



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI**

**MISCELLANEOUS CIVIL APPLICATION NO. 1654 OF 2004**

**JACQUELINE RESLEY ..... APPLICANT**

**VERSUS**

**THE CITY COUNCIL OF NAIROBI ..... RESPONDENT**

**JUDGMENT**

This is an application by way of Judicial Review. In the substantive Notice of Motion, filed under Order 53 Rule 3 of the Civil Procedure Rules, the Applicant, Jacqueline Resley, seeks the following orders:

- “1. An Order of Certiorari to remove into this court and to quash the decision of the City Council of Nairobi to charge a fee of Kenya Shillings Five Hundred (Kshs.500/=) or any other amount per entry to lodge an objection in respect of entries made in the 2005 Draft Valuation Roll.***
- 2. An Order of Certiorari to remove into this court and to quash the decision of the City Council of Nairobi to publish the 2005 Draft Valuation Roll and to levy rates for 2005 with effect from 1<sup>st</sup> January, 2005.***
- 3. An Order of Prohibition to prohibit the City Council of Nairobi from levying rates under the 2005 Draft Valuation Roll for the City of Nairobi.***
- 4. That all necessary and consequential orders or directions be given.***
- 5. An order that the Respondent do pay the costs of these proceedings”.***

To understand the basis of the dispute, we recapitulate the facts of the case as we understood them as follows. The Applicant is a resident of Nairobi City where she also works for gain. The Respondent is a public authority whose functions include, among others, the levying of rates in respect of specified properties, and to determine the rates payable in accordance with the law. Sometime in the year 2004, the Respondent undertook a process of valuation of rateable property with a view to determining new rates payable by property owners. The Applicant’s complaint is that the whole process of revising the rates was irregular and contrary to law. She contends that the fee of Kshs.500/= charged to every person who intended to lodge an objection was unlawful. Secondly that prior to preparation of the valuation roll, the respondent did not follow the mandatory statutory provisions and consequently the Draft Valuation Roll was incorrect and thirdly, that the advertisement dated 28<sup>th</sup> November, 2004 detailing the rates payable for the year 2005 was improper and unlawful on account of its failure to comply with the law.

Before we embark onto submissions made by counsels, let us deal with the first matter, which is straightforward. The surcharge of Kshs.500/= on every person intending to lodge an appeal is a statutory provision in the Valuation for Rating Act. The applicant, in bringing this objection must have overlooked the amendment made on 23<sup>rd</sup> October, 1992, pursuant to the Statute Law (Miscellaneous Amendments Act, 1992 (No. 11 of 1992) which authorized the Respondent to charge the said fee. We would, therefore, not allow prayer 1 of the Application.

Mr Rao for the Applicant submitted that the new Valuation Roll was illegal for non-compliance with mandatory statutory provisions. To begin with, he argued that since the new valuation was being undertaken outside the prescribed ten years, the last one having been undertaken in 1982, the Respondent was bound by Section 3 of the Valuation of Rating Act (Cap 266) to seek the approval of the Minister before doing so. No such approval was sought, and consequently the respondent was in breach of Section 3 aforesaid.

Secondly, Mr Rao argued that the time for Valuation was set without compliance with statutory prescriptions. According to the record, that date was set for 5<sup>th</sup> April, 2004 yet the Minister's approval was not obtained until 22<sup>nd</sup> October, 2004 as is evident from the Kenya Gazette Notice published on 5<sup>th</sup> November, 2004.

Thirdly, the form of rating and the appointment of valuers was also decided by the Respondent on 21<sup>st</sup> April, 2004 but the Minister's approval was obtained after the event on 22<sup>nd</sup> October, 2004. That, according to Mr Rao, was inconsistent with the Provisions of Sections 5 and 7 of the Rating Act (Cap 267).

