



IN THE COURT OF APPEAL

AT NYERI

(SITTING IN NAKURU)

(CORAM: OKWENGU, KIAGE & J. MOHAMMED, J.J.A.)

CIVIL APPEAL NO. 212 OF 2009

BETWEEN

TOM WAMBUA REUBEN & 169 OTHERS APPELLANTS

AND

MUNICIPAL COUNCIL OF NAKURU RESPONDENT

(Appeal from a ruling and order of the High Court of Kenya at Nakuru (Maraga, J.), dated 30th June, 2009 in H. C. JR. Application No.49 of 2009 & No.31 of 2009)

JUDGMENT OF THE COURT

[1] This is an appeal lodged by **Tom Wambua Reuben & 169** other persons (hereinafter referred to as the appellants). The appellants are all ratepayers of the Municipal Council of Nakuru (herein the Council), who is the respondent in this appeal. The appeal arises from judicial review proceedings lodged by the appellants in the High Court at Nakuru, seeking orders of prohibition against the Council, prohibiting the Council from implementing the draft valuation roll 2007, and or charging rates based on the said draft valuation roll; causing the said draft valuation roll to be endorsed or signed and or certified; or to publish a notice to the effect that the draft valuation roll had been signed and certified.

[2] The application for judicial review was filed on 17th April, 2009. It was contended that 13 years had lapsed since the Council had prepared the last valuation roll; that under **Section 3** of the Valuation For Rating **Act Cap 266** the valuation roll ought to be prepared after every 10 years or such longer period as the Minister may approve; that the Council prepared the valuation roll after 13 years without the ministerial approval; that despite several objections raised to the draft valuation roll, the Council was charging rates based on the new draft valuation roll that had not been operationalized.

[3] The appellants complained that there was no basis for the Council to demand increased rates without first setting out its intended expenditure and or liability or strategic plan to create a contractual relationship between the ratable owner and the ratable authority; that the draft valuation roll was illegal, null and void, and could not form the basis for any objection hearing; and that the Council had illegally contracted Apex Valuers contrary to **Section 7** of the Rating Act.

[4] During the hearing of the judicial review applications, the Council raised an objection questioning the competence of the judicial review applications on three grounds. Firstly, that leave was irregularly obtained, as the application for leave was defective. Secondly, that the appellants lacked *locus standi* as the judicial review application was in effect a representative suit that was filed without leave of court, as some of the appellants had not raised any objection to the draft valuation roll, while others were limited liability companies who had not exhibited any company resolution authorizing the filing of the suit. Thirdly, that the appellants were guilty of non-disclosure of material facts, as they failed to disclose that there was a relevant gazette notice that notified ratepayers of the draft valuation roll.

[5] In his judgment, the learned judge (Maraga J, as he then was), overruled the objections that were raised maintaining that the irregularity concerning the verifying affidavit sworn in support of the application for leave, was a minor irregularity that does not go to the substance of the application; that, although 72 other applicants had been enjoined in the suit without leave, there were 17 original applicants who were properly before the Court; that in any case, it was conceded that all the applicants were rate payers affected by the draft valuation roll and therefore had *locus* to bring the suit. Further, that the Civil Procedure Rules regarding representative suits were not applicable to judicial review proceedings. On the issue of non-disclosure, the learned judge ruled that there was no evidence that the appellants were aware of the gazette notice.

[6] In regard to the substantive issues raised in the application, the learned judge ruled that the appellants were entitled to seek an order for prohibition, as they were seeking to nip in the bud what they considered an illegal valuation process that was not complete. Nevertheless, the learned judge dismissed the application for judicial review holding that Apex Valuers were appointed properly through a competitive process as required under **Section 27(1)** as read with **Section 29(1)** of the Public Procurement and Disposal **Act No.3** of 2005; that **Section 3** of the Valuation for Rating Act did not require a resolution for extension passed by a full Council meeting before the approval of the Minister could be obtained nor did it require the Minister's approval to be in any particular form; that the resolution made by the Finance Staff and General Purposes Committee of the Council for extension of time in this regard was sufficient; that under **Section 18** of the Valuation for Rating Act, the valuation roll is effective from the commencement of the financial year in which it has been prepared; that any objections to the valuation roll need not be determined before the valuation roll becomes effective; as any amounts found to be in excess after determination of the objections or appeal regarding the valuation roll is recoverable from the local authority.

