



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Misc Appli 285 of 2009

**IN THE MATTER OF AN APPLICATION BY COUNCILOR JULIUS KAMAU MBURU FOR
JUDICIAL REVIEW ORDERS IN THE NATURE OF CERTIORARI, PROHIBITION AND
MANDAMUS**

AND

IN THE MATTER OF LOCAL GOVERNMENT ACT, CAP 265, LAWS OF KENYA

BETWEEN

JULIUS KAMAU MBURU..... APPLICANT

AND

MINISTER FOR LOCAL GOVERNMENT..... RESPONDENT

R U L I N G

Before me is a Chamber Summons dated 14th May, 2009 filed by E.M. Obongo advocates on behalf of the applicant **JULIUS KAMAU MBURU**. The respondent is named as the **MINISTER FOR LOCAL GOVERNMENT**. The application was filed under Order 53 rules 1(1), (2), 3(1) and 4 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act (**Cap. 21**). The orders sought are as follows-

1. ***This matter be certified as urgent.***
2. ***Leave be granted to the applicant to institute judicial review proceedings seeking orders-***
 - (a) ***THAT an Order of CERTIORARI to remove into the High Court and quash the Notice dated 29th April, 2009, revoking the nomination of the Applicant as a Councilor to the Town Council of Maragwa.***
 - (b) ***THAT an order condemning the respondent to pay costs to the application for leave and costs of the substantive application.***
3. ***Leave do operate as a stay of Notice dated 29th April, 2009, revoking the nomination of the Applicant as a Councilor to the Town Council of Maragwa pending the hearing and determination of the substantive application or as the Honourable Court may deem fit to direct.***
4. ***Pending the hearing and determination of the substantive application herein the applicant do***

continue to serve as a councilor and to enjoy all salaries and other benefits that may accrue while so serving.

5. *The costs of the application be provided for.*

The application was filed with a **STATUTORY STATEMENT** dated 12th May, 2009 and a **VERIFYING AFFIDAVIT** sworn on 12th May, 2009 by the applicant.

The grounds of the application are, inter alia, that the termination of the applicant as a Councilor was based on section 33 of the Constitution which applied to Members of Parliament and not local authorities; that the respondent acted irrationally and without legal basis by questioning the democratic rights of Narc Kenya Party to nominate councilors; that the decision of the respondent was of quasi judicial nature; and that the applicant was nominated by his party for a duration of 5 years; and also that the respondent usurped the powers of the Electoral Commission of Kenya.

At the hearing, Mr. Momanyi, for the applicant addressed me.

I have considered the application, the documents filed and submissions of counsel for the applicant. In my view, there is something for the court to investigate with regard to the exercise by the respondent, of statutory powers or Constitutional powers. I am of the view that the applicant has demonstrated an arguable case. I will grant leave to file judicial review proceedings.

I have been requested that leave do operate as a stay. I will not grant a stay, as it appears that a stay will be tantamount to determining the whole case. In my view, this is a case which needs to be fast tracked in its hearing and determination.

The request in prayer 4 does not appear to fall within the ambit of judicial review proceedings. It appears to be a request in the nature of a mandatory injunction, which can be granted in civil proceedings, not in judicial review proceedings. I will not grant the same.

Consequently, I order as follows-

1. ***Leave is granted to the applicant to file judicial review proceedings for certiorari as prayed.***

The Notice of Motion will be filed within 14 days from today.

2. ***I decline to grant stay.***

3. ***Costs will follow the decision in the Notice of Motion to be filed.***

4. ***Mention on 15.6.2009.***

Dated and delivered at Nairobi this 26th day of May, 2009.

George Dulu

Judge.

In the presence of-

Mr. Momanyi for applicant

Kevin – Court Clerk.