



REPUBLIC OF KENYA
THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Misc Civ. Case 519 of 2007

REPUBLIC.....APPLICANT
AND
CITY COUNCIL OF NAIROBI.....RESPONDENT

EX-PARTE

KAREN-NGONG VIEW ESTATE (WELFARE GROUP)

Suing through its Chairman

DAVID M. MBITHII

PETER MUIRURI

VINCENT KAMBO

HON. PAUL MUIITE

ERIC MURIGA CHEGE

RUTH MUGURE NGARUIYA

MARGARET MUIRURI

PROF. J. MAITHA

JOSEPH N. OUMA

NYAMBURA M. GCHUKI

PETER OUMA NAGEMI

PETER M.NTEERE

DR. EDITH MUIITE..... SUBJECTS

RULING

The application dated 6th March 2008 seeks inter-alia to set aside the order for leave and stay granted by myself of 21st May 2007.

However it is common ground that following a consent order filed in the proceedings and given recognition by the Court (Lady Justice Ang'awa) on 18th February 2008, when the learned judge ruled that the matter was functus officio, it is a matter I cannot re-open - the functus officio order having been made by a judge of co-ordinate jurisdiction. The tree having been cut so to speak it came down with all its branches as well. In my view affected parties do not in judicial review proceedings have different causes of action of their own and where parties to the proceedings settle the matter,

it cannot be resurrected by the affected parties. They can only institute separate proceedings. They are served under O 53 Rule 3 with the Notice of Motion in order to articulate their interests in that cause. Their remedy (if any) lies elsewhere.

The application is struck out.

I give no order as to costs.

DATED and delivered at Nairobi this 3rd day of October, 2008.

J.G. NYAMU

JUDGE`