[7] The appellants not being satisfied with the judgment of the High Court, lodged an appeal before this Court and by a memorandum of appeal dated 28th August, 2009, moved this Court to allow the appeal with costs and set aside the decision of the learned judge. In their memorandum of appeal the appellants have raised 21 grounds that were argued in five clusters as follows:

(i) That the learned Judge erred in failing to find that the appointment of valuers by the Council was irregular and illegal.

(ii) That the learned Judge erred in his finding regarding compliance of the requirements of **Section 3** of the Valuation for Rating Act.

(iii) That the learned Judge erred in failing to find that the valuation process was void and invalid as the Council failed to comply with **Section 5** and **Section 9(2)** of the Valuation for Rating Act.

(iv) That the learned Judge erred in his interpretation and application of **Section 18** of the Valuation for Rating Act.

(v) That the learned Judge erred in failing to make a proper analysis and evaluation of the facts and law presented before him, and failing to find that the draft valuation was not justifiable nor were there sufficient reasons to warrant increment of the rates payable.

[8] In support of the appeal, learned counsel, Mr. Lawrence Karanja who appeared for the appellants argued that according to **Section 3** of the Valuation for Rating Act, ministerial approval was necessary because the valuation roll was being done after more than ten years; and that the Minister did not give his approval under **Section 3** of the Valuation for Rating Act but gave approval under **Section 2** of the Valuation for Rating Act which was distinct from **Section 3**. With regard to the appointment of valuers, counsel submitted that although this was provided for under **Section 7** of the Rating Act, the Council appointed Apex Valuers, which was a body corporate, but the Minister gazetted three individuals who were separate from the body corporate appointed by the Council.

[9] Further, Mr. Karanja posited that contrary to **Section 5** of the Rating Act, there was no approval of the Minister for the rates to be levied in regard to the new valuation roll, and therefore the entire process was flawed and the valuation roll a nullity; that the approval given by the Minister was under **Section 6** of the Rating Act; that the valuation roll was not tabled before a full council meeting; and that the valuation roll could only come into effect after the objection proceedings were finalized. Counsel therefore urged the Court to allow the appeal.

[10] Learned counsel Aim Yoni, holding brief for Prof. Ojienda SC, argued the appeal on behalf of the Council. He pointed out that the purpose of the Valuation for Rating Act is to empower local authorities to value land; that the ministerial approval required under **Section 3** of the Valuation for Rating Act was not mandatory; that the mandate of valuation and charging rates lay strictly with the Council, who had an option to seek or not seek the ministerial approval; that where the valuation process was done without the Minister's approval, the Minister could ratify the valuation process; and that by **Gazette Notice No.2245** the Minister ratified the action of the Council by impliedly approving the valuation roll outside the ten year period.

[11] Regarding the appointment of Apex Valuers by the Council, Mr. Yoni submitted that although Apex Valuers was a successful bidder it was a juristic person who could only undertake the valuation through its professionals who are individuals; and this necessitated the gazetting of the three individuals; that the mode of rating was provided under **Section 5** of the Rating Act, which section has to be read with **Section 4** of the said Act; that the exercise of judicial discretion in judicial review can only be challenged if it was grossly unjust, and this has not been demonstrated; that over 50% of the rate payers had paid the rates and even 79 of the appellants had submitted themselves to the valuation court; and therefore, there was no public interest that could justify the issuance of the orders of prohibition.

[12] In a reply to the Council's submissions, the appellants argued that the discretion was upon the Minister to either approve or disapprove the request for ministerial consent. This discretion was different from the request for approval in regard to which the Council had no alternative but to seek ministerial consent if the period was more than ten years. In regard to the appointment of Apex Valuers, it was pointed out to the Court that although Apex Valuers as a corporate body had sought a resolution from the Council for the appointment of its individual valuers by the Council, this was not done; and that approval for rates to be levied under **Section 4** of the Rating Act could not cover approval under **Section 5** of the Rating Act.

