCC 677/2011 and that the leave operate as stay. J. Emukule granted prayers 2 and 3 thus staying proceedings in CMCC 677/2011.

In CMCC 677/2011, Joseph Omondi had obtained orders restraining the 1st to 21st respondents by way of temporary injunction from conducting the mayoral elections and the other office bearers. When J. Emukule heard the application in Judicial Review 94/2011, he indicated that **"in light of the orders granted in JR 93/2011 proceedings in CMCC 677/2011 were stayed"** and he directed JR 93/2011 and JR 94/2011 to be heard together today.

Having carefully considered the orders made in JR 93/2011 staying the proceedings of the Council on 4/8/2011 and the subsequent JR 94/2011 in which the court stayed the proceedings and orders in CMCC 677/2011, thus lifting the stay/injunction on the conduct of election of the mayor and other officers of the

Council, it seems that the court took away with the right hand what the left hand had given earlier the same date. This is the folly of parties filing multiplicity of suits over the same issue. Having said so, my understanding of the two applications now before court is that the mayoral elections conducted on 4/8/2011 are the subject of inquiry in both applications. I therefore think that the best way forward is that both applications do proceed to full hearing and be determined on merit so that the court will ultimately determine whether due process was followed. For the above reasons, I decline to grant the prayer for leave to commence contempt proceedings against the Clerk to the Council. Let the parties prepare for the hearing of the applications.

It is so ordered.

DATED and DELIVERED this 24th day of August, 2010.

R.P.V. WENDOH
JUDGE

PRESENT:

Prof. Ojienda for the applicants
Mr. Kahiga for the respondents
Khamala - Court Clerk.