Finally, Mr Rao took issue with the manner in which the Draft Valuation roll was laid before the Respondent's Council. Section 9 of The Valuation of Rating Act provides that the roll shall be signed and dated by the valuer, who will then present it to the Town Clerk for laying before the Council. In this instance, counsel contended that the roll was not laid before the Council but merely noted before the special committee aforesaid and further this was done by the Valuer and not the Town Clerk. According to him, it was wrong for the document to be submitted by the Chief Valuer as that was inconsistent with the provisions of Section 9 (2) of the Valuation of Rating Act which stipulates that this function is to be undertaken by the Town Clerk. The applicant relied on the following authorities and cases amongst others: 1. **Ryde on Rating**, 2. **Republic vs Commissioner of Co-operatives**, 3. **Jacqueline Resley vs The Nairobi City Council**, 4. **Associated Provincial Picture Houses vs Wednesbury Corp**, 5. **Bradbury & Others vs Enfield London Borough Council**, 6. **Wolver Hampton Borough Councils Aldermanic Election**, 7. **Cullimore vs Lyme Regis Corporation**.

Mr Njagi, for the Respondent, made passionate submissions in defence of the Respondent's actions. According to him the Applicant had not established a clear error nor that if there was any, that it was of a fundamental nature. In his view, a few lapses in a process were not sufficient to entitle the court to interfere with a decision of a public authority unless there were fundamental breaches.

Counsel submitted that the accusation that the roll had not passed the due process was not particularized and that the Applicant had not shown as to how the Council had not complied with the two statutes. The courts jurisdiction, he argued, is a supervisory one and not concerned with the merits of the decision. The applicant had not shown that the Council had committed "a speaking error", one which was of a fundamental nature. Thirdly, Counsel argued that it was inappropriate for the Applicant to challenge the Roll in court and at the same time lodge objection with the Council. That was a contradiction. Counsel stated that Cap 266 applied prior to Cap 267 and thus the Minister's approval comes after the Councils resolution. It was not required to publish the Minister's approval. Moreover, the averments by the applicant were said to be technical as valuation can be undertaken by any authorized person and the valuer did so. In addition, that the council was not required to deliberate on the roll, simply have it laid before them.

According to Counsel, the respondent had followed the proper procedures in passing resolutions

regarding the time of valuation, the method of valuation and the appointment of valuers as per the minutes of the Council dated 24<sup>th</sup> April, 2004. The Minister's approval to all these was also obtained as per the Kenya Gazette notices of 5<sup>th</sup> November, 2004. The draft roll was transmitted to the Town Clerk and thereafter deposited with the Council. The Town Clerk was present as the valuer took the Council through the Roll. Subsequently, a Valuation Court was formed to deal with any objection. Counsel contended that the method employed in arriving at the Valuation, and short time frame within which it was done, are all technical issues, and within the Council's prerogative to decide. The act further recognized use of any method. The respondent relied on the cases of *Timotheo Makenge vs Manunga Ngoethi*, *Chief Constable of North Wales Police vs Evans*, *Bell Property Trust Ltd vs Hampstead Borough Assess Corum*, *Republic vs Paddington Valuation Officer & another* *Exparte Peachy Property Corp*, *Ryde on Rating*, *Real Estate Valuation Handbook*.

Allow us to begin our deliberations of this important case by emphasizing that the remedy of Judicial Review is concerned with reviewing, not the merits of the decision in respect of which the application for Judicial Review is made, but the decision making process itself. Thus a decision of an inferior court or public authority may be quashed by an order of certiorari, where that court or authority has acted without jurisdiction, exceeded its jurisdiction or failed to comply with the rules of natural justice. (**The Supreme Court Practice 1993 Volume 1 at p. 845**). It is within this backdrop that we will go through the statutory provisions governing preparation of valuation rolls, to see if the respondent complied with the law.

Let us begin with Section 3 of Cap 266. It stipulates as follows:

***“Every local authority shall from time to time, but at least once in every ten years or such longer period as the Minister may approve, cause a valuation to be made of every rateable property within the area of the local authority in respect of which a rate on the value of land is, or is to be, imposed, and the values to be entered in a valuation roll.”***

According to the Minutes of the Special Council on 28<sup>th</sup> October, 2004, it was noted that the previous roll was prepared in 1982. This was 22 years ago and clearly required the approval of the Minister. There is no evidence before this Court that such approval was indeed obtained by the Respondent.

