



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JR CASE NO. 53 OF 2007

REPUBLICAPPLICANT

VERSUS

CITY COUNCIL OF NAIROBI.....1ST RESPONDENT

MINISTER FOR LOCAL GOVERNMENT2ND RESPONDENT

EX-PARTE

LAW SOCIETY OF KENYA

JUDGEMENT

Through the notice of motion amended on 6th March, 2013 the ex-parte Applicant the Law Society of Kenya prays for orders:

“1. THAT a Judicial Review Order of Certiorari do issue to call up into the High Court and quash the proceedings and decision made by the City Council of Nairobi to impose Single Business Permit fees as approved by the Minister for Local Government and published in Gazette Notice No. 9010 of 2006 against the legal profession and or members of the Law Society of Kenya.

2. THAT a Judicial Review Order of Prohibition do issue directed to the City Council of Nairobi, the Minister for Local Government, their officers, agents and or servants howsoever to prohibit and or prevent them from demanding, seeking or receiving applications for Single Business Permits or fees for such application or permit or licence as published under Gazette Notice No. 9010 of 2006 or otherwise howsoever from the legal profession, advocates and or members of the Law Society of Kenya.

3. THAT costs of this application be awarded to the Applicants.”

The City Council of Nairobi and the Minister for Local Government are the 1st and 2nd respondents respectively.

When the matter came up for hearing on 4th December, 2013 there was no appearance for the 1st

Respondent although its counsel was in Court on 23rd September, 2013 when the matter was fixed for hearing.

Ms Chimau for the 2nd Respondent indicated to the Court that her client was not opposed to the application. She furnished the Court with a letter Ref. No. MLG 1349-01/XIII (62) dated 23rd January, 2012 addressed to the Attorney General by the Permanent Secretary of the Ministry of Local Government indicating, *inter alia*, that:

“Our instruction on the matter are as follows:- vide a circular No. 35/2011 Ref MLG/919/(20) of 15th February 2011 addressed to all the Town Clerks, City Council of Nairobi, Municipal and Town Councils, County Council and all the Regional Local Government officers by the Permanent Secretary, the Councils were stopped from levying single business permits to the members of the professions reflected therein including Engineers.”

Ms Chimau also tendered to the Court the decision of Majanja, J in **REPUBLIC v THE CITY COUNCIL OF NAIROBI AND ANOTHER, EX-PARTE ENG JONATHAN M MBUI AND 3 OTHERS, Nairobi H.C. JR Misc. Civil Application No. 243 of 2007** in which the learned Judge observed that:

“Gazette Notice No. 9010 is made by the Town Clerk, Nairobi with the consent of the Minister under the provisions of section 148 of the Local Government Act (Chapter 265 of the Laws of Kenya). In the circumstances without concurrence of the Minister, the rules may not be enforced.”

I have considered the material placed before the Court and I agree with Majanja, J that without the Minister's agreement the regulations of the 1st Respondent cannot be enforced.

In the circumstances of this case I allow Prayer 1 of the application. Having done so, I see no need for allowing the 2nd Prayer. Costs will be in the cause.

Dated, signed and delivered at Nairobi this 31st day of March , 2014

W. KORIR,

JUDGE OF THE HIGH COURT



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