**Republic v Maitha and another *ex parte* Waudi**

**Division:** High Court of Kenya at Nairobi

**Date of ruling:** 26 January 2004

**Case Number:** 802/03

**Before:** Lenaola AJ

**Sourced by:** LawAfrica

**Summarised by:** A Mwanzia

*[1] Constitution – Supremacy – Whether section 27(2) of Local Government Act inconsistent with section*

*33 of Constitution – Local Government Minister’s power to revoke nomination of nominated councillor –*

*Whether revocation void – Section 27(2) – Local Government Act (Chapter 265) – Section 33 –*

*Constitution of Kenya.*

*[2] Judicial review –* Certiorari *– Nomination of councillor revoked and another appointed* vide Gazette *notice – Whether Minister had power to revoke nomination – Whether* Gazette *notice sufficient as personal notice – Whether* certiorari *could issue.*

**Editor’s Summary**

The Applicant was nominated by the National Rainbow Coalition (“NARC”) Party as a councillor in the Municipal Council of Mombasa. The party sent the Applicant’s name for verification by the Electoral Commission of Kenya. The Electoral Commission accepted the nomination, approved his name and forwarded it to the Minister for Local Government for gazettement and formal appointment of the Applicant as a nominated councillor. The Minister for Local Government (First Respondent) proceeded to make the appointment and gazetted the Applicant as a lawfully nominated councillor of the Mombasa Municipal Council. On 20 June 2003, the Minister revoked the nomination aforesaid and published the revocation in the Kenya *Gazette* Notice number 4201. He also nominated one Fred Oyucho as a councillor in place of the Applicant through *Gazette* Notice number 4200. The Applicant made an application to the High Court seeking orders of *certiorari* to quash the Minister’s decisions signified under the two *Gazette* notices aforesaid. It was the Applicant’s contention that the Minister was required to consult the Electoral Commission of Kenya and political parties as required under section 33 of the Constitution of Kenya before making the revocation. Secondly, the Applicant stated that the Minister was required to serve him notice of the termination as per section 27(2) of the Local Government Act (Chapter 265) and that the *Gazette* notice was not sufficient. The Applicant contended that in so far as section 27(2) of the Local Government Act purported to give the Minister power to revoke nomination of councillors, it was inconsistent with section 33 of the Constitution which required consultations and was thus null and void. The Respondent opposed the application arguing that the Minister was not required to consult with anybody in revocation of the nomination as per section 27(2) of the Local Government Act.

**Held** – The Minister did not deliver notice in writing of the Applicant’s revocation of his nomination as councillor as required by section 27(2) of the Local Government Act. An advertisement or notice to the world in the nature of a Kenya *Gazette* notice was not such notice as required by section 27(2) aforesaid. It would be against the spirit of section 33 of the Constitution to allow consultations up to the point of appointment without the same process of consultation. The proviso to section 27(2) of the Local Government Act in as far as it purports to contradict section 33 of the Constitution was inconsistent and void. The nomination by the Minister of Fred Oyucho without following set down procedure was also void. Orders of *certiorari* would accordingly issue to quash the Minister’s decision as contained in *Gazette* notices number 4200 and 4201.

**No cases referred to in ruling**