With regard to the **method** of Valuation, although we would tend to agree with the Respondent that it has discretion in adopting the best method of Valuation, we believe it has a duty to adopt a method that is fair and transparent to all, especially the rate payers. Section 5 (1) of Cap 266, gives some idea on the possible method. It states that for the purpose of preparing a draft valuation roll, the valuer shall on production of written authority enter land within the area of the local authority in respect of which a rate on the value of land is to be imposed and shall have power to inspect and make extracts from all registers and other records. It is clear that no such visit was made by any valuer to any of the properties upon which rates were imposed; the applicants included. Section 5 (3) further goes on to state that the valuer may by notice in writing require a rateable owner to make returns as regards the land to enable the valuer prepare a draft valuation roll accurately. There is no prima facie evidence before this court, that either of the two procedures detailed in Section 5 was employed by the valuers.

In fact, the respondent has conceded that the Valuations were done based on “information” available to them in the Department, but not even such “information” has been produced before this court as relates to the Applicant's land.

The valuers were appointed in accordance with Section 7 of Cap 267 during the General Purposes Committee meeting of 21<sup>st</sup> April, 2004, and the Minister's approval was obtained on 22<sup>nd</sup> October, 2004, by Kenya Gazette Notice of 5<sup>th</sup> November, 2004. The Roll was laid before the Council on 28<sup>th</sup> October, 2004. This would mean that the Valuation was done in a record six days. We would agree with the Applicant that that would appear to be most unlikely to be accomplished. In the absence of any evidence to the contrary, we would tend to believe that the Valuation was done much before, and without the approval of the Valuers by the Minister. Between the date of the Ministers approval aforesaid and the

date of laying the roll before the Council on 28<sup>th</sup> October, 2004, there is no prima-facie evidence before this court that valuations were indeed done.

Similarly, we come to the same conclusion with respect to approval relating to the Form of Rating required under Section 4 (1) (ii) of the Rating Act. We do not find evidence that the Minister's approval was sought and obtained as to the Form of Rating before the same was adopted by the Respondent.

Finally, we come to Section 9 of The Valuation for Rating Act, Cap 266 which requires certain significant steps to be taken by the Respondent, the breach of which, we believe, would invalidate the Roll. Section 9 (1) and (2) state as follows:

**“9 (1) When a draft valuation roll or draft supplementary valuation roll has been completed, the valuer shall sign the roll and insert therein the date of completion thereof, and shall transmit the roll to the town clerk.**

**(2) As soon as may be after a draft valuation roll or draft supplementary valuation roll has been transmitted to him by the valuer, the town clerk shall lay the roll before a meeting of the local authority, and the roll shall thereafter be available at the office of the local authority for public inspection, and any person may, during ordinary business hours, inspect it and take copies or extracts from it”.**

In this instance, there were two significant violations of the Section: firstly, the roll was laid before the Special Council of the local authority and not the **whole local authority**. Secondly, the Draft Valuation Roll was laid before the council by the **Valuer** and not by the **Town Clerk** as it is required by the law. We believe these are significant breaches of the law that would, together with other breaches outlined above, entitle the Applicant to the remedies sought before this court. The Respondent's Counsel referred to certain authorities. We will now consider the same. In the case of **Timotheo Makenge vs Manunga Ngoehi, (1979) KLR P 53** it was held that:

**“In certiorari, it is not “any error” which may be corrected: it is only an error on the face of the record, or what is known as a “speaking error”, which will justify the court quashing an order in the exercise of its supervisory jurisdiction”.**

It was the respondent's submission that the issues raised by the applicant were all technical and as such the court should only correct the errors in the Valuation Roll and not review, as the court's role was supervisory and not one of review.

