



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

JUDICIAL REVIEW NO 2 OF 2019

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL

REVIEW BY WAY OF ORDERS OF MANDAMUS, CERTIORI AND PROHIBITION

IN THE MATTER OF THE CONSTITUTION OF KENYA, THE LAW REFORM ACT

AND THE FAIR ADMINISTRATIVE ACTION ACT

PETER KIENI KANUNA.....1ST APPLICANT

JAMES WAHOME KIBAKI.....2ND APPLICANT

CASSIUS MUMO MURINGO.....3RD APPLICANT

(Suing in their capacity as members of Thogoto Ukai Self Help group)

AND

KIKUYU DISTRICT SOCIAL DEVELOPMENT OFFICES.....1ST RESPONDENT

THE PRINCIPAL SECRETARY

MINISTRY OF LABOUR AND SOCIAL PROTECTION.....2ND RESPONDENT

PROTAZ INZIANI MAJANJE.....1ST INT. PARTY

JOSEPH NDUATI NGOBU.....2ND INT. PARTY

PETER MUTHEE KIHUYU.....3RD INT. PARTY

R U L I N G

1. By a chamber summons filed on 20th February 2020 **Peter Kieni Kanuna, James Wahome Kibaki** and **Cassius Mumo**, the 1st to 3rd Applicants respectively, approached this court under Order 53 Rule 1 of the Civil Procedure Rules and Sections 8 and 9 of the Law Reform Act. Seeking leave to apply for judicial review orders of certiorari, prohibition and mandamus against the Kikuyu District Social Development officer (1st Respondent) and the Principal Secretary Ministry of Labour and Social Protection (2nd Respondent). Three Interested Parties are also named in the chamber summons. The Applicants assert to be members of and chairperson, secretary and treasurer respectively, of **Thogoto Ukai Self Help Group**. Their complaint relates to the alleged refusal by the 1st Respondent to renew the registration of the Self-Help Group under Certificate No. KC 221435, when approached for the purpose in January 2018. In that regard they also seek that the leave granted also does operate as stay of the decision/order of the said Respondent.

2. The court directed that the prayer for leave be argued *inter partes*. On the hearing date, Mr. Munaawa represented the Applicants. Conceding that there is a leadership dispute in the Self Help Group pitting the Applicants against the Interested Party, and the existence of litigation before the Environment and Land Court (ELC) at Thika, he asserted that the sole concern in the instant case is the renewal of the group's registration.

3. Appearing for the Interested Parties, Mr. Wanjeri, referring to copies of rulings in respect of the ELC litigation annexed to the Applicants' affidavits submitted that the issue in contention herein is the *locus standi* of the Applicants. He also pointed out that the Applicants were facing criminal charges in **Nairobi CM's Cr. Case No.271/17** in relation to the affairs of the **Self-Help Group**. In his view the Applicants having failed to persuade the ELC on their capacity or standing, have now approached this court to obtain through the "back door" the recognition of their status. He therefore opposed the granting of leave. In a quick rejoinder Mr. Munaawa asserted that all that the Applicants desire is the renewal of registration and that the issues relating to the proper office bearers of the Self-Help Group can be canvassed in the main suit.

4. The court has considered the material canvassed in respect of the motion as well as perused the two rulings of the **ELC Thika in ELC Case No.6 of 2017 Thogoto Ukai Self-Help Group and Peter Keru Kanene v Joseph Gachoki Gitau t/a Geo-acre Surveys and 3 others**. There is no dispute that the Self-Help Group is engulfed in leadership wrangles pitting the present Applicants against the Interested Parties, and that in **Nairobi CM's case No. 271 of 2017** the 1st and 2nd Applicants face charges of giving false information to a person employed in the public service contrary to section 129 (a) of the Penal Code, and making a document without authority contrary to section 357 (a) of the Penal Code. The particulars in the first charge allege false information to the effect that the registration certificate of **Thogoto Ukai Self-Help Group** was lost while the second charge relates to alleged falsification of minutes of a **Thogoto Ukai Self-Help Group** meeting purportedly held on 30th January 2014.

