



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI
MISCELLANEOUS APPLICATION NO 169 OF 2004

IN THE MATTER OF AN APPLICATION BY GREENHILLS INVESTMENTS LIMITED, MARKET MASTERS LIMITED AND SUGAR CANDY LIMITED FOR ORDERS OF PROHIBITION, CERTIORARI AND MANDAMUS

IN THE MATTER OF AN APPLICATION BY GREENHILLS INVESTMENTS LIMITED, MARKET MASTERS LIMITED AND SUGAR CANDY LIMITED FOR ORDERS OF PROHIBITION, CERTIORARI AND MANDAMUS

AND

IN THE MATTER OF THE ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT OF 1999

AND

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

REPUBLIC APPLICANT

VERSUS

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 1ST RESPONDENT

PUBLIC COMPLAINTS COMMITTEE 2ND RESPONDENT

CITY COUNCIL OF NAIROBI 3RD RESPONDENT

EX PARTE

GREENHILLS INVESTMENTS LIMITED

MARKET MASTERS LIMITED

SUGAR CANDY LIMITED

RULING

The objection raised in this matter when the application dated 10th May 2004 came for hearing before me is that the two affidavits sworn by Mr Mwenesi, the learned counsel for the applicant are a nullity and ought to be struck out:

- a) Because they do not comply with the provisions of Order 18 rule 3 which stipulates that affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove
- b) Because they relate to contentious matters and an advocate ought not depone on contentious matters as this is specifically prohibited in the rules made under the Advocates Act

The court has considered the submissions of counsel. As regards the first objection a careful scrutiny of the affidavits indicate that the substance and content of the affidavits substantially relate to the court record/or archives. There can never be a better deponent than an advocate on issues relating to archives or court records. Such matters are within an advocates knowledge. I do not think O 18 does apply to Judicial review and even if it did the objection cannot be sustained for the two reasons given above.

Turning to the second objection I find nothing contentious with an advocate deponing on the state of the court record. Any contention can always be resolved by the court looking at the record and the possibility of an advocate descending into the arena of contest are remote. In the instant case reference is clearly made to the affidavit of Professor Pitt Situma sworn on 7th April 2005 which affidavit represents the factual base of the application.

In the result the objections are disallowed with costs to the applicant. Application to be set down for hearing on merit.

DATED and delivered at Nairobi this 23rd day of May 2005.

J G Nyamu

JUDGE