[13] At this stage the matter before the learned judge having been an application for orders of judicial review, our obligation as an appellate court is to reconsider the facts as laid before the learned judge and the application of the law by the learned judge, in order to determine whether the learned judge properly exercised his discretion in coming to the conclusion that the orders of judicial review were not merited.

[14] In doing so we take cognizance of this Court's decision in ***Municipal Council of Mombasa vs. Republic: Exparte Umoja Consultants Ltd; Civil Appeal No. 185 of 2001*** in which the Court in considering a similar appeal expressed itself thus:

“...The court would not be concerned with the issue of whether the increases in the fees and charges were or were not justified. The court would only be concerned with the process leading to the making of the decision. How was the decision arrived at? Did those who made the decision have the power, i.e. the jurisdiction to make it? Were the persons affected by the decision heard before it was made? In making the decision, did the decision maker take into account relevant matters or did he take into account irrelevant matters? These are the kind of questions a court hearing a matter by way of judicial review is concerned with, and such court is not entitled to act as a court of appeal over the decider; acting as an appeal court over the decider would involve going into the merits of the decision itself – such as whether there was or there was not sufficient evidence to support the decision – and that, as we have said, is not the province of judicial review”.

[15] The above quote reflects the position of the law before the promulgation of the Constitution of Kenya 2010. Article 47 of this Constitution expanded the scope of judicial review by introducing fair administrative action as a fundamental right. The learned Judge did not have the benefit of these constitutional provisions nor can the provisions act retrospectively. We reiterate that our jurisdiction is not to consider the merit of the learned Judge’s discretion or substitute his discretion with ours, but to consider the facts as laid before the learned Judge and the law as it was before the promulgation of the Constitution of Kenya 2010 and make a determination whether in exercising his discretion the learned Judge properly apprehended the facts and the law.

[16] Section 3 of the Valuation for Rating Act states as follows:

“Preparation of valuation rolls and supplementary valuation rolls

3. Local Authority to cause valuation roll to be prepared

Every local authority shall from time to time, but at least once in every ten years or such longer period as the Minister may approve, cause a valuation to be made of every rateable property within the area of the local authority in respect of which a rate on the value of land is, or is to be, imposed, and the values to be entered in a valuation roll.” (Emphasis added)

[17] In regard to “time for valuation” Section 2 of the Valuation for Rating Act provides the following definition:

“Means such dates within a period of 24 months preceding the commencement of the financial year in respect of which a valuation roll prepared under Section 3 is to come into force as may be determined by resolution of a local authority and approved by the Minister to be the date at which all valuations shall be deemed to have been made for the purposes for such valuation rolls and of every supplementary valuation roll prepared during the continuous in force of the valuation roll.” (Emphasis added)

[18] The undisputed evidence before the learned judge was that the ministerial approval given by the minister was through Gazette Notice Number 2245 of 31st March 2006. The Gazette Notice stated as follows:

“Gazette Notice No. 2245

THE VALUATION FOR RATING ACT

(Cap 266)

THE MUNICIPAL COUNCIL OF NAKURU

TIME OF VALUATION

IN EXERCISE of the powers conferred by section 6 of the Valuation for Rating Act, the Minister for Local Government gives approval to Municipal Council of Nakuru’s Minutes of Finance, Staff & General Purpose Committee meeting (Min 31) held on 24th May 2005 as follows:

“That the time of valuation for Municipal Council of Nakuru’s Valuation Roll shall be 31st December 2004”

Dated this 3rd day of March 2006

Signed

MUSIKARI KOMBO

Minister for Local Government”

[19] The Council maintained that this Gazette Notice No.2245 is the one that gave ministerial approval for valuation and preparation of the roll after ten years. It was conceded that this was after the process had started but argued that the ministerial approval could be given retrospectively.

[20] In his judgment the learned Judge addressing **Section 3** of the Valuation for Rating Act stated as follows:

“It does not state that the request to the Minister has to be made by a resolution of the council. Therefore Mr. Kahiga’s contention that the Council should have passed a resolution in its full meeting requesting for the extension is clearly untenable. I find and hold that the request made to the Minister, on 24th May 2004, vide Minute 31 of the Finance, Staff and General Purposes Committee of the Council is in order.

