



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISUMU**

Civil Case 53 of 2007

FREDRICK OTIENO OBONYO & 4 OTHERS PLAINTIFFS

-VERSUS-

MUNICIPAL COUNCIL OF KISUMU RESPONDENT

RULING

Coram:

Mwera J.

Mwamu for Plaintiff/Applicant

Onyango for Olel for Defendant/Respondent

Raymond CC.

Citing O39 rr. 1, 2, 3 CPR and S. 3A CPA the 5 plaintiffs, who claimed to be suing on behalf of a body called Kisumu Homes Welfare Development Association on 3.5.2007 sought orders to the main prayers:

- 1) That the defendant council and its employees be restrained from demanding rates from the applicants, registered proprietors of their respective plots in an area called Manyatta "A", Kisumu.
- 2) That the defendant council should also be restrained from levying rates and demanding the same from the applicants and,
- 3) That a mandatory injunction be granted compelling and estopping the said defendant council from collecting taxes and rates in the area covered by the 4th plaintiff or,

In the alternative the court do authorize the plaintiff to collect rates and provide essential services under its jurisdiction without interference from the defendant council.

- 4) Costs.

The grounds on which this application was based were that there had been no valuation of the subject plots in the first place and the defendant was not providing basic services and no commencement date effecting the rates demanded, was given.

The 1st appellant swore an affidavit supporting the application which Mr. Mwamu argued. Mr. Onyango

opposed the same by reference to grounds of opposition. Seemingly, it is pertinent to state here that no specific parcels of land were stated in the chamber summons nor was it said how wide the area covered by the 4th plaintiff was. And more that this court was asked to take the duty/authority of the defendant council to levy rates over properties within its area, as well as the provision of services thereat, and hand over the roles to the 4th plaintiff.

Mr. Mwamu's, position that the law was not followed, namely, Valuation for Rating Act (Cap. 266), in that the defendant council has not caused a valuation of the plaintiffs' properties to be done, giving a basis to assess rates which then it can demand, is worth attention. And that the defendant council did not provide services like roads, water, security, lighting etc. which it ought to do when it collects rates is also a worthy point.

Mr. Onyango had no rebuttal for this except to say that this court could not issue the temporary injunction order sought because the plaintiffs have not stated which specific parcels of land are involved. And no mandatory injunction can issue to "compel and estop" the defendant council from levying rates or providing services. Lastly that this court cannot transfer the defendant's roles and duties to an unknown entity claiming to have "jurisdiction" over an unspecified area within the municipality. And that probably the plaintiffs should have moved by way of judicial review to impeach the administrative acts of the defendant.

To be fair to the plaintiffs one would see that if the defendant has not prepared and compiled a valuation roll of the rateable owners (SS. 3, 7 Cap. 266) so that they are notified before the notices of demand issue, the defendant is actually going about the exercise in a wrong way. In fact in a manner contrary to law. How does it identify its rate payers, the values of their respective parcels of land and the level of rates to levy? There was no evidence of this placed before the court.

On the other hand the plaintiffs do not seem to have parcels of land in town. Or if they do they did specify them so that injunction orders, if given, attach to specific people with specific parcels of land. It looks like the plaintiffs are asking this court to give a vague and omnibus order of injunction in the municipality of Kisumu at any time. Now that could be really dangerous. Such orders cannot issue.

To add to that, this court cannot and it has not been shown that it can by its fiat transfer the statutory obligation to collect rates etc and the duty to provide services, from the defendant to some unknown welfare association. Or rather, these proceedings did not, in a warranted manner, point to such a fiat.

And in any case the plaintiffs could perhaps contemplate a course by judicial review to challenge the administrative acts of a public body, the defendant, rather than institute a suit as this.

In sum this application is dismissed with costs.

Orders accordingly,

Delivered on 21.1.2009.

J. W. MWERA

JUDGE

JWM/hao