



**THE REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**JUDICIAL REVIEW DIVISION**  
**MISCELLANEOUS APPLICATION NO. 283 OF 2018**  
**IN THE MATTER OF: AN APPLICATION FOR LEAVE TO COMMENCE**  
**PROCEEDINGS IN THE NATURE OF JUDICIAL REVIEW**  
**AND**  
**IN THE MATTER OF: THE FORESTS CONVERSATION AND MANAGEMENT ACT 2016**  
**BETWEEN**  
  
1. HON. KAMAU THUO  
2. ALBERT GAKURU MUCHIRI  
3. ELIAS KARIUKI MUCAU  
4. SOPHIE GATHONI  
5. ISAAC KAROGA WANJOHI.....**APPLICANTS**  
  
**VERSUS**  
  
1. THE EXECUTIVE BOARD OF FRIENDS OF KARURA FOREST  
**COMMUNITYFOREST ASSOCIATION**  
2. KENYA FOREST SERVICE BOARD  
3. THE REGISTRAR OF SOCIETIES  
4. NATIONAL ALLIANCE OF COMMUNITY FOREST  
**ASSOCIATIONS (KENYA).....RESPONDENTS**

**RULING**

**Introduction**

1. The Applicant instituted this suit by way of ex parte Chamber Summons dated 16<sup>th</sup> July, 2018, brought pursuant to the Provisions of Order 40 Rule 2 of the Civil Procedure Rules .The Ex-parte Applicant through that application sought the leave of court to commence Judicial Review proceedings against the Respondents for the following orders :-

- a) That this Application be and is hereby certified urgent and be heard ex-parte in the first instance.
- b) That leave be granted for an order of CERTIORARI to remove into this Honourable Court and quash the decision made by the

Respondent during the Annual General meeting held on 27<sup>th</sup> June, 2018.

c) That leave be granted for an order of MANDAMUS to compel the Respondents have the Associations Audit of all donor projects and should be conducted by an independent and credible audit firm.

d) That leave be granted to the Applicant to institute Judicial Review Proceedings for an order of PROHIBITION prohibiting the Defendants/Respondents from being in office, directly or indirectly and or/unlawfully, maliciously and arbitrarily carry out business as the Board of the Association, member usage of any FKFCFA premises, be barred from carrying out any management responsibility(Projects on the ground) and further leave from office with immediate effect pending hearing and determination of the main motion.

e) That leave be granted herein for a declaration that the Kenya Forest Service Board takes over the FKFCFA Board mandate or appoints an interim FKFCFA Board until the fresh elections are conducted, and all donor projects are audited since the inception of the FKFCFA and the case being heard and determined.

f) That the Respondents be condemned to pay the costs for this Application.

2. The Applicants Application is supported by an annexed Verifying Affidavit sworn by Hon. Kamau Thuo being the 1<sup>st</sup> Applicant and a statutory statement.

3. The Application was listed for Hearing on 16<sup>th</sup> July, 2018 when Court directed that the Application as well as a Hearing Notice be served upon the Respondents within 7 days.

4. The Applicants Case is that they are members of the Friends of Karura Forest Community Forest Association(FKFCFA) a community Association established under the Forest Act of 2005(Repealed) and that the Association holds its Annual General Meeting as required by the Constitution and Association Rules but that since June 2012 when the 1<sup>st</sup> Respondent was appointed no elections have ever taken place and as such the same is a contravention of the Constitution by the members of the 1<sup>st</sup> Respondent re-electing themselves.

5. That further the Associations Accounts, records, documents and projects have not been audited sufficiently under the tenure of the Respondents.

#### **The 1<sup>st</sup> Respondent's Case.**

6. The 1<sup>st</sup> Respondent filed its Grounds Of Opposition opposing the Application on the following grounds:

a) That the Application is incompetent, misconceived and fatally defective rendering it incapable of being sustained in law.

b) That on a perfunctory perusal of the Application, the Applicants do not disclose a prima facie arguable case for the reason that the grounds on which the Application is premised are too general and vague.

c) That the reliefs sought in the application have no legal basis as the association is not under the direct supervision or regulation by the Kenya Forest Service.

d) That the Application is consequently vexatious, frivolous and an abuse of the court process. It is therefore untenable and should be dismissed with costs.

