

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

Miscellaneous Civil Application 461 of 2008

S.O.S. CHILDREN'S VILLAGES KENYA REG. TRUSTEES.....APPLICANTS

AND

MUNICIPAL COUNCIL OF MOMBASARESPONDENTS

RULING

Pursuant to leave granted on 12th October 2008, SOS children's villages Kenya Registered Trustees, the exparte applicant herein took out the Notice of Motion dated 3rd November 2008 in which it sought for the following orders:

- 1. That an order of prohibition do issue against the Respondent to restrain it whether by itself or its servants, employees or agents or otherwise howsoever from proceeding as stated by notice in the Daily Nation of Monday 29th September, 2008 to sell by auction the Applicant's property LR No. MN/1/3855.*
- 2. That an order of prohibition do issue against the Respondent to restrain it whether by itself or its servants, employees or agents or otherwise howsoever from imposing or levying against the Applicant any rates in respect of its property being LR No. MN/1/3855.*
- 3. That an Order of Mandamus do issue against the Respondent to require it to formalize the exemption of the Applicant's property LR. No. MN/1/3855 from valuation for rating and payment of rates in accordance with Section 27(1)(e) of the Valuation for Rating Act Chapter 266 Laws of Kenya and Section 22(1) of the Rating Act, Chapter 267 Laws of Kenya.*
- 4. That the costs of this application be provided for.*

The motion is accompanied by a statement of facts and a verifying affidavit of Claudio Croce sworn on 3rd November 2008. When served with the motion, Municipal Council of Mombasa filed the replying affidavit of Tubman Otieno sworn on 16.2.2009 to oppose the same.

The learned advocates appearing in this dispute filed written submissions to dispose of the motion. The main argument put forward by the exparte applicant is that it is a charitable institution which owns land within the jurisdiction of the Mombasa Municipality. That being the case, the exparte applicant argued that such property does not attract any rates.

The Respondent on its part was of the view that the property falling within its jurisdiction attracted payment of rates. In short, the Respondent was of the view that the applicant was not exempted from paying rates. The Respondent further claimed that the only body authorized to exempt payment of rates is the Ministry of Lands and not the Municipality.

I have carefully considered the written submissions plus the material placed before me. It is not in dispute that the exparte applicant is a charitable institution. It is also not disputed that the exparte applicant is the registered proprietor of the parcel of land known as I.M.N/3855 (L.R.NO. MN/I/3855). It is further not in dispute that the Respondent vide the Daily Nation of 29th September 2008 advertised that the aforesaid property had been repossessed and was awaiting auction. What is in issue is whether or not

the applicant's property is exempted from valuation for rating. I have examined the provisions of 27(1) (e) of the valuation for Rating Act and Section 22(1) of the Rating Act. It is apparent from the aforesaid provisions that the exparte applicant's property known as L.R.No.MN/I/3855 is exempted from valuation for rating purposes. There is evidence that the exparte applicant made an application seeking for rates exemption to the Ministry of Local Government. While the application was awaiting a response the Respondent rushed to demand for rates. In the end I am convinced the motion has merit. It is allowed as prayed.

Dated and delivered at Mombasa this 21st day of May 2009.

J.K. SERGON

J U D G E