



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KERICHO

Misc. Civ. App. 4 of 2009 (JR)

SAMULE KIPLIMO ROTICH APPLICANT

VERSUS

THE KIPKELION TWON COUNCIL RESPONDENT

RULING

I: Background

1. The applicant was a business concern. He was allocated land/plot by the Respondent, the town council of Kipkelion known as unsurveyd plot No. 7, petrol station.
2. He constructed structures thereon and was issued with regular license to operate his business.
3. He received a letter dated 25th February, 2009 notifying him that he must move his properties to a new market or face demolition by 29th February, 2009.
4. The applicant filed for leave for Judicial Review proceedings for orders of certiorari and to quash the decision of the Respondents.

II: Judicial Review proceedings – Leave

5. The applicant argues that he was not notified of the intended notice to vacate the premises failure to, his premises would be demolished.
6. The letters of 25th February, 2009 gave a deadline of 29th February, 2009 for the demolition to take place. He prays that there be leave to so bring the Judicial Review proceedings.
7. I find that on examining the notice letter, it indicates the 30th October, 2008 as the date in which a public notice has been issued.
8. It is not disputed that licenses to operate their business was granted. I believe this is quite clear.
9. In a Judicial Review application, what is important is that administrative action is subject to be controlled in three aspects. If a body conducts itself illegally, irrationally and procedural impropriety¹.
10. I note the arguments put forward is that of fairness. That when the notices are said to have been

issued, there was no fair hearing. The procedural fairness was lacking towards the applicant.

11. I would therefore in the event ask myself whether the applicant was as in the following case;

1. Council of Civil Service Union v Minister of Civil Service (1985) AC 374 (pg 20 Judicial Review in Kenya PLO Lumumba 1999) accorded procedural

fairness of being heard when the orders to demolish was made. I so find he may not have been.

12. I accordingly find that leave be and is hereby granted leave to the applicant to bring Judicial Review proceedings. The applicant is to file a Notice of Motion within 21 days of to-days date. That he is to give 8 clear days between the date of service and hearing of the application.

13. That the leave will accordingly operate as a stay.

Dated this 4th day of March, 2009 at Kericho

M.A. ANG'AWA

JUDGE

Advocates

E.M. Orina advocates instructed by the firm of M/S E.M. Orina & Co. advocates for the Applicant – present