

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW 15 OF 2008

RUIRU WATER PROJECT SELF HELP GROUP.....PLAINTIFF

VERSUS

STATE COUNSEL, NAKURU.....1ST DEFENDANT

THE CHIEF SOLAI LOCATION, NAKURU.....2ND DEFENDANT

RULING

Pursuant to an order of leave granted by this court on 10th July 2008, the applicant filed the notice of motion seeking for orders of prohibition to restrain the Chief Solai Location, the sub-chief Arutani Sub-location and an entity called NPA Ruiru Community Water Project from compulsorily taking the applicant's water project or materials allocated to or purchased by the applicants. They also applied for the proceedings and resolution by the Chief and sub-chief passed in a meeting held on 17th July 2008 be brought to the High Court for quashing.

The applicant is a self help group whose aim is to provide piped water to its members within Solai location. In this regard the applicant obtained funds from the Catholic Diocese of Nakuru and they have made tremendous arrangements for construction of water tank, rain pipes on a piece of land which was donated to the applicant by Nyandarua Progressive Agencies. The applicants are aggrieved that the Chief, Solai Location interfered with the project and on 7th July 2008, the Assistant Chief Arutani sub-location held a meeting where the applicants intended to construct a water tank and resolved to seize the water project and allocate it to a group known NPA community Ruiru water Project by compulsorily acquiring the applicant's project.

This application was served upon the respondent and the interested party both filed a replying affidavit. The respondent's have denied the allegations contained in the applicant's affidavit. In particular the applicant's have interchanged the dates of the alleged meeting as they refer to a meeting on 17th July 2008 and 7th July 2008 where a decision was reached which they intend to quash in these proceedings. Counsel for the respondent drew the attention of this court to the provisions of **Order 53 of the Civil Procedure Rules** where it is mandatory for a party seeking an order for judicial review to attach the copies of documents intended to be quashed.

The applicants did annex the said copies of the minutes they are asking this court to review and quash. The applicants are asking the court to access the wrong doing which is disclosed in a copy of minutes of a meeting held on 5th July 2008. However the contents of the said meeting does not at all reveal that the respondent or the subject in this matter intend to take anybody's project. Counsel urged the court to dismiss this application, which was filed to defeat the ends of justice. They also failed to disclose to this court the existence of another matter that is CMCC at Nakuru No. 183 of 2007. In that case Kimani Kibe and others have sued the respondents over the same subject matter.

The applicant in this case seeks for judicial review orders, which are discretionary remedies in nature. These orders are granted on the basis of clear evidence of abuse of power, excess in the exercise of jurisdiction or on the grounds that the rules of natural justice were not observed by an inferior tribunal. In this case the applicant's claim is that the respondent and the subject be prohibited from compulsorily

acquiring the applicant's water projects and materials. Secondly the decision passed in a meeting held on 17th July 2008 by the respondent is quashed.

By way of analysis of the material before me in this application, there is no document annexed to the application to show any decision or attempt to compulsorily acquire the applicant's project. The subject is a mere social welfare group, I doubt whether they have any legal capacity of their own to sue or to be sued. Thus the subjects cannot even own property let alone compulsorily acquire property from the applicant. The applicant is also a self-help group with the same legal limitations and one wonders who took the decision to file the present suit.

On the second ground that is the allegation that there was meeting held on 17th July 2008 where the applicant alleges a decision was made to compulsorily take over their project. There are no minutes to support this allegation. There is no decision attached to this application, which the applicant is seeking to quash. This application offends the provisions of **Order 53 rule 7**, which provides as follows:

“(1) In the case of an application for an order of certiorari to remove any proceedings for the purpose of their being quashed, the applicant shall not question the validity of any order, warrant, commitment, conviction, inquisition or record, unless before the hearing of the motion he has lodged a copy thereof verified by affidavit with the Registrar, or accounts for his failure to do so to the satisfaction of the High Court.

(2) Where an order of certiorari is made in any such case as aforesaid, the order shall direct that the proceedings shall be quashed forthwith on their removal into the High Court.”

In the upshot this application lacks merit. It is most vexatious and it is dismissed with costs to the respondent.

Ruling read and signed on 14th day of May 2009

M. KOOME

JUDGE