The section does not require the Minister’s approval to take any particular form. Although the Minister’s said approval in this case is not happily worded, even a cursory perusal of it as well as that of the said Minute makes it quite clear that that approval was sought and given under Section 3 and not Section 2 of the Valuation for Rating Act. At any rate Section 2 of the Valuation for Rating Act is only a definition Section. There is no requirement demanded of anybody under it. Mr. Kahiga’s contention therefore that the approval the Minister gave vide Gazette Notice No.2245 of 31.03.2006 is in compliance with that section is clearly untenable.”

[21] We have considered **Section 2** and **3** of the Valuation for Rating Act. In our view it is apparent that a local authority may prepare a valuation roll after ten years provided the Minister has given his approval for the preparation of the roll after the ten-year period. Secondly, once the valuation roll is prepared it can only come into force within a period of 24 months from the commencement of the financial year in which the roll was prepared. Thirdly, there must be a resolution of the local authority on the date for which the valuation roll should come into force, and the Minister should approve this resolution. Therefore, the ministerial approval is required at two levels; first at the commencement of the process, for the valuation and preparation of the valuation roll outside the ten year period, and secondly, upon preparation of the valuation roll, approval for the coming into effect of that valuation roll. On the other hand the Council may initiate the process of preparation of the roll through any of its organs but the resolution of the Council is required after preparation of the roll in regard to the date of coming into effect of the valuation roll.

[22] We concur therefore with the learned Judge that there is no requirement for passing of a resolution by a meeting of the full Council to carry out valuation for rating outside the ten-year period. A decision made by the Council using any of its organs, to carry out a valuation of rateable property, and preparation of a valuation roll outside the ten-year period, is sufficient. Ideally, once a decision is made to carry out valuation and preparation of a valuation roll outside the ten-year period, the Council should seek the approval of the Minister before the valuation and preparation of the roll is done. However, where the process is commenced before such ministerial approval, there is nothing that bars the approval being given retrospectively before the roll becomes effective. This means that the preparation of a valuation roll outside the ten-year period without the ministerial consent can be validated by ministerial approval given retrospectively.

[23] In this case, no evidence was laid before the learned judge to show that ministerial approval was sought for the valuation and preparation of the roll before the process began. According to minute 109 of 4th May, 2004, the issue of valuation and preparation of a new roll was raised by the municipal treasurer during the meeting of the Finance Staff and General Purpose Committee Meeting and it was resolved that the Council advertises for the updating of the valuation roll through the normal procedure. It is not disputed that prior to this date the last valuation roll was prepared in 1992 and therefore the resolution was being made more than 10 years after the last valuation roll. Therefore, in accordance with **Section 3** of the Valuation for Rating Act the approval of the Minister was mandatory.

[24] The issue before us is whether the learned Judge properly directed himself in holding that the approval given by the Minister vide Gazette Notice No. 2245 was approval under **Section 3** of the Valuation for Rating Act for valuation and preparation of the valuation roll outside the 10 years statutory period. On the face of the Gazette Notice the Minister stated that he was acting in exercise of powers under **Section 6** of the Valuation for Rating Act. In that regard **Section 6** that deals with the Contents of the draft valuation and supplementary rolls provides *inter alia* as follows:

“... Provided that, on application, by a local authority, the Minister may declare in writing that the valuer, in preparing any draft valuation roll or draft supplementary valuation roll, need neither value nor include in the roll the value of the land or the assessment for improvement rate, as required by paragraphs (c) and (e) respectively, and the valuation roll and all supplementary valuation rolls prepared during the currency of that valuation roll shall be deemed to be valid and proper valuation and supplementary valuation rolls notwithstanding that they do not contain any such valuations or that the valuations have not been made.

