



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**

**HIGH COURT MISC. APPLICATION NO. 44 OF 2003**

1. JAMES NJIRU MURAGE )
2. JOHN KARIUKI NJERU )
3. ANTONY NYAGA NJUGUNA )
4. ELIZABETH WAMUGO NYAGA )
5. FAUSTIN KITHAKA JUSTUS )
6. PHIDES MWENDIA NGUKU )
7. RAPHAEL MWANIKI MURIUKI )
8. EPHRAIM NJERU MWANIKI ) ..... APPLICANTS

**VERSUS**

**DISTRICT WORKS OFFICER**

**MBEERE DISTRICT ..... RESPONDENT**

**R U L I N G**

James Njiru Murage, John Kariuki, Antony Nyaga Njuguna, Elizabeth Wamugo Nyaga, Faustin Kithaka Justus, Phides Mwendia Nguku, Raphael Mwaniki Muriuki and Ephraim Njeru Mwaniki (hereinafter referred to as the applicants) have come to this court under Order LIII rules 3 (1) of the Civil Procedure Rules seeking:

1. An order of certiorari to quash the decision of the District Works Officer Mbeere District dated 25th June, 2003. 2. An order of prohibition to prohibit the District Works Officer Mbeere District from evicting the applicants from the plot numbers Embu/Kithunthiri/1953, 1951, 2050, 1954, 1950, and 1947 and to further prohibit the said District Works Officer Mbeere from demolishing the applicants properties standing on the aforementioned properties.

The prerequisite leave for the application was granted by Khamoni J on 14th July, 2003. The District Works Officer Mbeere District was duly served with the application in person on the 23rd July, 2003. The Attorney General was also served with the application on 24th July, 2003. Neither the District Works Officer Mbeere nor the Honourable Attorney General filed any response to the application, nor was there any appearance at the hearing of the application.

In support of the application one of the applicants James Njiru Murage has sworn a supporting affidavit stating that each of the applicants owns one of the aforementioned properties which properties have been developed with commercial buildings. Copies of the relevant duly certified copies of the registers for the titles have been exhibited. By a letter dated 25th June, 2003 written by the District Works Officers Mbeere District and addressed to each of the applicants, the District Works Officer has alleged that the applicants have encroached on the road reserve and further given them notice requiring each of them to remove the buildings failure to which the same will be demolished without further notice. A copy of the said letter has been duly exhibited. The applicants are aggrieved by the actions of the District Works Officer and maintain that the aforementioned notice is issued without any jurisdiction as the notice is issued under section 101 (1) of the Traffic Act Cap 403 Laws of Kenya which has no relevance as the same deals with payment of fares on an Omnibus. The applicants maintain that the titles are free from any encumbrances and the District Works Officer Mbeere cannot interfere with their boundaries. The applicants maintain that the actions of the District Works Officer Mbeere are violations of the applicants right to property as enshrined in Section 75 of the Constitution. The applicants also contend that the rules of natural justice have been violated as they were not given a chance to be heard before the stated notice was issued. The advocate of the applicants relied on **Re.. Kisima Ltd 1978 K.L.R. 36**.

Upon careful examination of the application the affidavit in support, annexures thereto, the statement and particulars and the authority cited in support, and noting further that there has been no response to the application. It is apparent that the applicants are holders of titles to the afore stated parcels of land and that there are no encumbrances noted on the said titles. It is evident from the notice issued by the District Works Officer Mbeere that the applicants are alleged to have encroached on the road reserve. This is denied by the applicants who maintain that the parcels of land merely border the main Kiritini/Embu road and that the boundaries were duly surveyed and beaconed by the Survey of Kenya. Since the District Works Officer Mbeere District has failed to respond to the applicants contention, it is difficult to know what is the basis of the District Works Officer's allegation that the applicants have encroached on the road reserve. There would have been nothing easier than the District Works Officer Mbeere responding to the applicants contention and establishing the alleged encroachment. Indeed that would be a matter of public interest.

In the absence of any response however I am inclined to believe and accept that there is no substance in the allegation that the applicants have encroached on to the road reserve. Moreover the notice issued to the applicants does not seem to make any sense as it talks of encroachment on to the road reserve but is given in accordance with section 101 of the Traffic Act Cap 403 which has nothing to do with road reserve or encroachment of boundaries. It is apparent that the District Works Officer Mbeere has purported to act under powers which do not exist. It is further evident that the applicants were not given any hearing but were merely given notice to demolish their properties. This is obviously breach of the rules of natural justice. The court must therefore step in and control the excesses of powers being exercised by the District Works Officer, Mbeere as there is no evidence that the applicants have encroached on the road reserve nor is there any evidence that the District Works Officer Mbeere has followed the laid down machinery in correcting such a situation if indeed there was encroachment. The applicants have satisfied this court that the orders sought ought to be issued and it is therefore hereby ordered that:

(1) orders of certiorari do issue to call into this court and quash the decision of the District Works Officer Mbeere dated 25th June, 2003

(2) an order of prohibition do issue to prohibit the District Works Officer Mbeere from evicting the applicants from their aforementioned plots or to demolish their properties on the aforementioned plots. I do award the applicants costs of the application.

Orders accordingly.

Dated, signed and delivered at Nyeri this day of ....., 2003

**H. M. OKWENGU**

**JUDGE**