



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

Civil Case 1136 of 2007

1. Land and Environmental Law Division
2. Subject of main suit:-
 - i) Judicial Review
 - ii) Order LIII r 1 Civil Procedure Rules
 - iii) County Council of Kiambu
 - iv) Commercial building – road/footpaths and boundary of the said plots
 - v) Encroachment on public road/path
3. Application for leave to bring Judicial Review Proceedings
4. Procedure: Format explained

Procedure explained

5. Held:

Leave be hereby granted.

6. Case Law

a) Farmers Bus Service & Others v The Transport Licensing Appeal Tribunal

(1959) EA 779

b) Wela Omondi v The Chairman Electoral Commission of Kenya

(2002) I KLR 486

7. Advocate:

S.W. Kinuthia of Mwicigi Kinuthia & Co. Advocates for the plaintiff/applicant- present

Respondents are not represent – absent

CYRUS KARANJA KINYUA APPLICANT

VERSUS

THE COUNTY COUNCIL OF KIAMBU 1ST RESPONDENT

POUL NGUGI GITAU 2ND RESPONDENT

RULING

I: PROCEDURE

1. This is a Judicial Review application. The procedure required before court is for the exparte applicant to file suit in the following format:-

Republic.....applicant

Versus

The Country Council of Kiambu respondent

Ex parte Cyrus Karanja Kinyua, Interested Party Poul Ngugi Gitau

2. The application for leave to file Judicial Review is thus stated as follows:-

“In the matter of an application by Cyrus Karanja Kinyua for leave to apply for an order of Prohibition and Mandamus and In the matter of alienation of a Public path access LR Plot 37 and 110 Githunguri market

3. This format has been stated in other authorities such as the Farmers Bus Services & Others V The Transport Licensing Appeal Tribunal (1959) EA 779

Where Judicial Review must be brought in the name of the Republic. This authority was relied on in the case of Wela Omondi

v The Chairman Electoral Commission of Kenya (2002) I KLR 486 (Ringera J). I do recall that Akiumi J (as he then was) also dealt with the format for Judicial Review in one of his decision.

4. Once a statement, verifying affidavit a notice to the Registrar of the High Court of Kenya and a Chamber Summons is filed seeking leave to bring a Judicial Review, the pleadings are served upon the Registrar of the High Court of Kenya not later than the previous day before the hearing[1]. The Registrar would endorse the back of the statement and notice to him. A copy would be left with him and placed in a file for his record. A second copy would be annexed to an affidavit of service that would be filed in court as proof of service. The service is not made to the registry nor to any other officer such as an executive officer for Deputy Registrar. In the absence of the Registrar, if per chance he may be out of the courts jurisdiction, the lawful officer duly so allocated to so act in his absence and authorized to sign some document in the capacity as Registrar.

5. On the day of the hearing of the Chamber Summons, the exparte applicant would come to court alone[2]. He/she would then apply to the Hon. Judge for leave to bring Judicial Review.

6. If this leave is granted then a notice of motion[3] is filed. It is then served upon the parties concerned. Thus, the application by way of a notice of motion is made within 21 days to the High Court. Unless the judge otherwise directs, these would be eight clear days between the service of the notice of motion and the day named for the hearing.

7. It is at the hearing that there is an inter parties hearing. The Attorney General and any person deserved to be heard in opposition of the application may be heard.

8. In an application for certiorari, that involves judgments, order, decree, conviction or any other proceedings for proposes of being quashed, a period of 6 months is required to bring such proceedings. There is therefore a time limit.

9. It is hoped that the outlined procedure would be adhered to by the advocates and litigants as they come to court.

II: Application for leave 15 October 2007 to bring in Judiciary Review of Prohibition.

10. The County Council of Kiambu allocated two plots to the two parties. One being the exparte applicant Cyrus Karanja Kinyua and the other Poul Ngugi Gitau an Interested Party.

11. The County Council of Kiambu permitted the interested Party to encroach on a foot path public access between the two building. This meant that there was an encroachment to the access way of the public foot path.

12. The exparte applicant seeks leave to bring Judicial Review by way of prohibiting the respondent-county council from continuing blocking the said access; and to quash a decision made on the matter by them.

III: Leave

13. This court grants the said application for leave to bring Judicial Review against the County Council of Kiambu. That the leave herein do act as a stay.

14. That there be 21 days given herein to file and service the notice of motion giving eight clear days to the date fixed for hearing to this matter.

15. The costs will be in the cause.

Dated this 25th day of October 2007 at Nairobi.

M.A. ANG'AWA

JUDGES.W. Kinuthia of Mwicigi Kinuthia & Co. Advocates for the plaintiff/applicant- present

Respondents are not represent - absent