



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
MISC APPLICATION 759 OF 2004**

**IN THE MATTER OF: AN APPLICATION BY MAUR ABDALLA
BWANAMAKA FOR LEAVE TO APPLY FOR
ORDERS OF MANDAMUS AND
PROHIBITION**

AND

IN THE MATTER OF:

REPUBLICAPPLICANT

VERSUS

**1. THE MUNICIPAL COUNCIL OF MOMBASA
.....1ST RESPONDENT**

2. THE MINISTER FOR LOCAL GOVT sued through

**THE ATTORNEY GENERAL.....2nd
RESPONDENT**

3. THE DIRECTOR OF PHYSICAL PLANNING sued through

**THE ATTORNEY GENERAL3rd
RESPONDENT**

EXPARTE MAUR ABDALLA BWANAMAKA

R U L I N G

Before the court under certificate of urgency is an exparte Chamber Summons of Mr. MAUR ABDALLA for leave to take out Notice of Motion under Order 53 CPC against:

1. The Municipal Council of Mombasa
2. Minister for Local Government
3. The Director of Physical Planning.

The Applicant is a property owner and resident within the Municipality of Mombasa. His property is Plot No. MN/I/1853. the verifying affidavit shows that the first Respondent is under a statutory duty under Rating Act Cap.267 to levy rates by adopting various forms of rating in respect of properties under its jurisdiction.

The provisions of Rating Act Cap 266 apply. Section 3 of Cap 266 requires every local authority to cause to be prepared at least every 10 years. Valuation roll to be made in respect of every rateable property. That the last time the first Respondent caused a valuation of properties to be carried out and a valuation roll to be prepared was in the year 1991.

Nothing was done in the year 2000 but instead the council applied to the Minister for extension of time by 2 years up to 2002 and again up to 2005.

The applicant states that there is no sign that the Council will perform its statutory duty this time and it is poised to seek further extension.

It is sworn that since the year 1991 value of properties have increased. The council is not collecting correct rates thus improve its revenue base. Another complaint is that the Municipal Council is in breach of Physical Planning Act in granting development permission. And the Director of Physical Planning has failed in his statutory powers to guide the council in Land Planning matters and has permitted change of user of Land without adherence to the process of the law.

Consequently the applicant and other residents of Mombasa have suffered.

I have considered the above matters and submissions by Counsel. I am convinced that the exparte applicant has shown circumstances to warrant an examination of the dispute by way of Judicial Review.

I grant leave sought. The leave thus granted shall operate as stay as prayed under prayer 3 of Chamber Summons.

Costs shall be in the cause.

Notice of Motion to be filed within 21 days.

Read on 21/9/05 in open court.

Delivered and dated at Mombasa this 21st day of September 2005.

J. KHAMINWA

J U D G E