[25] An examination of the gazette notice shows that it gives approval to Minute 31 of the Council’s Finance, Staff & General Purposes Committee meeting held on 24th May 2005. We reproduce that minute herein as follows:

“Minute 31 VALUATION ROLL

The Municipal Treasurer informed the meeting that the current council valuation roll expired in the year 2002. The Municipal Treasurer further informed the meeting that the council had contracted Apex valuers Ltd, through competitive bidding for preparation of Council’s valuation roll.

However, the Municipal Treasurer informed the meeting that there are statutory provisions for the ministerial approval which requires councils’ resolutions as below:

(a) In accordance with section 4(1)(b) of the Rating Act Cap 267, the council adopts the form of rating as provided for therein.

(b) In accordance with section 7 of the Rating Act Cap 267, the Council appoints the following valuer as an additional

valuer to the three appointed- R.M.KINYANJUI (MRS) B.A.LANDECON; M.I.S.K.R. &P.V.

(c) As per section 2 of the valuation for Rating Act, the Council passes a resolution adopting 31st December 2004 as the “time of valuation”

(d) In accordance with the proviso to section 6 of the Valuation for Rating Act Cap 266, the Council passes a resolution seeking the ministers written declaration that the valuer, in preparing any Draft valuation Roll, or draft supplementary valuation roll, need neither value nor include in the roll the value of the land or the assessment for improvement rate, as required by paragraph (c) and (e) respectively of this section.

The Municipal Treasurer therefore requested the Council to consider approving the extension of the current valuation roll until the updating of the valuation roll is completed.

After lengthy deliberations it was unanimously RESOLVED:

(i) That the current Valuation Roll period be extended until the updated Valuation Roll is completed.

(ii) That the above statutory provisions be approved and adopted

[26] From the above minute 31 it is evident that the Council contemplated approval of the Minister for four things. Firstly, approval for form of rating under **Section 4(1)** of the Rating Act; secondly, approval under **Section 7** of the Rating Act for appointment of an additional valuer for preparation of the draft valuation roll; thirdly, approval for time for valuation as defined in **Section 2** of the Valuation for Rating Act; and finally a declaration under **Section 6** of the Valuation for Rating Act that in the preparation of the roll, the appellant need neither value nor include the value of land or assessment for improvement rate.

[27] Worthy of note is that minute 31 of the Council’s Finance Staff and General Purpose Committee made no reference to approval of the Minister under **Section 3** of the Valuation for Rating Act for valuation and preparation of the valuation roll outside the 10 year period. Gazette Notice No.2245 similarly made no reference to **Section 3** of the valuation for Rating Act. Although the Gazette Notice shows that the Minister purported to act under **Section 6** of the Valuation for Rating Act, it does not reflect the exercise of powers under **Section 6** of the Valuation for Rating Act as the Gazette Notice makes no reference to the content of the draft valuation roll which is the subject of **Section 6**. Instead, the Gazette Notice is clear that its subject is “time of valuation” and proceeds to declare the time of valuation of appellants valuation roll to be 31st December 2004.

[28] In our view, although **Section 2** of the Valuation for Rating Act is a definition section, it is a substantive provision in determining the “time of valuation.” According to the definition provided under **Section 2**, unless the date set is determined by resolution of a local authority and approved by the Minister, the date will not qualify to be time for valuation. Thus, it is the approval of the Minister that gives the date final validity. In this regard, that approval was important and it is understandable why it was given prominence through Gazette Notice No.2245 of 31st March, 2006.

[29] Whereas Gazette Notice No. 2245 should have expressly conveyed the Minister’s approval for valuation and preparation of the roll after the ten-year statutory period, it was still plausible for one to reasonably conclude that read as a whole, and it being clear that the ten-year period had already expired, the Minister was in giving, approvals as he did for the process to proceed, cognizant of and gave his consent for the valuation and roll preparation to be done after the statutory period. It seems clear to us that the learned Judge had this in mind when he described the Minister’s approval as “*not happily worded*” but was nonetheless persuaded that even from “*a cursory perusal*” of the notice, it did convey the appropriate approval. We do not think, with respect, that the learned Judge’s conclusion constituted an inferential error or was otherwise so perverse as to justify our interference with his exercise of discretion. We reject the appellant’s invitation to do so. Our advised hesitation is consistent with this Court’s principles as enunciated in a long line of authorities including **Mbogo vs Shah [1968]EA 93** and **United India Insurance Co. Ltd vs East African Underwriters [1985] KLR 898**.

