



**REPUBLIC OF KENYA**

**High Court at Machakos**

**Miscellaneous Civil Application 44 'B' of 2012**

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW  
SEEKING FOR ORDER OF CERTIORARI BY OROKISE CO-OPERATIVE SAVINGS AND CREDIT  
SOCIETY LIMITED AND 4 OTHERS

AND

IN THE MATTER OF THE COUNTY COUNCIL OF OLKEJUADO

AND

IN THE MATTER OF AN APPLICATION FOR AN ORDER OF CERTIORARI AND PROHIBITION  
BY WAY OF JUDICIAL REVIEW

BETWEEN

**SOCIETY LIMITED**

**1. OROKISE CO-OPERATIVE SAVINGS & CREDIT**

**SOCIETY LIMITED**

**2. RONGAI SAVINGS AND CREDIT CO-OPERATIVE**

**SOCIETY LIMITED**

**3. RONAKI SAVINGS AND CREDIT CO-OPERATIVE**

**SOCIETY ..... APPLICANTS**

**4. SERIAN SAVINGS & CREDIT CO-OPERATIVE**

VERSUS

**1. THE ATTORNEY GENERAL**

**2. THE COUNTY COUNCIL OF OLKEJUADO**

**3. MINISTER OF LOCAL AUTHORITY**

**..... RESPONDENTS**

## RULING

The applicants filed the application dated 24/5/2012 under **Order 53 Rule 3 & 4 of the Civil Procedure Rules, Section 3** of the **Civil Procedure Rules** and **Section 8 of the Law Reform Act** and all the enabling Provisions of the Law.

The application seeks the following orders:-

**1. THAT this Honourable Court do remove and bring unto this court the decision of the County Council of Olkejuado made on 30<sup>th</sup> January, 2012 and gazette on 3<sup>rd</sup> February 2012 and grant an order of certiorari by way of Judicial review by quashing the decision made increasing the bus park fees for passenger motor vehicles within the Kajiado County under the zonal jurisdiction of the County Council of Olkejuado.**

**2. THAT this Honourable Court do grant an Order of prohibition by way of judicial review prohibiting the County Council of Olkejuado from increasing the bus park fees for passenger motor vehicles within the Kajiado County under the zonal jurisdiction of the County Council of Olkejuado until the council complies with the law.**

**3. THAT the costs of this application be provided for.**

According to the Statement of Facts and affidavits verifying the facts, the applicants are registered Co-operative Societies with a membership of over 500 owners of Public Service Motor Vehicles plying the **Nairobi-Ongata Rongai – Kiserian – Ngong** Route within the County Council of **Olkejuado**. The applicants are aggrieved by a **Gazette Notice No. 1274** of 3<sup>rd</sup> February 2012 wherein the 2<sup>nd</sup> Respondent (the **County Council of Olkejuado**) increased the bus park fees for passenger motor vehicles. The Kshs.1,000/= fees for 15-30 passenger motor vehicle was increased to Kshs.2,500/=. The new fees were to take effect from 1/2/2012. The applicants complained that the notice was meant to take effect retrospectively. They also complained that the increase was excessively high. They were further aggrieved that the services and public amenities had not been improved before the increase despite them having so demanded in the past. That the applicants were not given any notice by the County Council of the intention of making any such by laws nor a copy of the proposed by-laws deposited in the council's office for public inspection.

The applicants contended that they were condemned before being heard and their constitutional right to a fair administrative action and ownership of property threatened by the decision of the Respondents.

In opposition to the application, the County Council through the clerk **John Gikingo** filed a replying

affidavit sworn on 4/7/2012. According to the Council, the **Local Authority Trust Fund Regulations** require each council to prepare **Local Authority Service Delivery Action Plans (LASDAS)**, setting out priorities for improving local services. That the Council prepared their action plans for financial year 2012/2013 in accordance with the guidelines published by the Minister in charge of Local Government. That the Council by notices in the local dailies invited its various stakeholders to give their input. That a technical committee was constituted and it prepared the agenda for consensus making which was heard on 24/11/2011 which contained amongst other things, the review of the bus park fees and charges due to the need to improve council services. It is asserted that the said consensus meeting included representation from the council and stakeholders.

