



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

Misc Civil Appli 30 of 2008

REPUBLIC.....APPLICANT

VERSUS

JARIBU MOTORS LIMITED.....
APPLICANT

EX-PARTE

SECRETARY, PROVINCIAL (NAIROBI)

LIAISON COMMITTEE.....1ST
RESPONDENT

PROVINCIAL LIAISON COMMITTEE..... 2ND
RESPONDENT

RULING

By notice of motion dated 13.06.08 stated to be brought under Order LIII rule 3(1) of the Civil Procedure Rules, the applicant prayed for the following orders:-

1. By way of mandamus to compel the 1st respondent to set down the applicant's appeal as an agenda to be heard and determined by the 2nd respondent and/or
2. By way of mandamus to compel the 2nd respondent to meet, hear and determine the applicant's appeal and
3. By way of declaration, the honourable court order that the 1st respondent's conduct in issuing non-official receipts dated 06.03.08, for money paid with respect to lodging an appeal to be heard by the 2nd respondent is criminal.

4. That costs of this application be in the cause.

The grounds on which the application is based are:-

- i. That the applicant is aggrieved by the decision of the Director of City Planning.
- ii. That the applicant is intent on appealing against the said decision of the Director of City Planning.
- iii. That such appeal lies with the Provincial Liaison Committee, the 2nd respondent herein, and which committee has not given to the applicant any notice of the hearing of its appeal nor has any notice of a decision made by the respondent with regard to the appeal been given for the last 94 days contrary to the provisions of the Physical Planning Act, Cap.286.
- iv. That the 1st respondent is by law charged with the responsibility of setting the agenda and hence convening meetings to be held by the 2nd respondent, which duty he has failed to carry out.
- v. That the applicant stands to suffer irreparable loss if it is not accorded its right to be heard before the 2nd respondent as soon as possible.
- vi. That it is in the interest of justice that the orders prayed for herein be granted.

The application is supported by the affidavit of Iqbal Manji, a director of the applicant sworn on 13.06.08.

At the hearing of the application on 03.11.08, the applicant was represented by learned counsel, Miss A. Amimo.

Applicant's counsel said that the application was served on 06.08.08 but the respondents never appeared at the hearing. There is indeed an affidavit of service by Francis Makau, process server sworn on 02.09.78 confirming service as stated above, but the respondents never appeared.

I have given due consideration to the application, the grounds on which it is based and the affidavit of the applicant sworn on 13.06.08 in support of the application.

Other than the specific reference to Order LIII rule 3(1) of the Civil Procedure Rules providing for an application such as the one now before this court to be filed within 21 days of the grant of leave to do so, and other than a general reference to the Physical Planning Act, Cap.286, the application lacks specificity as to the actual legal provisions relied on for various of the orders sought. Examples of the aforesaid lack of specificity are:-

- a) Prayer 3 seeking a declaration that the 1st respondent's conduct alluded to in that prayer is criminal. No legal provision for the criminality alluded to has been specified. What would be the basis for the court making such a declaration? And supposing the court makes such a declaration, what will be next? Is it appropriate for the court in exercising its civil jurisdiction also to veer into granting declarations relating to criminality?
- b) What provisions of the Physical Planning Act are relied on as the basis of grounds (iii) and (iv) of the application? These matters have been left to speculation.

In my respectful view, the application cannot properly be granted in its present form. It is incompetent and I so declare it and here by strike it out. Costs in the cause.

Orders accordingly.

Delivered at Nairobi this 1st day of December, 2008.

B.P. KUBO

JUDGE