



**REPUBLIC OF KENYA**

**High Court at Kakamega**

**Judicial Review 13 of 2012**

**CONSILLIA ATIENO PASI**

**GREGORY MAKOKHA**

**ANNE ANDAMBI**

**WILBERFORCE OKELLO ..... APPLICANTS**

**V E R S U S**

**THE COUNTY COUNCIL OF BUTERE/MUMIAS ..... RESPONDENT**

**R U L I N G**

In their notice of motion dated 2<sup>nd</sup> March 2012 the ex-parte Applicants are seeking an order of certiorari to be issued and quash the decision of the County Council of Butere/Mumias made on 4<sup>th</sup> November 2011 that removed the applicants from being members of the Cess Monitoring Committee. The application is supported by the affidavit of the 1<sup>st</sup> applicant. It is the applicants' contention that they were elected as members of the Cess Monitoring Committee on the 12<sup>th</sup> of August 2010 and their period was to lapse on the 12<sup>th</sup> of August 2012. On the 4<sup>th</sup> of November 2011 the respondent purported to select and forward names of other members of the committee without following the proper procedure. The applicants came to know about the decision when there was a matter pending before the Mumias Court vide PMCC No. 356 of 2011 when that decision to alter the membership of the Cess Monitoring Committee was annexed.

The applicants further contend that Cess Monitoring Committee are established under Legal Notice No. 120 of 1998 and the procedure for removal is provided for in that Legal Notice. There were no election for new members to the committee on 4<sup>th</sup> of November 2011. The applicants would like to be allowed to continue with their remaining duration.

On their part the respondents maintain that the Cess Monitoring Committee is just like any other committee and under the provisions of Rule 22 of the Standing Orders made under the second schedule of the Local Government Act Chapter 265 Laws of Kenya, a local council can at any time dissolve or alter the membership of a committee. In its written submission the respondent maintains that the application herein is fatally defective as it was not brought against the respondent ex-parte the applicants. Counsel for the respondent relied on the case of **FARMERS BUS & OTHERS VS. THE TRANSPORT LICENSING APPEAL TRIBUNAL [1959] E.A. 779.**

According to Legal Notice No. 120 of 1998 the Minister for Local Government made regulations known as The Local Government (Crop Cess Monitoring Committee) Regulations 1998. Under the regulations each local authority is expected to establish such a committee and the main purpose of that committee is to maintain and repair access roads. The committee is composed of not more than 12 and not less than 6 members of whom seven twelfth (7/12) shall be councilors appointed by local authority and five twelfth (5/12) shall be representative of farmers in the local area. According to the regulations a member of such a committee can be removed by the Minister under certain conditions provided for under Regulation 15 of the said Regulation. Although the Cess Monitoring Committee can be held to be any other committee of a local authority, it is clear that such committees include individuals from outside the management of a local authority. Further, the removal process is clearly stipulated by the

regulations. There is no evidence that the respondent followed the laid down procedure for the removal of the applicants from membership of the committee. The only information available is that under Minute No.FC 21/011 there was a discussion of the withdrawal of council members from Cess Committee which discussion was amended to refer to withdrawal of nominated councilors from that committee. Council members were advised that membership to that committee was governed by the regulations contained in Legal Notice No. 120 of 1998. The minutes of the meeting of 4<sup>th</sup> November 2011 simply indicate that the **Chairman cited the motion as carried and tabled a list bearing names of other members.**

From the proceedings of that meeting it appears that the applicants were replaced as members of the Cess Monitoring Committee. I do find that the procedure followed to remove them was not proper as the Minister of Local Government was not made aware of that process. I do further find that the applicants have proved their claim and deserve the orders being sought. The application dated 2<sup>nd</sup> March 2012 is hereby granted as prayed and an order of certiorari shall issue quashing the decision of the Respondent to remove the applicants from the Cess Monitoring Committee of the County Council of Butere/Mumias. There shall be no orders as to costs.

**Delivered, dated and signed at Kakamega this 10<sup>th</sup> day of October 2012.**

**SAID J. CHITEMBWE**

**J U D G E**