#### **Submissions**

##### **Applicants Submissions**

7. The Applicants filed their submissions on 10<sup>th</sup> August, 2018. The Applicants submitted that the Friends of Karura Forest Community Forest Association(FKFCFA) has its constitution and Rules setting out guidelines as to how the Association shall be run on a day to day basis and that in the same breath the Constitution provides for its members being any person above the age of 18 and body corporate or any resident or community association bordering Karura Forest subscribing to be members of the Association.

8. The Applicants submit that the Rules of Natural Justice concern procedural fairness as a constitutional requirement in administrative action. That Judicial Review is available as a relief to claim of violation of rights and freedoms guaranteed in the constitution.

##### **The 1<sup>st</sup> Respondents Submissions**

9. The 1<sup>st</sup> Respondent Submitted that the instant application does not meet the threshold for granting leave to judicial review proceedings. The 1<sup>st</sup> Respondent submitted that the backbone of the Application is the Elections held by the Association and that challenging the same elections would be outside the scope of the Judicial Review and that bringing an application in respect of the affairs of an association or society amounts to an abuse of the court process and wastage of precious judicial time.

##### **The 3<sup>rd</sup> Respondents Submissions**

10. The 3<sup>rd</sup> Respondent submitted that the only instance that the 3<sup>rd</sup> Respondent is mandated to receive Annual General Meetings is when there are new elections for the Society and that by the time the Applicants were filing this Application the 3<sup>rd</sup> Respondent had not been served with any application and were only made aware by the 1<sup>st</sup> Respondent who served them the documents later after the genesis of this Application, which the 3<sup>rd</sup> Respondent declined to accept.

11. The 3<sup>rd</sup> Respondent further submitted that the duty of mandamus does not fall under the mandate of the office of the Registrar of Societies and that there is no cause of action against the 3<sup>rd</sup> Respondent for the leave sought or other prayers and asked that the Court expunges the 3<sup>rd</sup> Respondent from the suit.

### **Determination**

12. I have considered the Application before this court, the Grounds of Opposition as well as Submissions by Counsel. In **Republic vs. County Council of Kwale & Another Ex Parte Kondo & 57 Others Mombasa HCMCA No. 384 of 1996** the Court expounded on the function of leave in Judicial Review proceedings. The Court held:

*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 frivolous, vexatious or hopeless and secondly to ensure that the applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit 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 or administrative error, and to remove the 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.... Leave may only be granted therefore if on the material available the court is of the view, without going into the matter in depth, that there is an arguable case for granting the relief claimed by the applicant the test being whether there is a case fit for further investigation at a full inter partes hearing of the substantive application for judicial review. It is an exercise of the court's discretion but always it has to be exercised judicially.*

13. It is at the leave stage when the Court will have to establish whether there exists a prima facie suit to allow the parties to move to the hearing of the substantive motion. In order to establish the existence of the prima facie suit, it would require that the court examine the substance of the applicants cause. Differently put, the requirement for leave serves important substantive function and is not a procedural technicality.

14. It is not in dispute that the inception of this suit was brought about upon the realization that an Annual General Meeting held by the Respondents was alleged to be unconstitutional by the Applicants. However, the Applicants have filed the application not only against the Association but also against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents without sating in detail what kind of grievances these Respondents have caused. Judicial Review proceedings are aimed at arriving at justice expeditiously. It requires no oral evidence. When parties are simply joined to proceedings without thought, it becomes difficult for the Judicial Review remedies to be effective. Leave cannot just be granted to start a process against parties against whom remedies do not lie. The Applicants must circumscribe the limits of their claims against each Respondent and then seek the leave of the Court to commence Judicial Review proceedings. For those reasons the application before the Court lacks merit and is dismissed. Parties to bear own costs.

**Dated, Signed and Delivered in Nairobi this 11<sup>th</sup> day of April, 2019.**

**E. OGOLA**

### **JUDGE**

In the presence of:

M/s Onyango h/b Mr. Rabala for Applicant

M/s Opiyo h/b Mr. Mbaabu for 1<sup>st</sup> Respondent

Mr. Ibrahim Court Assistant