A full council meeting held on 22/12/2011 adopted the various committee minutes and projects. That the Minister for Local Government approved the proposed increase of the bus park fees and charges. The Council accordingly published a notice in the Kenya Gazette. The Council's contention is that its actions were within the law and the full Council resolution ensured all the stakeholders were heard.

The 1<sup>st</sup> and 3<sup>rd</sup> Respondents opposed the application by way of the replying affidavit of **Dr Patel Nyongesa Otuoma**, the Minister for Local Government. It is asserted that the Council acted within its jurisdiction as sanctioned by the **Local Government Act** and that the parking fees or charges can be regulated through by laws or imposed by resolution of the Local Authority with the consent of the Minister.

**Mulondo Oundo Muriuki Advocates** appeared for the Applicants. **Kenyani** the litigation counsel appeared for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents while **Mwangi Wahome & Co. Advocates** appeared for the 2<sup>nd</sup> Respondent. The application was canvassed by way of written submissions which I have duly considered.

The applicants in this case are complaining about the process that was adopted by the Council in arriving at the increased bus park fees.

The Council elected to increase the bus park fees by way of a resolution that was approved by the Minister in accordance with the **Local Government Act**.

**Section 148 (2) of the Local Government Act Cap 265 Laws of Kenya** provides as follows:-

**“All fees or charges imposed by a local authority shall be regulated by by-law, or if not regulated by by-law, may be imposed by resolution of the local authority with the consent of the Minister and such consent may be given either in respect of specified fees or charges or may be given so as to allow a specified local authority to impose fees or charges by resolution in respect of a specified power or a particular matter.”**

The Council therefore acted within the law to review the fees and charges by way of resolution with the Minister's approval as opposed to by by-laws. The Council exercised its discretion which was conferred on it by the **Local Government Act**. The applicants have relied on **Section 72 A** and **Section 72 B (1)** of the **Traffic Act**. **Section 72 A (1)** provides as follows:-

**“A local authority may, by by-laws –**

**(a) designate parking places on roads, within its area of jurisdiction for vehicles or vehicles of any particular class or description, having regard to both the interests of traffic and the interests of owners and occupiers of adjoining property; .....**

**(2) The procedure for the making, approval and publication of by-laws made under subsection (1) shall be that prescribed in the Local Government Act, and, for the purposes of their enforcement and the disposal of fines imposed for their contravention, such by-laws shall be deemed to be by-laws made by the same local authority under that Act.**

**Section 72 B (1):-**

**“There shall be paid to the local authority in respect of a vehicle left in a designated parking place charges calculated in accordance with this section or in such other manner as the local authority may by by-laws prescribe.”**

The use of the term **“may”** in **Section 72 A (1)** in my view gives the council some discretion. The provision is not couched in mandatory terms. The council chose the option of increasing the bus park fees by way of resolution. The process was within the law.

On whether the rules of natural justice were violated, the Council organized stakeholders' forums and notices were put out in the Local dailies and committee meetings – **(See annexures JG 1 & JG “2”)**.

The committee meetings and projects were passed by a full resolution of the Council which resolution was approved by the Minister for **Local Government**.

The applicants have not raised any complaint regarding the process of passing the resolution. The process faulted by the applicants is the lack of a bylaw which the court has already analyzed above. The issues of service delivery *visa vis* the high increase and lack of amenities goes to the merits of the decision. *“It is the trite law that in Judicial Review Applications the court is not concerned with the merits of the decisions but the decision making process”* (See **Antony John Kibirithi vs Land Registrar Kilifi District & 3 Others Misc. Application 316/2001**).

The application has no merits and I dismiss the same with costs.

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**B. THURANIRA JADEN**

**JUDGE**

Dated and delivered at Machakos this **11<sup>th</sup>** day of **April** 2013.

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**B. THURANIRA JADEN**

**JUDGE**