



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS CIVIL APPLICATION 186 OF 2008**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW  
ORDERS OF PROHIBITION & CERTIORA**

**AND**

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

**AND**

**IN THE MATTER OF TRANSPORT LICENSING ACT CAP 404, LAWS OF KENYA**

**AND**

**IN THE MATTER OF TRAFFIC ACT CAP 403 LAWS OF KENYA**

**AND**

**IN THE MATTER OF LEGAL NOTICE NO. 37 OF 2008**

**BETWEEN**

**EXPARTE**

**DONALD KIGARI.....1<sup>ST</sup> APPLICANT**

**JEREMIAH K. WACHIRA.....2<sup>ND</sup> APPLICANT**

**ALICE W. KARUIKI.....3<sup>RD</sup> APPLICANT**

**PLICAH W. MIANO.....4<sup>TH</sup> APPLICANT**

**JACKSON WACHONGU.....5<sup>TH</sup> APPLICANT**

**NELSON KIMANI K.....6<sup>TH</sup> APPLICANT**

**MILCENT W. MWANGI.....7<sup>TH</sup> APPLICANT**

**JOSPHEAT K. MWANGI .....8<sup>TH</sup> APPLICANT**

MOFFAT ANDAJE.....9<sup>TH</sup> APLICANT  
FRANCIS KIREMA.....10<sup>TH</sup> APPLICANT  
PHINNEUS MUGAMBI.....11<sup>TH</sup> APPLICANT  
ESHTERH NJOKI KIBE.....12<sup>TH</sup> APPLICANT

**VERSUS**

ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT  
MINISTER, MINISTRY OF LOCAL GOVERNMENT.....2<sup>ND</sup> RESPONDENT  
PERMANENT SECRETARY MINISTRY OFLOCAL GOVERNMENT.....3<sup>RD</sup>  
RESPONDENT  
TOWN CLERK, CITY COUNCIL OF NAIROBI.....4<sup>TH</sup> RESPONDENT  
CITY COUNCIL OF NAIROBI.....5<sup>TH</sup> RESPONDENT  
COMMISSIONER FOR POLICE.....6<sup>TH</sup> RESPONDENT

**AND**

KENYA BUS MANAGEMENT SERVICES LTD.....1<sup>ST</sup> INTERESTED PARTY  
CITY HOPPERLTD.....2<sup>ND</sup> INTERESTED PARTY  
DOUBLE M. AUTO TECH LTD.....3<sup>RD</sup> INTERESTED PARTY  
THE MINISTER MINISTRY OF TRANSPORT.....4<sup>TH</sup> INTERESTED PARTY  
THE CHAIRMAN OF THE TRANSPORT LICENSING BOARD.....5<sup>TH</sup> INTERESTED PARTY

**RULING**

Before me is a Chamber Summons dated 15<sup>th</sup> April 2008 filed by M/S Wangeci Munene & Company advocates on behalf of twelve ex-parte applicants. The respondents are named as Attorney General, Minister for Local Government, Permanent Secretary Ministry of Local Government, the Clerk City Council of Nairobi, City Council of Nairobi and the Commissioner of Police. On the other hand, Kenya Bus Management Services Ltd, City Hopper Ltd, Double M. Autotech Ltd, Minister Ministry of Transport, and Chairman Transport Licensing Board were named as interested parties. The application was brought under Order LIII rule 1 of the Civil Procedure Rules. It was brought under certificate of urgency. It seeks for leave to file Judicial Review Proceedings for certiorari and Prohibition, and also that such leave do operate as a stay of implementation of Legal Notice No. 37 of 2008. The application has several grounds. There is a STATEMENT OF FACTS and an affidavit filed together with the application. The Notice to the Registrar, at least one day before the filing of the application, was also filed as required by law.

At the hearing of the application, counsel for the applicants Ms. Munene, made passionate submissions before me. Counsel argued that though there might have been other similar applications made, this application raised some novel points of law. Counsel argued that the Legal Notice No. 37 of 2008 was

actually ultra-vires the parent statute the Traffic Act (Cap. 403). It was therefore null and void and courts should not allow it to stand, and continue to be implemented. Counsel submitted that the Legal Notice was made under Section 72 (j) of the Traffic Act, which merely granted Local Authorities power to make by laws to provide for parking places in its area of jurisdiction, and provide omnibus stations. The said section 72 provided that such a decision should take into account the interests of the owners, public and occupiers of property. That the section should also be read with section 72A on designated parking places. The Counsel argued that there was laid down procedure for making by laws under section 202 of the Local Government Act (Cap. 265) which were not followed.

Counsel contended that the applicants were not given notice as required under section 203 of the Local Government Act. Therefore, their interests were not taken into account in making the said by-laws. The rules of natural justice were flouted, and that amounted to procedural ultra vires. Secondly, the by laws were subsidiary legislation and could not purport to override the clear provisions of statutes, as the by-laws did in the present case. That was substantive ultra vires.

Counsel also submitted that under section 153(6) of the Local Government Act, by laws cannot supercede or cancel an existing TLB Licence. Counsel contended that the illegality should not be allowed to continue. Counsel sought to rely on the Judicial Review Handbook by Michael Fordham pages 276-279,327-331. Counsel emphasized that the applicants stand to suffer irreparable losses.

Counsel asked me to grant leave to file Judicial Review proceedings, and to grant the stay orders requested.

I have considered the application, documents filed, and the submissions of learned counsel for the applicants.

Indeed, other similar applications have been filed in this court. I have considered the persuasive and passionate submissions of the applicant's counsel. I am of the view that the applicants have demonstrated sufficient interest in the matter in question. They have also demonstrated a prima facie arguable case. I will grant them leave to file Judicial Review proceedings as requested.

The applicants have also asked that leave granted do operate as stay of the Legal Notice No. 37 of 2008. Counsel has put forward forceful arguments. The issue of ultra vires, in my view is an arguable issue that should be canvassed in the main application. The same applies to the issue of flouting the principles of natural justice. Those issues need to be argued when all the parties have an opportunity to be heard. This application was heard ex-parte and I did not get the advantage of hearing the other side. I decline to grant stay orders.

Consequently, I order as follows –

1. I certify the Chamber Summons as urgent.
2. I grant leave to the applicants to file Judicial Review proceedings as requested for in prayers 2 and 3 of the Chamber Summons. The main Motion will be filed within 21 days from today.
3. I decline to grant stay orders.
4. Costs in the cause.

It is so ordered.

**Dated and delivered at Nairobi this 23<sup>rd</sup> April 2008.**

**George Dulu**

**Judge**

**In the presence of –**

**Ms. Munene for applicants**

**Mwangi – court clerk**