5. The question that arises is whether the Applicants are the elected current office bearers of **Thogoto Ukai Self-Help Group** with requisite authority to bring the instant suit on behalf of the group. No document has been tendered in this regard. While it is not clear at this point under what legal regime, if not the Societies Act, that the Self-Help Group is registered, the Group being an artificial person ought to act through its proper office bearers. The ELC at Thika was confronted with a similar issue in **ELC Case No. 6 of 2017**. The Court's ruling delivered on 28th September 2018 indicates that it had summoned **Rose Mwangangi** the District Social Development Officer, Kikuyu to shed light on the issue, and that the Interested Parties were the current office holders at the time, having succeeded the previous leadership which had Protus Inziani Majanje (chairman), Peter Kieni Kanuna (secretary) and Peter Muthee Kahunyi (Treasurer).

6. The Court also considered a letter written by the present Applicants on 3rd October 2017 and addressed to the Ethics and Anti-Corruption Commission complaining about the conduct of the District Social Development Officer Rose Mwangangi, before concluding that;

"From the above letter, it is very clear that there are leadership wrangles in Thogoto Ukai Self-Help Group .. that there is a conflict as to who are the genuine office bearers of 1st Plaintiff (Thogoto Ukai Self-Help Group) and who would have the legal capacity to instruct an advocate on behalf of the 1st Plaintiff...."

For the above reasons, the court proceeds to stay this suit until criminal case No.271 against Peter Kieni Kanuna and James Wahome Kibaki is heard and determined."

7. Despite this ruling delivered on 28.9.18, some of the parties who had filed ELC Case No.6 of 2017 proceeded to file the present motion. The issues regarding the proper office bearers of the Self-Help Group have not been resolved and neither has the criminal case against the 1st and 2nd Applicants been determined. The question of the proper persons with capacity to bring legal action on behalf of the Self-Help Group are as live in this case as it was in **ELC Case No. 6 of 2017**, and it is therefore absurd for the Applicants to claim as they did, that the question will be determined in the main suit.

8. In **Mombasa High Court Misc. Application No.384 of 1996 R V County Council of Kwale and Another Ex-parte Kondo and 57 Others, Waki J** as he then was, while underscoring the purpose of leave before judicial review proceedings observed as follows:

"The purpose of application for leave to apply for judicial review is firstly to eliminate at an early stage, any applications for judicial review which are either frivolous, vexatious or hopeless, and secondly, to ensure that the Applicant is only allowed to substantive hearing if the court is satisfied that there is a case for further consideration. The requirement that leave must be obtained before making an application for judicial review is designed to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints on administrative error, and to remove uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived."

9. These objects were reiterated in **Meixner and Another v the Attorney General [2005] 2 KLR 189** where the court also stated that the consideration whether or not to grant leave is an exercise in judicial discretion, and the test applicable, is whether or not the Applicant has demonstrated an arguable case or a prima facie case (see also **Mirugi Kariuki v attorney General [1990 – 1994] EA 156**).

10. It is apparent from the Applicants' own material and the rulings in **ELC Case No. 6 of 2017** that the 1st Respondent did not recognize the Applicants as the proper office bearers of Thogoto Ukai Self-Help Group. Significantly, the official registration form in respect of self-help groups, a copy of which is annexed as annexure **"PKK9"** to the verifying affidavit of the 1st Applicant, requires details of elections conducted in the group, and names of the office bearers elected, including the chairperson, secretary, treasurer. The application form has a space provided for the signature and details of the applicant who on the face of it ought to be an elected office bearer as that section is required to be signed by the chairman, treasurer or secretary of the applicant group. In this case, the Applicants were aware that the 1st Respondent did not recognize them as office bearers but went ahead to apply for the renewal of registration no doubt using a similar form.

11. It is common knowledge that two of the Applicants herein are also facing criminal charges in connection with their alleged falsification of matters relating to the affairs of the Self-Help Group. These facts appear to weaken claims of illegality, unfairness or irrationality in regard to the 1st Respondents' treatment of the application by Applicants for the renewal of the registration of the Self-Help Group. The legitimacy of the Applicants' claims to incumbency to offices in the Self-Help Group having been put to question *vide* the ruling of the court in **ELC Case No. 6 of 2017**, the Applicants ought to have first sought to resolve the matter before taking any further action purportedly on

behalf of the Self-Help Group.

12. I think I have said enough to demonstrate that the motion filed on 20th February 2020 is misconceived and cannot be allowed. The same is accordingly dismissed with costs to the Interested Parties.

SIGNED ON THIS 12TH DAY OF JUNE 2020 AND DELIVERED VIA eMAIL TO THE PARTIES ON 12TH DAY OF JUNE 2020

C. MEOLI

JUDGE