



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MISCELLANEOUS CIVIL APPLICATION NUMBER 208 OF 2008**

**IN THE MATTER OF AN APPLICATION BY COUNCILLOR PAUL MUGETHI JOEL FOR  
JUDICIAL REVIEW ORDERS IN THE NATURE OF CERTIORARI, PROHIBITION AND  
MANDAMUS**

**AND**

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

**AND**

**IN THE MATTER OF GAZETTEMENT NOTICE NUMBER 2953 OF 11<sup>TH</sup> APRIL 2008**

**BETWEEN**

**REPUBLIC .....APPLICANT**

**AND**

**MINISTER FOR LOCAL GOVERNMENT.....1<sup>ST</sup> RESPONDENT**

**COUNTY COUNCIL OF MARAGWA.....2<sup>ND</sup> RESPONDENT**

**RULING**

Before me is a chamber Summons dated 17<sup>th</sup> April 2008 filed by Wanyoike & Juma advocates on behalf of the ex-parte applicant Paul Mugethi Joel. The application was filed under the provisions of Order LIII rules 1(1), (2), 3(1) and 4 of the Civil Procedure Rules. It was filed under certificate of urgency. It seeks for leave to file Judicial Review proceedings for orders of certiorari, prohibition and mandamus. It also seeks that such leave if granted do operate as a stay of Gazette Notice No.2953 dated 4<sup>th</sup> April 2008.

From the documents filed, it clear that the Notice to the Registrar was filed on 18/4/2008. This application was itself filed on 21/4/2008. Therefore there was compliance with the legal requirement of service of notice on the Registrar, at least one day before the filing of the application. There is filed with the application a supporting affidavit, with several annexed documents, together with a statutory STATEMENT OF FACTS, and a verifying affidavit. I also heard verbal submission from counsel for the applicant, Mr. Juma.

I have considered the applicant, the documents filed, which include Gazette Notice No. 1276 in the Kenya Gazette of 22<sup>nd</sup> February 2008 nominating the applicant councilor for the County Council of Maragua for sixteen months; as well as Gazette Notice No. 2953 in the Kenya Gazette of 11<sup>th</sup> April 2008, revoking the nomination of the applicant, among others, as a councilor. I have also perused Section 40 of the Local Government Act (Cap. 265).

At this stage, I am not required to go into the substantive merits of the Motion which has to be filed after leave is granted. I am however, required to determine whether the application of the applicant merits the granting of leave to file Judicial Review proceedings, and whether I should grant stay orders as requested. Having considered the facts before me, I am of the view that the applicant has demonstrated that he has a sufficient interest in the subject matter in contest. He has also demonstrated an arguable prima facie case to persuade me to grant leave for him to file Judicial Review proceedings. The applicant has also requested that the leave granted do operate as a stay. Having perused the provisions of section 40 of the Local Government Act (Cap. 265), and considered the contentions of the applicant that he was not given any notice of revocation, I am of the view that irreparable loss will be visited on the applicant if stay orders are not granted.

For the above reasons, I certify the application as urgent and order as follows –

1. I grant leave to the applicant to commence Judicial Review proceedings as requested in prayer 2(a) (b) and (c) of the Chamber Summons. The main Motion will be filed within 21 days from today.
2. The grant of leave above granted will operate as a stay as requested in prayer 3 of the Chamber Summons, provided that the main motion is filed and served within 21 days from today, and in default the stay orders granted will automatically lapse.
3. Costs in the cause.

It is so ordered.

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

**George Dulu**

**Judge**

**In the presence –**

Mr. Juma for applicant

Mwangi - court clerk.