

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

Misc Civil Appli 17 of 2007

REPUBLIC.....APPLICANT

VERSUS

THE CITY COUNCIL OF NAIROBI RESPONDENT

AND

WIDE REACH LIMITED INTERESTED PARTY

EX-PARTE

THE CHURCH COMMISSIONERS OF KENYA APPLICANT

RULING

By an application dated 22nd day of November, 2007 the interested party (affected party is perhaps the correct description for purposes of judicial review) sought an order to set aside the court's order made on 5th October, 2007 granting leave to the ex-parte applicant to apply for the judicial review order of certiorari to remove into the high Court and quash the decision by the City Council of Nairobi made on 3rd October 2006 approving the construction of a billboard on a portion of LR 209/5775/1 and also seeks an order to set aside the order made on 5th October 2007 stopping the affected party, its servants and/or agents from constructing or further constructing a billboard on LR 209/5775/1 until the hearing of the substantive application.

One of the principal grounds raised by the respondents and the affected party is that the ex-parte applicant has no loci standi or standing to bring the application. However, the applicant has contended that the land in question was surrendered by it to the Commissioner of lands for the construction of a road or road purposes and the Commissioner had agreed to take the surrender on condition that should the public purpose of road use fail the land would revert back to the ex-parte applicant for any purpose the applicant would deem fit. In other words the ex-parte applicant contends that the land was held in trust by the Commissioner.

On a prima facie basis I find that the applicant has a sufficient interest in the subject matter before the Court and therefore the ex-parte applicant does have standing. Having ruled this I am aware that my ruling on standing is still tentative and that the same issue could be canvassed at the hearing of the actual judicial review application.

As regards the other grounds raised by the Respondent and the affected party I find it unsafe to deal with them in view of the fact that the substantive application has been filed and served, and the parties have responded to it. Any ruling on these further grounds could compromise the hearing and determination of the application for judicial review order.

I have in my past decisions held that leave is a filter stage and it is only in clear and exceptional cases that a public law court can interfere with the grant of leave after the filter stage has passed. The application is dismissed with costs in the cause.

I further direct that parties set down the main application for hearing and I shall proceed to give the necessary directions including the appointment of a hearing date.

DATED and delivered at Nairobi this 31st day of October, 2008.

J.G. NYAMU

JUDGE