



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

H.C. MISC. APPLICATION NO. 23 OF 1990

ALICE MUTHONI KAMAU..... APPLICANT

V E R S U S

NAIROBI CITY COUNCIL1ST RESPONDENT

LAWRENCE THIONGO MURAYA2ND RESPONDENT

R U L I N G

This is an application praying for an issuance of an order of mandamus against the Nairobi City Council and seeks the following orders.

1. THAT this Honourable Court be pleased to grant the order of mandamus to compel the Director of Housing Development of the Respondent to allocate and/or transfer the residential House referred to as No. 1091 in UMOJA PHASE 11 in Nairobi to the Applicant.
2. THAT the costs of this Application and the Application for leave to apply for the order of Mandamus be paid by the Respondent.

I cannot emphasise more that there is a specific prayer seeking to compel the Nairobi City Council to allocate and/or transfer the residential House referred to as No. 1091.

Mr Mwaura the learned counsel appearing for the exparte applicant was gracious enough to concede that the applicant cannot state how she is claiming that specific house. I am also not told why the 2nd Respondent out of several persons who won the ballots along with him was chosen to be the Respondent. Once beaten to her stand now she is making a prayer through her affidavit to get a home in any other estate of equal size and value. I am also not told what is its size or value.

Applications for orders of Judicial review might not have been more slighted than as it has been done in the present case. The applicant first of all is seeking a specific remedy without establishing legal right over the subject mater (***in this case house No. 1091, Umoja Estate, Nairobi***).

The scope and efficacy of an order of mandamus have been specified in Halsbury's Laws of England 4th Edition Volume 1 at page 111 from paragraph 89.

It stipulates and I quote:

“The order of mandamus is of a most extensive remedial nature, and is, in for, a command

issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in a nature of public duty. Its purpose is to remedy the defects of justice and accordingly it will issue to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right, and that it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.”

In paragraph 90 entitled ‘Mandate’ it is stated:

“The order must command no more than party against whom the application is made is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once where a statute, which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way.”

This is what this applicant is seeking. A specific right which is not substantiated and the enforcement of a specific duty which is not defined or shown to be existing

I think, the above finding is sufficient to dispose off the application and I need not go into other grounds which are equally against the applicant, viz the absence of clear and undisputed facts, irregularity in the format of the application etc. to mention a few.

The outcome of all the above is that the application by way of amended Notice of Motion filed on 24th January, 2002 is dismissed with costs.

Dated and delivered at Nairobi this 28th day of June, 2003.

K. H. RAWAL

J U D G E