



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII

Civil Appeal 77 of 2009

SIGANO MURIAGA MURIMI APPELLANT

VERSUS

MUNICIPAL COUNCIL OF KEHANCHA)

THE CLERK MUNICIPAL

COUNCIL OF KEHANCHA)RESPONDENTS

THOMAS MERENGO)

RULING

The Applicant Sigano Muriaga Murimi is the mayor of the 1st Respondent (Municipal Council of Kehancha). The 2nd Respondent is the clerk to the Council and 3rd Respondent is the Deputy Mayor. The facts deponed to by the applicant in the Supporting Affidavit are not in dispute. On 14/4/09 there was called a special Full Council Meeting of 1st Respondent. The notice calling it had two items of agenda:-

- (a) Receiving and adopting Minutes of Special Finance Staff and General Purposes Committee, and
- (b) Tabling of Municipal of Kehancha Draft Valuation Roll of 2009.

On the day of meeting, and before the agenda had been discussed, one Councillor Samson Getobai proposed that the conduct of the Mayor) Applicant) be discussed. 2nd Respondent guided the meeting that it was illegal to discuss the applicant as it was not on the agenda and no notice to that effect had been given. The Meeting went on and discussed the applicant and passed a note of the confidence in him. It was resolved that 2nd Respondent takes over the duties of the Applicant. When 3rd Respondent was going to be installed, the Applicant rushed to the Senior Resident Magistrate, Kehancha for a temporary injunction to restrain the Respondents, etc, from implementing the resolutions made at the meeting above. Mr. Kiseru was acting for the Applicant. He sought an *ex parte* order. The court asked him to serve the application and gave a date for *inter parte* hearing. It declined to grant *ex parte* injunction on basis that the 1st Respondent was a corporate body against whom injunction could not issue.

Mr. Kiseru's client was aggrieved by the refusal to grant *ex parte* injunction and the comment. He filed an appeal. His case was that the magistrate was plainly wrong in saying that injunction cannot issue

against a corporate body (or local authority). With the appeal was filed this Chamber Application under Order 39 rules 2, 3, and 9 of the Civil Procedure Rules, Section 63e of the Civil Procedure Act and Sections 13, 14, 75 and 76 of the Local Government Act, Cap.265 of the Laws of Kenya.

Mr. Kweyu for the Respondents opposed the Application. There is an affidavit sworn by 2nd Respondent in Reply. The Respondents content that the appeal and application are incompetent as they were prematurely brought, the court of Kehancha not having heard the application to conclusion. The Respondents further content that the remedy available to the Applicant was judicial review.

The Counsel addressed me and put forward a number of authorities.

My view is that the subordinate court was entitled to grant or nor grant any interim relief or injunction. It declined to grant *ex parte* injunction. It may have expressed the view that an injunction could not issue against a corporate entity, but that was only a provisional view. It was not a definite order. A party aggrieved by that provisional order was entitled to an opportunity to be heard by the same court at *inter parte* stage. The applicant was indeed informed to come for *inter parte* hearing on 5/5/09. He instead rushed to this court. The Applicant was entitled to wait until 5/5/09 to present evidence and arguments to get the court review its position. The decisions in Wea Records Ltd v. Visions Channel 4 Ltd and others [1983] 1 All ER 589 and Kipas Manie & 23 others v. Oloololo Game Ranch Ltd, HCCivil Appeal No.160 of 2003 at Kisii are useful here. It follows that the order by the court below was not amenable to appeal.

Further, the court below only issued an order and not a decree. It would appear that, by dint of section 76(1) of the Civil Procedure Act, an appeal from such order can only be done with leave of court. No such leave was sought or granted.

In short, the appeal and application herein are both incompetent and are each struck out with costs.

Dated, signed and delivered at Kisii this 6th day of July, 2009

A. O. MUCHELULE

JUDGE

6/7/09

A. O. Muchelule Judge.

c/c Mongare

Mr. Abisai for Respondent

Court: Ruling in Open Court.

A. O. MUCHELULE

JUDGE