



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

JR CASE NO. 12 OF 2017

HUDSON KIBETE.....1ST APPLICANT

GERALD MURORIA.....2ND APPLICANT

FRANCIS KEMERIA.....3RD APPLICANT

HENRY KINOTI.....4TH APPLICANT

VS

THE COUNTY GOVERNMENT OF MERU.....1ST RESPONDENT

MERU COUNTY DIRECTOR OF COOP.....2ND RESPONDENT

SUBCOUNTY COOPERATIVES OFFICER

(IMENTI NORTH/BUURI.....3RD RESPONDENT

UNITED STAR SAVING COOPERATIVE SOCIETY

(FORMALLY NTIMINYAKIRU SAVINGS &

CREDIT COOP SOCIETY LTD.....4TH RESPONDENT

JUDGMENT

By Chamber summons dated 6th November 2017, the applicants herein sought for order that herein sought for order that leave be granted to them to apply for orders of Certiorari, Mandamus and prohibition to prohibit the Respondents from implementing the decision of Cooperatives Enterprise Development on Tourism in the County Government of Meru contained in inquiry Report CS9233 of United Saving and Credit Co-operative Society Ltd and to compel the Respondents to clear the names of the applicants by expunging their respective names from the said inquiry report pending the hearing and determination of the application herein or in the alternative the implementation of the said enquiry report e suspended pending the hearing and determination of the main application.

It was also sought that if leave is granted same should operate as stay of implementation of the Respondents decision effected by a letter dated 28th March 2017 and 3rd April 2017 until substantive application is heard and determined.

Leave to bring into court the decision of the Respondents was granted and applicants were given 21 days within which to file substantive motion and serve.

On 8.5.2018 when matter went before Justice Jaden no substantive motion had been filed and no affidavit of service had been filed to show 1st & 3rd Respondents had been served. Another hearing date was taken.

On 7.6.2018, Mr Kithinji Advocate appeared for 4th Respondent. There was no appearance for the applicants and their advocate and the court dismissed the matter and closed file for reasons no substantive motion had been filed as ordered on 30th November 2017.

By an application dated 28th September 2018, the applicants sought that the court reinstates the suit for hearing and determination on merit and that the applicants be granted leave and/or extension of time to file Notice of motion out limitation of time. The application is supported

by affidavit of Hudson Kibete sworn on 28th September 2018.

By a Replying Affidavit sworn on 18th October 2018 by Purity Kagwiria the Chief Executive officer of 4th Respondent the application was opposed.

The court directed that supplementary affidavit in response to Replying Affidavit be filed concurrently with written submissions which the court was to rely on to determine application dated 28th September 2018.

1st Respondents legal officer also opposed application dated 28.9.2018 by a Replying Affidavit sworn on 5th November 2018. The actions which the applicants had sought to be removed into court to be quashed and/or set aside were made vide an inquiry Report CS 9233 was made in December 2016, and subsequently followed via letters dated 28th March 2017 and 3rd April 2017.

The applicants filed chamber summons seeking leave on 27th November 2017 and they were granted 21 days leave pursuant to order 53 Rule 3(11) of the Civil Procedure Rules which provides:-

“When leave has been granted to apply for an order of Mandamus, prohibitor or certiorari the application shall be made within 21 days by Notice of Motion to the High court and there shall unless the judge granting leave has otherwise directed be at least eight clear days between the service of the notice of motion and the day named therein for hearing.

21 days from 30.11.2017 was falling on 20th December 2017. Order 53 Rule 3(1) being mandatory the applicants were supposed to have filed the substantive motion by 20th December 2017 but by 8th May 2018 and 7th June 2018 they had not filed the substantive Notice of Motion and from the court record they were not present in court on both days. If the advocate for the applicants was indeed in court he would have seen that the matter was listed before Majanja J as per the cause list and it is not tenable to say we sat in High court No. 2 before another Judge when the cause list annexed clearly indicates who the presiding judge was.

Even if Justice Majanja had not made the order closing this file on 7th June 2018 the 21 days had lapsed and in my considered view there was nothing to extend and no suit to reinstate.

The authorities cited by the 1st Respondent is relevant in all fours and the court is guided by them

7 to find that applicants application dated 28th September 2018 has no merit and it is dismissed with costs to the 1st and 4th Respondents.

HON. A.ONG'INJO

JUDGE

RULING DELIVERED, DATED AND SIGNED IN COURT ON 26TH FEBRUARY 2019.

In the presence of:

C/A: Kinoti

Mr Advocate for 4th Respondent

Mr Ngugi Advocate holding brief for Majail for applicants

M/S Gichunge Muthuri & Co Advocate for 3rd Respondent

HON. A.ONG'INJO

JUDGE