



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. JUDICIAL REVIEW APPLN. NO. 275 OF 2016**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**THE COUNTY**

**GOVERNMENT OF MACHAKOS ..... RESPONDENT**

**EX-PARTE APPLICANT: VICTORY FAITH MINISTRIES**

**JUDGMENT**

1. In the Notice of Motion dated 7<sup>th</sup> November, 2016, the Ex-parte Applicant is seeking for the following reliefs:

***a) An order of certiorari do issue removing to this court and quashing the Respondent's rates demand note dated 4<sup>th</sup> October, 2016 demanding rate totaling to Kshs. 58,200,908.00 in respect of Land Reference Number 337/1006 situate in Mavoko within Machakos County.***

***b) An order of Mandamus do issue directed to the Respondent ordering it to comply with the law particularly Section 22 and 27 of the Valuation for Rating Act which exempts land used for religious and educational purposes from levy of property rates.***

***c) An order of prohibition do issue restraining the Respondent from levying, valuing, assessing, issuing demand notices or in any other way asking the Applicant to pay rates in respect of Land Reference Number 337/1006 situate in Mavoko within Machakos County.***

2. The Application is premised on the grounds that the demand rates by the Respondent are illegal, irregular and unconstitutional; that the Applicant is exempted by law from paying the said land rates and that the Ex-parte Applicant is a charitable organization which assists many destitute people who will suffer if the property is lost.

3. In the Statement that accompanied the Chamber Summons, the Ex-parte Applicant averred that it is a religious organization and duly registered under Trustees (*Perpetual Succession*) Act; that its property is by deed of Sections 22 and 27 of the Valuation for Rating Act exempted from valuation and to that extent payment of rates and that the Respondent has been making illegal demand for the payment of rent to the tune of Kshs. 59,800,000 yet the land is valued at Kshs. 3,400,000.

4. According to the Ex-parte Applicant an order of certiorari should issue to remove to this court and quash the Respondent's rates demand note dated 4<sup>th</sup> October, 2016 in respect of Land Reference No.

337/1006 situate in Mavoko within Machakos County and an order of mandamus directed to the Respondent to comply with Sections 22 and 27 of the Valuation for Rating Act.

5. The Applicant has finally averred that the Respondent should be prohibited from levying, valuing, assessing and issuing demand notices in respect of L.R. No. 337/1006.

6. In response, the Respondent's Chief Legal Officer deponed that the Constitution of Kenya at Article 209 (3) (c) expressly allows county governments to impose property rates that are situated within their jurisdiction.

7. The Respondent's representative deponed that the land rates demanded by the County Government of Machakos are regular since the information in its data base shows that the land use for L.R. No. 337/1006 is for residential purpose and therefore subject to payment of rates.

8. The Respondent's Chief Legal Officer finally deponed that the Applicant has never made efforts to have the records kept by the Respondent to show that the suit land is used for educational purposes and that the Application should be dismissed.

9. The Applicant's counsel submitted that Section 27(1) of the Valuation for Rating Act is clear on what properties are exempted from valuation; that the Applicant is a religious and educational institution which should be exempt from paying rates and that indeed the County Government passed a resolution exempting religious organizations from paying rates on their amenities.

10. The Respondent's counsel submitted that as per the Respondent's data base, the suit property is used for residential purposes; that the grant bears special conditions which the Ex-parte Applicant was aware of and that it is the responsibility of the Applicant to bring to the attention of the Respondent that it is actually a charitable organization.

11. The Respondent's counsel further submitted that Section 27(1) (d) of the Valuation for Rating Act excludes profit-making entities from the exemption of rates payment. However, it was submitted, the schools on the suit property are run as commercial institutions and should therefore pay the requisite rates.

12. The Ex-parte Applicant's case is that demand of rates in respect of L.R. No. 337/1006 by the Respondent is illegal and irregular because the Applicant is exempted from paying rates to the Respondent.

13. According to the Applicant, since it acquired the suit in 1992, it has never paid to the Respondent rates. However, from the year 2012, the Respondent started demanding for rates which stood at Kshs. 59,800,000 as at 27<sup>th</sup> November, 2015.

14. After receiving demand letters from the Respondent, the Ex-parte Applicant, through the "*Machakos County Pastors Forum*" petitioned the Assembly to discuss the issue. The said Petition was committed to the Committee of Finance and Revenue Collection which tabled its Report to the Assembly on 5<sup>th</sup> May, 2016.

15. The Assembly approved the Committee's Report by stating "*that the church should be exempted from paying land rates for church worshipping centres.*"

16. The Applicant has referred this court to the provisions of Section 27 (1) of the Valuation for Rating Act, Cap 266 which provides as follows:

***"27.(1) No valuation for the purposes of any rate shall be made in respect of any land which is used, or, is bona fide intended to be used within a reasonable time, directly and exclusively for any of the following purposes-***

a) *public religious worship;*

b) *cemeteries, crematoria and burial or burning grounds;*

c) *hospitals or other institutions for the treatment of the sick;*

d) *educational institutions (including public schools within the meaning of the Education Act) whether or not wholly supported by endowments or voluntary contributions, and including the residence of students provided directly by educational institutions or forming part of, or being ancillary to, educational institutions;*

e) *charitable institutions, museums and libraries;*

f) *outdoor sports;*

g) *National Parks and National Reserves within the meaning of the Wildlife (Conservation and Management) Act:  
Provided that nothing in this subsection shall apply to land used for profit or for residential purposes other than for the residence of students as aforesaid."*

17. The Applicant has deponed that the suit land is used for running of schools and is therefore exempt from paying rates. On the other hands, the Respondent's case is that even if the suit land is being used for educational purpose, it cannot be exempt from paying the rates because the said students in those schools pay fees, thus generating income for the Applicant.

18. Indeed, as per the Grant that was issued to the Ex-parte Applicant in 1992, "*the land and the buildings shall only be used for educational purposes and the accommodation for the Headmaster/Principal.*"

19. Although Section 27 (1) (d) of the Valuation for Rating Act exempts any land which is used for educational institutions from paying rates to the County Governments, the Act provides that "*nothing in the sub-section shall apply to the land used for profit.*"

20. The Respondent in this matter has not annexed any document to show that indeed the schools that are on the suit land are for making profits.

21. Indeed, having annexed a title showing that the registered proprietor of the land is a church, the only presumption that this court can make is that the school that the church is running on the suit land is not for purposes of making profits.

22. In the circumstances, and considering that the law is clear that any land that is used for educational purpose is exempt from paying rates to the County Government, unless it is shown that the running of the school in such land is wholly for the purpose of making profits, I find that the demand by the Respondent for rates from the Ex-parte Applicant is unlawful.

23. For those reasons, I allow the Applicant's Notice of Motion dated 7<sup>th</sup> November, 2016 as prayed.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 23<sup>RD</sup> DAY OF FEBRUARY, 2018.**

**O.A. ANGOTE**

**JUDGE**