



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

Miscellaneous Civil Application 313 of 2009

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW OF
PROHIBITION**

AND

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

**IN THE MATTER OF THE CITY COUNCIL OF NAIROBI AND PRIVATE/PUBLIC SECTORS
PARTNERSHIP STRATEGY**

AND

IN THE MATTER OF NOTICE TO RELOCATE ISSUED ON 30TH APRIL, 2009

AND

IN THE MATTER OF THE REPUBLIC

VERSUS

CITY COUNCIL OF NAIROBI1ST RESPONDENT

DR. JOHN NYAMU T/A VINE YARD HOLDINGS.....INTERESTED PARTY

EX-PARTE

**NARIBOI CITY MARKET STALL HOLDERS ASSOCIATION (Suing
through**

MESHACK MBUTHIA MACHARIA (Chairman)

MARY ELSA ACHOLA (Secretary)

SAMUEL MBUTHIA NGOKONYO (Treasurer).....
APPLICANT

RULING

Before me is an application by way of Chamber Summons dated 27th May 2009 filed by M/s Njoroge Musyoka & Company advocates for the applicant – NAIROBI MARKET STALL HOLDERS ASSOCIATION suing through their Chairman, Secretary and Treasurer. The respondent is named as the CITY COUNCIL OF NAIROBI. There is an interested party named as DR. JOHN NYAMU T/A VINEYARD HOLDINGS. The application was brought under Order LIII rule 1 (2) of the Civil Procedure Rules.

The prayers sought are as follows –

- (a) THAT an order of prohibition do issue directed to the 1st respondent to prohibit the respondent from any further actions and/or proceedings acting either by itself and/or through the Interested Party, its agents, servants, employees or assignees pursuant to the Naotice to relocated dated 30th April 2009 threatening to remove the applicant's members from their trading premises on Land Reference Number 209/18551/1 situate between Muindi Mbingu Street and Koinange Street, Nairobi pending the hearing and final determination of the intended application by the applicant for judicial review orders as prayed.
- (b) THAT the interested party, whether by himself, his servants, agents or whosoever be restrained from commencing and/or proceeding with the proposed development on Land Reference Number 209/18551/1 situate between Muindi Mbingu Street and Koinange Street, Nairobi pending the hearing and final determination of the intended application by the applicant for judicial review orders prayed herein.
- (c) THAT the grant of leave herein does operate as a stay of the proposed development by the 1st respondent and the interested party or by their servants, employees or agents of building upon land Reference Number 209/18551/1 situate in Nairobi aforesaid.
- (d) THAT the costs of this application be borne by the 1st respondent and the interested party.

The application was filed with a STATEMENT OF FACTS dated 27th May 2009 and a verifying affidavit sworn by MESHACK MBUTHIA MACHARIA (as chairman of the applicant Association) ON 27TH May 2009. Several documents were annexed to the affidavit including the Certificate of Registration of the applicant Association dated 6th April 1999 issued by the Registrar of Societies. It is apparent from the documents filed that L.R. No. 209/18551/1 was vide Gazette Notice No. 5024/09 published in the Kenya Gazette of 22nd May 2009 declared to be a monument, and that the applicants members were on 30th April 2009 served with a Notice to relocate. That though on 30th April 2009 the 1st respondent and interested party sent the applicants what is described as a "Promisory Note" to give priority to the current business operators, there was no assurance or guarantee given that the applicants would return to their stalls in the said premises.

Though the prayers on the face of the application sought do not specifically indicate that the applicants are asking for leave to institute judicial review proceedings, and the documents filed in form and context are for leave. In fact stay is specifically requested for in case of grant of leave. In my view therefore, this is an application for leave to file judicial review proceedings in terms of Order 53 of the Civil Procedure Rules.

Having considered the application, documents filed and submissions of counsel for the applicant, I am

of the view that the applicant has demonstrated a sufficient interest in the subject matter or issue complained of herein. I am also of the view that the applicant has demonstrated an arguable case. However, prayer (b) for restraining of orders is not within the area of judicial review reliefs which are limited to certiorari, prohibition and mandamus. I will grant leave to file judicial review proceedings.

I have been asked to grant stay orders. In my view, if stay orders are not granted in the interim, the applicants stand to suffer substantial loss or prejudice. I will therefore grant a stay.

For the above reasons, I order as follows —

1. leave is granted to the applicants to file judicial review proceedings for prohibition. The Notice of Motion will be filed within 21 days from today.
2. The leave above granted will operate as a stay as requested until 15th July 2009 unless varied and or extended by this court. Liberty to apply.
3. Mention on 15/7/2009.
4. Cost to await decision in Notice of Motion to be filed.

Dated and delivered at Nairobi this 11th day of June 2009.

GEORGE DULU

JUDGE