[30] In regard to the appointment of valuers, under **Section 7** of the Rating Act, the Council had the powers to appoint a valuer for the purposes of valuation of the draft valuation roll subject to the Minister giving approval for the appointment of such valuer. In this case, it is not disputed that the Council following a competitive bidding process, resolved that Apex Valuers Ltd be appointed to do the valuation, and that at the request of the Council the Minister gave approval under **Section 7** of the Valuation for Rating Act through Gazette Notice No.8190 of 13th October, 2006 for the appointment of Francis O. Oketch, G. K. Mutugi and W.H.A. Olima as valuers to prepare the draft valuation roll for the Council. In our view, there was no inconsistency in the appointment as all the three valuers were officers of the successful bidder Apex Valuers Ltd who had been procured by the Council. We concur with the submission that Appex Valuers Ltd being a corporate body, it could only act through its agents or servants, and provided that the officers were valuers who were gazetted there was no irregularity. It is apparent that the Council forwarded the names to the Minister for gazettement following communication from Apex Valuers Limited through the letter accepting their appointment, that the 3 valuers were their officers who constituted the team that would conduct the valuation exercise. Thus the gazettement did not constitute procurement of different valuers but was mere implementation of the procurement of Apex Valuers Ltd in accordance with the resolution of the Council and there was no flouting of any procurement procedures.

[31] One of the grounds raised by the appellant was that the learned Judge erred in failing to find that the valuation process was void and invalid as the Council failed to comply with **Section 5** and **Section 9(2)** of Valuation for Rating Act. We have perused **Section 5 of the Valuation for Rating Act**. It outlines the powers of the valuer in regard to entry, inspection, and information, concerning any land within the area of the Local Authority, during the valuation process. No issue appears to have arisen in this regard. It appears to us that the appellants must have intended to refer to **Section 5 of the Rating Act** that deals with methods of rating that may be adopted by the rating authority and **Section 9(2) of the Valuation for Rating Act** that deals with approval and deposit of draft valuation and supplementary valuation rolls for public inspection.

[32] In regard to methods of rating, it is necessary to set out sections 4 and 5 of the Rating Act that states as follows:

“4. Forms of rating

(1) The rating authority may, for the purposes of levying rates, adopt the following forms of rating—

(a) an area rate in accordance with section 5 of this Act;

(aa) an agricultural rental value rate;

(b) a site value rate or a site value rate in combination with an improvement rate in accordance with section 6 of this Act:

Provided that—

(i) where any one of the aforementioned forms of rating has been adopted in respect of any rating area, no other form of rating under this subsection shall, at the same time, be adopted in respect of that area;

(ii) before the rating authority adopts any form of rating, the Minister’s approval to the form of rating so adopted and the rating area in respect of which such form of rating is adopted shall be obtained and a notice to this effect shall be published by the rating authority.

.....

5. Alternative methods of area rating

(1) Subject to subsection (2) of this section, the rating authority may, with the approval of the Minister, adopt one or more of the following methods of rating—

(a) a flat rate upon the area of land;

(b) a graduated rate upon the area of land;

(c) a differential flat rate or a differential graduated rate upon the area of land according to the use to which the land is put, or capable of being put, or for which it is reserved;

(d) an industrial rate upon the area of land used for other than agricultural or residential purposes;

(e) a residential rate upon the area of land used for residential purposes;

(f) such other method of rating upon the area of land or buildings or other immovable property as the rating authority may resolve, and a rate levied in accordance with any such method as aforesaid shall in this Act be known as an area rate.”

[33] In accordance with minute 31 (set out under paragraph 25 above) the Council adopted the method specified under **section 4(1)(b) of the Rating Act**, that is the method of site value rate. Nothing turns on this, as it is evident that through Gazette Notice Number 2241 the Minister approved the method adopted by the Council. The said Gazette Notice stated as follows:

THE RATING ACT

(CAP 267)

THE MUNICIPAL COUNCIL OF NAKURU

SITE VALUE RATE

IN EXERCISE OF the power conferred by section 4(1) (b) of the Rating Act, the Minister for Local Government approves adoption by the Municipal Council of Nakuru of a “site value” for purposes of levying rates.

