



**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**  
**IN THE MATTER OF THE SOCIETIES ACT CAP 108 LAWS OF KENYA**  
**IN THE MATTER OF ORDER LIII OF THE CIVIL PROCEDURE RULES CAP 21 LAWS OF KENYA**  
**IN THE MATTER OF THE LOCAL GOVERNMENT ACT CAP 26 OF THE LAWS OF KENYA**  
**IN THE MATTER OF THE NATIONAL PROGRESSIVE PARTY**  
**REPUBLIC**  
**VERSUS**  
**MINISTER FOR LOCAL GOVERNMENT.....1<sup>ST</sup> RESPONDENT**  
**ELECTORAL COMMISSION OF KENYA.....2<sup>ND</sup> RESPONDENT**  
**REGISTRAR OF SOCIETIES.....3<sup>RD</sup> RESPONDENT**  
  
**(Ex-parte)**  
**DAVID NZIOKA KITHUSI.....APPLICANT**  
  
**JAMES B. KIAMBA**  
**FRANKLIN MAKOLA**  
**JOSEPH M. MUSYOKI**  
**MUMO WA KITUSA**  
**RAPHAEL STANLUS MUSYOKA**  
  
**KIMITI.....INTERESTED PARTIES**

**JUDGMENT**

This is a Notice of Motion dated 29<sup>th</sup> November 2005. It was filed by M/S Ogonji & Tiego advocates on behalf of the ex-parte applicant DAVID NZIOKA KITHUSI. The respondents were named as MINISTER FOR LOCAL GOVERNMENT (1<sup>st</sup> RESPONDENT), ELECTORAL COMMISSION OF KENYA (2<sup>ND</sup> RESPONDENT), and the REGISTRAR OF SOCIETIES (3<sup>RD</sup> RESPONDENT). On the other hand, JAMES B. KIAMBA, FRANKLIN MAKOLA, JOSEPH M. MUSYOKI, MUMO WA

KITUSA, and RAPHAELS STANLUS MUSYOKA KIMITI were named as interested parties. The Notice of Motion was brought under Order LIII rule 3 of Civil Procedure Rules, section 8 and 9 of the Law Reform Act (Cap. 26), section 6(2) and 39 (c) of the Local Government Act (Cap. 265) and all other enabling provisions of the law.

The application seeks for several orders. However, at the hearing of the Notice of Motion Mr. Gikandi who appeared for the applicant, stated that some prayers had been overtaken by events. He was therefore only pursuing prayers 1 and 5. For the sake of clarity I will highlight the said prayers as follows –

- (i) An Order of certiorari to bring to this court the Gazette Notice Numbers 8581 and 8582 both dated 13<sup>th</sup> October 2005 and published by the Minister for Local Government for the purposes of being quashed.
- (ii) The costs of these proceedings.

Before the application was heard, vide a letter dated 14<sup>th</sup> December 2007, counsel for all the parties named, including counsel for the Minister for Local Government signed a consent in the following terms –

**“By consent,**

**(1) An order of certiorari to bring to this court Gazette Notice Numbers 8581 and 8582 both dated 13<sup>th</sup> October 2005 and published by the Minister for Local Government for purposes of being quashed.**

**(2) Each party do bear its own costs of this suit”.**

The above consent letter was filed in court on 21<sup>st</sup> February 2008.

Only the 5<sup>th</sup> interested party RAPHAELS STANLUS MUSYOKA KIMITI did not sign the consent. He appears to be the beneficiary of the Ministers order being sought to be quashed.

At the hearing, only counsel for the applicant, Mr. Gikandi appeared before me. The other parties were not represented. Mr. Gikandi informed me that all parties who were absent during taking of the hearing date were served. Counsel made extensive submissions in support of the application, especially that the Minister for Local Government did not have legal powers under the Local Government Act (Cap. 265), and the Constitution to publish the Gazette Notices as he did.

On my part, since the Minister for Local Government, through his counsel signed a consent for this court to grant the orders prayed, I take it to be an admission of his mistake. It is the Minister’s orders that are sought to be quashed. Therefore, I will allow the application and order as follows –

1. An order of certiorari be and is hereby issued bringing to this court Gazette Notice Numbers 8581 and 8582 both dated 13<sup>th</sup> October 2005 and published by the Minister for Local Government for purposes of being quashed, and the same Gazette Notices have been hereby quashed forthwith.
2. Each party will bear their own costs of the suit.

It is so ordered.

Dated and delivered at Nairobi this 22<sup>nd</sup> February 2008.

**George Dulu**

**Judge**

**In the presence of –**

Mr. Gikandi for applicant – Ms. Kungu holding brief.

No appearance for other parties

Mwangi – court clerk