



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL APPLICATION NO. 209 OF 2003

**IN THE MATTER OF: AN APPLICATION BY THE REPUBLIC EX-PARTE
THE COUNTY COUNCIL OF LAMU FOR ORDERS OF CERTIORARY & PROHIBITION**

A N D

IN THE MATTER OF: LAMU SRMCC No.60 OF 2003

A N D

**IN THE MATTER OF: THE LOCAL GOVERNMENT
ACT CAP. 265**

A N D

**IN THE MATTER OF: GOVERNMENT PROCEEDING
ACT CAP. 40**

A N D

**IN THE MATTER OF: PUBLIC AUTHORITIES LIMITATION
ACT CAP. 49**

A N D

**IN THE MATTER OF: INTERPRETATION & GENERAL PROVISIONS
ACT CAP. 2**

A N D

**IN THE MATTER OF: ORDER XXXIX RULES 1, 2, 3, & 9 OF THE
CIVIL PROCEDURE RULES**

A N D

**IN ACCORDANCE WITH: ORDER LIII RULES (1) (2) (3) AND ORDER
LIII RULE 2 OF THE CIVIL PROCEDURES**

A N D

REPUBLIC

=V E R S U S=

THE SENIOR RESIDENT MAGISTRATE LAMU LAW COURTS...RESPONDENT

1. ABUBAKAR MOHAMED OMAR

2. ABDULMALIK MZEE

3. MOHAMED BWANA USI

4. AREEF A. AMERSHI

5. AZIZA ALI ABDALLAH

6. SAE SAID HEMED

7. FUMO ZAKARIA SALIM

8. KAIM LALI KAIM

9. JOHN MWADIME

10. SALIM NASSIR ALI

11. ALI NASSIR ALI

12. ALI BWARAFIKI FAMAU.....INTERESTED PARTIES

EXPARTE:

COUNTY COUNCIL OF LAMU.....APPLICANT

R U L I N G

On 1st day of September the Applicant obtained leave to file an application for Judicial Review. On 17/9/2003 the Notice of Motion was filed pursuant to leave thus granted. The prayers sought are certiorari and prohibition and certiorari on the grounds set out in the application. The statement of facts show that the interested parties filed Civil Suit against the ex parte applicants hereafter called the council seeking declaratory orders that Gazette Notice No.5690 to change fish cases is null and void and ultra vires the powers of the Council, injunction was also sought to prevent the Council from collecting the cases. The Respondent issued an ex parte injunction against the Council.

The Council now contends that the Respondent had no jurisdiction to issue injunctive orders against the Council by dint of Section 40 Government Proceedings Act or to hear a suit in which injunction is sought against the Council. It is also contended that the said suit (S.R.M. 60 of 2003) is time-barred against the Council by dint of the provisions of Public Authorities Limitation Act, and that the Attorney-General has not been issued with Statutory Notice of the suit and therefore the suit is a nullity ab initio. That also the Interested Parties sought to question the propriety of decision and Gazettement made on 8th June, 2001 and resolution made on 6/3/2003 respectively.

It is therefore submitted that the Respondent should have allowed the objection on jurisdiction to be heard first immediately. It was reased.

I have perused the Complaint filed in Lamu Resident Magistrate's court on 11/8/2003. The prayers sought are declaration and injunctions and damages. These remedies are not available to a party in Judicial Review proceedings by dint of Law Reform Act, Cap.26 Part VI which has granted the Judicial Review jurisdiction for the remedies only of Mandamus, Prohibition and Certiorary.

That jurisdiction does not include issue of declarations and injunction and damages. (It is of course true that in England now because of reforms there these remedies are now available). It is therefore clear that a party seeking declarations of its rights must file an ordinary Complaint for the same. See Civil Procedure Rules Order II rule 7 which states "No suit shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby and the court may make a binding declaration of right whether any consequential relief is or could be claimed or not.

a) The jurisdiction to issue declaratory judgment is not limited only the High Court as is the case with Judicial Review jurisdiction.

I therefore find that the Senior Resident Magistrate has jurisdiction to hear the suit SRMCC 60 of 2003 and I do dismiss this application.

Consequently the Learned Magistrate to conduct the suit as he deems fit. Any person dissatisfied with his orders or judgment there is always the remedy of appeal. This court cannot direct the court what orders to give or not to give.

It is for this court to inquire into the correctness of his decisions but only to see that he is within his jurisdiction.

The application is therefore dismissed with costs to Respondent. It is directed the suit do proceed before that court.

Dated at Mombasa this 26th day of February, 2004.

JOYCE KHAMINWA

J U D G E

Ruling read on 26/2/04 in presence of:-

Akanga – H/B for Kilonzo

Mr. Akanga

I ask for stay of proceedings in the lower court.

N/A for Respondent

I do not see any reason to grant stay requested. This is an administration dispute between the counsel and cess payers.

The suit should be conducted in the lower court.

JOYCE KHAMINWA, J.

Mr. Akanga - I apply for copy of proceedings.

Court: Let the same be supplied.

JOYCE KHAMINWA,