Dated the 3rd March 2006

MUSIKARI KOMBO

Minister for Local Government.

[34] As regards Section 9(2) of the Rating Act the issue was whether the valuation roll that was prepared was transmitted to the Town Clerk and laid before the Council and whether it was made available for public inspection. It is evident from the affidavit that was sworn in support of the appellants' motion that the roll was laid before a special full council meeting but the appellants maintained that the special full council meeting was illegally convened. The minutes of the meeting were availed to the Court. From the minutes the draft valuation roll was laid before the Council and this is supported by a Gazette Notice Number 10214 that notified the public of the availability of the draft valuation roll for public inspection. We find that the appellants failed to substantiate their contention that the special meeting was illegally convened or that the draft valuation roll was not made available for public inspection.

[35] Further, **Section 18** of the valuation for Rating Act states as follows:

“18. Coming into force of draft rolls and validity of valuation rolls

(i) A draft valuation roll or draft supplementary valuation roll which has been made before the local authority in accordance with Section 9(2) shall for purposes of any law providing for the imposition of rates on land by a local authority, deemed to be the valuation roll or supplementary valuation roll, as the case may be, and to have come into force at the commencement of the financial year for which it has been prepared.

(ii) A valuation roll shall remain in force, as amended from time to time by supplementary valuation roll, until it is wholly superseded by a new valuation roll.”

[36] Two main things arise from the application of this provision. First, the previous roll prepared by the Council in 1992 remained in force as amended by any supplementary valuation roll, until the draft valuation roll that was being prepared by the Council came into force. Secondly, the draft valuation roll was deemed to be the valuation roll for purposes of imposition of rates by the Council, immediately the draft valuation roll was laid before the council and appropriate notice communicated to the ratepayers. This is notwithstanding the procedure for lodging objections to the draft valuation roll through the valuation court.

[37] **Section 28(1)** of the Valuation for Rating Act is instructive that an appeal from the decision of the valuation court shall not operate as a stay of execution against the decision appealed from. Thus, although there is provision for objection proceedings, and a right of appeal in regard to the objection proceedings, where one is dissatisfied with the valuation process, once the roll comes into effect, unless stayed by the Court, the objection proceedings or an appeal *per se* would not stop the implementation of the new roll. It is not therefore correct as was posited that the Council violated the rules of natural justice by the application of the new valuation roll before the conclusion of the objections in the valuation court. The ratepayer's right to raise objection in the valuation court remained intact. Indeed, Section 28(1) of the Valuation for Rating Act provides for appropriate recompense where the ratepayer is found to have made excess payment following any amendments to the roll as a result of the decision of the valuation court or on appeal.

[38] In **Pithon Waweru Maina vs Thuka Mugiria 1983 eKLR** this Court adopting **Mbogo vs Shah** (supra) stated as follows:

“...the Court of Appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that the judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge has been clearly wrong in the exercise of his discretion and that as a result there has been misjustice.”

[39] Ultimately, we find that the learned Judge properly directed himself and came to the right conclusion in regard to the appointment of Appex valuers limited; compliance with the requirement for the method of area rating; and the requirement for preparation and deposit of the draft valuation roll for public inspection and in regard to the Minister's consent for the valuation and preparation of the valuation roll after the ten-year statutory period as we have stated. We therefore cannot fault his exercise of discretion in the dismissal of the appellants' motion.

[40] For the aforesaid reasons this appeal fails and we accordingly dismiss it. As we consider that the appellants were acting in a public spirited manner in filing the proceedings and this appeal, we order that each party do bear own costs of the appeal.

Those shall be the orders of this Court.

Dated and Delivered at Nakuru this 22nd day of November, 2017.

H. M. OKWENGU

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JUDGE OF APPEAL

P. O. KIAGE

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JUDGE OF APPEAL

J. MOHAMMED

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR