



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NANYUKI**

**JUDICIAL REVIEW NO. 3 OF 2016**

**IN THE MATTER OF AN APPLICATION BY ELIJAH MUTHEKI MBUGUA FOR LEAVE  
TO APPLY FOR JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION**

**AND**

**IN THE MATTER OF THE CO-OPERATIVES SOCIETIES ACT (CAP 400) LAWS OF KENYA**

**AND**

**IN THE MATTER OF LAW REFORM ACT CAP 26 LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE FAIR ADMINISTRATION ACTIONS ACT NO. 4 OF 2015**

**AND**

**IN THE MATTER OF CONSTITUTION OF KENYA**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**-VERSUS-**

**NANYUKI EXPRESS CABS**

**SAVINGS & CREDIT CO-OPERATIVE SOCIETY.....1<sup>ST</sup> RESPONDENT**

**COOPERATIVE SOCIETIES TRIBUNAL.....2<sup>ND</sup> RESPONDENT**

**AND**

**ELIJAH MUTHEKI MBUGUA.....EX PARTE APPLICANT**

**SUMMARY OF THE COURT'S RULING**

1. **ELIJAH MUTHEKI MBUGUA** a former member of Nanyuki Express Cabs Saving & Credit Co-operative Society Limited has brought this action seeking for leave to file for prerogative orders.

2. He seeks leave to file for certiorari order, to have the decision of the society to denying motor vehicle KBW 474 Z and KBS 830 V right to access the society's Bus Park and the decision of the society to expel him from the society's membership removed to this court for quashing. He also sought for leave to file order of mandamus to order the society to permit the aforesaid vehicles to park at the society's bus park and to order the society to cancel the expulsion of Elijah from the society. Finally he seeks leave to file for order of prohibition to prohibit the society from preventing the aforesaid vehicles accessing the society's bus park and preventing the society from expelling Elijah from its membership.

3. Having considered the submissions of the parties the court made the following determination:

**(a) To grant leave as sought would be in contravention of section 8 and 9 of the Traffic Act Cap 403 which requires a vehicle which has changed ownership to have its registration changed to reflect that transfer and that change of ownership to be effected in the register within 14 days of such transfer or change. To grant such leave would also be to allow enforcement of illegal contracts in view of the above provisions of the Traffic Act.**

**(b) Under clause 7 of the society's by-laws membership of the society is, amongst others, is open to those who own matatu. Elijah by the Exhibits he produced before court was not the owner of the matatus to which the society's impugned decision was directed.**

**(c) The filing of this action while the case before the tribunal subsisted is an abuse of the court's process for it is tantamount to inviting two determinations over the same matter.**

**(d) The Tribunal has jurisdiction as provided under section 76 of the Co-operative societies Act Cap 490 to determine any dispute between members or between members and the society. Emphasis is laid on the word any. It follows that the decision of the society is within the purview of that section.**

**(e) The tribunal by virtue of section 7 of the Fair Administration Action Act No. 4 of 2015 has jurisdiction to entertain an action under that Act.**

4. In the end the finding of the court is that the chamber summons dated 15<sup>th</sup> February 2016 is without merit and is dismissed with costs to all the respondents.

**DATED AND DELIVERED THIS 31<sup>ST</sup> DAY OF MAY 2016.**

**MARY KASANGO**

**JUDGE**

**CORAM**

Before Justice Mary Kasango

Court Assistant:.....

Applicant .....

Exparte applicant:.....

1<sup>st</sup> Respondent: .....

2<sup>nd</sup> Respondent

For Applicants .....

For Respondents: .....

COURT

Summary of the court's ruling read in open court.

**MARY KASANGO**

**JUDGE**