



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA

Misc Application 785 of 2005

IN THE MATTER OF: THE KENYA REVENUE AUTHORITY ACT CAP489
AND

IN THE MATTER OF: THE CUSTOMS & EXCISE ACT CAP 472
AND

IN THE MATTER OF: THE LAW REFORM ACT CAP 26 AND ORDER LIII
CIVIL PROCEDURE RULES
AND

IN THE MATTER OF: THE PUBLIC MOTICE ISSUED ON 7/9/05 BY KENYA
REVENUE AUTHORITY DIRECTING ALL CUSTOMS
AGENTS TO SEEK LICENCES THROUGH THE
KENYA INTERNATIONAL FREIGHT AND
WAREHOUSING ASSOCIATION (KIFWA)
EFFECTIVE ON 30/9/2005.
AND

IN THE MATTER OF AN APPLICATION BY:

1. JOSEPHAT MWACHANYA

2. VALENTINE MWAKAMBA

3. PETER M. MWAMBURI

(As officials of ACWFFK on behalf thereof and on behalf of 310 members named herein for leave to apply for orders Certiorari, Mandamus and Prohibition).

AND

IN THE MATTER OF:

1. KENYA REVENUE AUTHORITY

2. COMMISSIONER
OF CUSTOMS AND EXCISE.....RESPONDENTS

R U L I N G

Chamber Summons dated 14/9/05 is presented to court under the Provisions of Order 53 CPC and other provisions of law therein stated. The applicants seek leave to institute application under the jurisdiction of Judicial Review.

The application is accompanied by statutory statement and supporting affidavit (verifying affidavit) with annexure. The affidavit is sworn by Peter Mambembe Mwamburi described as Chairman of an association called ACWFFK. It is shown that the association is registered as a friendly society under Societies Act Cap 108.

The said society operates with its counterpart KIFWA. There has been attempt to merge the two bodies but without success and both associations has always operated under their separate constitution.

On 7/9/2005 the Respondent issued public/press notice published in local dailies see Notice Marked I. T

he applicants say that that notice is discriminatory based on parochial and irrelevant considerations intended to scuttle the association to force membership to seek KIFWA's patronage.

The respondents have no power to dissolve any association to shut out business members of Association in preference of another. It is contended that Respondents act in (publishing the Notice) is arbitrary wanton and unsupported by law.

The applicants could well lead to their being denied a chance to engage in business. According to Statement relief sought is:

1. Certiorari to quash the Notice complained of
2. Mandamus to compel the respondents to issue customs agent licenses with the new requirement as to recommendation
3. Prohibition to prohibit the respondents from dealing only with KIFWA recommended agents.

Upon perusing the Notices complained of and upon reading the application with accompanying documents it is clear the principles and the purpose to which Judicial Review proceedings are applicable should be set down in this case. The orders of certiorari, Mandamus and prohibition are old English procedures mainly applied to control government duties and powers. In this country the procedure is donated by Law Reform Act Cap 26 Laws of Kenya and the practice is set out under order 53 CPC.

These orders are issued in the name of Republic to ensure that the public authorities carry out their duties and that inferior Tribunals are kept within their proper jurisdiction. The exercise of statutory powers which interferes with some persons legal rights, status or situation is amenable to Judicial Review.

The applicants say they are businessmen as freight forwarders and clearing agents. That is the way they earn their living. They are licensed by Respondents to carry on their business. If their licenses are cancelled their legal rights to work to earn a living is interfered with.

At this stage the court is only required to see that there is a real dispute and threat to rights of applicants by the Respondents who have statutory powers to appoint agents and issue licences. Such statutory power must be exercised fairly on reasonable grounds to avoid breaching the legal rights of members of public. The Respondents are not able to perform their functions without the services of customs agents, freight forwarders and clearing agents.

In the circumstances I find that the Applicants have shown a prima facie case and I grant the leave sought.

The licenses are predicted to expire on 30/12/05. There is sufficient time to finalize this case before then. I therefore do not order that leave to operate as stay.

Notice of Motion shall be filled within the next 21 days and shall be served upon the Respondents and persons interested.

Delivered and dated at Mombasa this 20th day of September 2005.

J. KHAMINWA

J U D G E