Secondly, the Respondent pointed to the case of **Chief Constable of North Wales Police vs Evans (1982) I W L R 1152** where the Court stated that it is the remedy of judicial review to ensure that the individual is given fair treatment by the authority and that its purpose is not to substitute the decision of the authority with that of the judiciary.

And further

**“That an order of mandamus to reinstate the respondent was the only satisfactory remedy in consequence of that breach of duty, to make such order would be impractical and would border on a usurpation of the powers of the Chief Constable by the court”.**

The respondent has submitted that to make contrary orders would appear to usurp the role of the Council and the Valuation Court, and that is indeed not the function of this Court.

Counsel also referred to the case of **Republic vs Paddington Valuation Officer and Another Ex parte Peachy Property Corporation Ltd (1965) 2 ALL E R.** In this case the valuation officer had not valued all the properties to be rated, but used an arbitrary scale and this formula was applied to all dwellings in the borough. The applicants contended that the respondents had taken into account extraneous considerations. In refusing to grant the order for certiorari, the court held that despite using an arbitrary

scale the valuers had in addition inspected every house externally and at least half were inspected internally. Moreover, the first respondent had attended coordinating conferences wherein each officer prepared details of typical houses and flats in the area. On this basis, it was agreed that the officer had not prepared the list on an entirely wrong basis and certiorari could therefore not be granted. The same cannot be said of the respondents before this Court. They have not shown what extra steps, if any, they took to ensure compliance with the law.

It is our humble view that in this case there is an apparent disregard of statutory provisions by the respondent, which are of a fundamental nature. The Parliament has conferred powers on public authorities in Kenya and has clearly laid a framework on how those powers are to be exercised. Where that framework is clear, there is an obligation on the public authority to strictly comply with it to render its decision valid. This view is supported by the case of ***Cullimore vs Lyme Regis Corporation (1962) I Q B 718*** where it was so held.

Further, as Rawal J said in ***Jacqueline Resley vs NCC C A 1517 of 2001*** that:

***“The above provisions, read with earlier provisions of the Valuation Act clearly show that the legislature envisaged a fair and reasonable procedure to be undertaken by a local authority before and after the Draft Valuation roll is made, published and acted upon”.***

As we stated earlier, the purpose of the court is to ensure that the decision making process is done fairly and justly to all parties. Blatant breaches of statutory provisions cannot be termed as mere technicalities by the respondent. That the law must be followed is not a choice and the courts must ensure that it is so followed. The statements by the respondents that this court’s role is only supervisory will not be accepted and neither will the view that this court will usurp the functions of the valuation court in determining this matter. This court is one of inherent and unlimited jurisdiction and it is our duty to ensure that the law is followed. In the case of ***Bradbury and others vs Enfield London Borough Council (1976) I W L R P 1311*** it was stated that:

***“If a local authority does not fulfill the requirements of law, this court will see that it does fulfill them. It will not listen readily to suggestions of “chaos”. Even if chaos should result, still the law must be obeyed”.***

And further

***“... It is imperative that the procedure laid down in the relevant statutes should be properly observed. The provisions of the statutes in this respect are supposed to provide safeguards for Her Majesty’s subjects. Public bodies and Ministers must be compelled to observe the law; and it is essential that bureaucracy should be kept in its place ...”***

In the result, we allow the Applicant’s Notice of Motion dated 22<sup>nd</sup> December, 2004 in terms of prayers 2 and 3 and hereby make the following orders:

1. The decision by the City Council of Nairobi to publish the 2005 Draft Valuation Roll and to levy rates for 2005 with effect from 1<sup>st</sup> January, 2005 is quashed, and
2. The City Council of Nairobi is prohibited from levying rates under the 2005 Draft Valuation Roll for the City of Nairobi.

We also award the costs of this application to the Applicant.

Dated and delivered at Nairobi this 31<sup>st</sup> day of March, 2006.

**ALNASHIR VISRAM**

**JUDGE**

**M K IBRAHIM**

**JUDGE**