



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..... 1ST
RESPONDENT**

**COOPERATIVE SOCIETIES TRIBUNAL 2ND
RESPONDENT**

AND

**ELIJAH MUTHEKI MBUGUA EX PARTE
APPLICANT**

RULING

1. The exparte applicant, **ELIJAH MUTHEKI MBUGUA (Elijah)** filed a chamber summons dated

15th February 2016. By that chamber summons Elijah seeks the following prayers:-

1. **Leave be granted to the Ex-parte applicant to apply for an order of Certiorari directed at Nanyuki Express Cabs Services Savings and Credit Co-operative Society limited quashing the decision of the Management committed of the respondent in item 8 in Minute 4/15/11/2015 and item No.. 6 in Minute 3/27/11/2015 suspending operations of Exparte applicant's Motor Vehicle Reg. No. KBW 474 Z from operation and expelling the Exparte applicant from the membership of the respondent herein.**
2. **Leave be granted to the Ex-parte applicant to apply for an order of Mandamus directed at Nanyuki Express Cabs Services Savings & Credit Co-operative Society Limited directing the Management committee of the Respondent compelling it to issue a letter addressed to the National Transport Service Authority (NTSA) to issue a TLB license in respect to the Ex-parte applicant's motor vehicle Registration No. KBW 474 Z to enable the said motor vehicle operate between Nanyuki and Nairobi.**
3. **Leave be granted to the E-parte applicant to apply for an order of prohibition directed at the Nanyuki Express Cabs Services savings & Credit Co-operative Society Limited prohibiting it from suspending operations of Ex-parte applicant's Motor Vehicle Reg. No. KBW 474 Z from operation and expelling the Ex-parte Applicant from the membership of the Respondent herein.**
4. **The leave granted herein to operate as a stay of the proceedings at the Co-operative Societies Tribunal Case No. 7576 of 2015 Elijah Mutheki Mbugua –vs – Nanyuki Express Cabs Services savings & Credit Society Limited & 2 others fixed for hearing on 18th February 2016 until the hearing and determination inter parties of the Exparte's substantive Notice of Motion application for the reliefs sought herein.**

2. The above prayers are based on the grounds that Elijah is a **member** of the **Nanyuki Express Cabs Savings & Credit Co-operative Society Limited (the Society)** being **member No. 315**. He became the Society's members in the year 2009 and is the holder of **623,655 shares**. The membership to the society is restricted to those who are owners of public service vehicles commonly known as Matatu. Elijah describes himself a beneficial owner of two matatu vehicles namely **KBS 830 V** and **KBW 474 Z**. He deponed that he purchased those vehicle and is in the process of having them registered in his name. Elijah stated that the society had, in contravention of Section 21 of the Co-operative Society Act Cap 490 unlawfully denied the stated vehicles the right to access the Society's public vehicle's stage or parking bay at Nanyuki and Nairobi. As a consequence of that denial the subject vehicles have been unable to pick or drop passengers from the said stages. That that action has caused Elijah loses and has denied him income to enable him service the loans he obtained to purchase the vehicle. Elijah stated that the denial to access those stages was unlawful and arbitrary which action has breached his legitimate expectations to operate transport business. Elijah further deponed that the society has also declined to issue him with a letter to National Transport Services Authority (NTSA) to enable him obtain a licence from Transport Licensing Board (TLB) for the two aforesaid vehicle to operate on the road and carry passengers between Nanyuki and Nairobi.

3. Following those actions that Elijah attributes to the society, he on 9th December 2015 filed a case before the Tribunal, envisaged under Cap 490, being Tribunal Cause No. 756 of 2015. By his plaint before that Tribunal Elijah sued the society as the 1st defendant and the society's chairman and vice chairman as the 2nd and 3rd defendant respectively. In that plaint Elijah set out the same facts set out herein before and prayed for the following prayers:-

1. **Loss of income for all the days motor vehicles registration No. KBS 830 V and KBW 474 Z have been denied serviced by the defendants until the services are restored and damages for loss of user for the same period.**

2. **An order compelling the defendant to permit the plaintiff's motor vehicles KBS 830 V and KBW 474 Z to receive all services in the defendant's stages in Nanyuki and Nairobi respectively.**

3. **A permanent injunction against the defendants by themselves, agents, employees, proxies and any other person acting on their behalf from interfering with the plaintiff's motor vehicle registration No. KBS 830 V and KBW 474Z from accessing, picking and dropping passengers from the 1st defendant's stages in Nanyuki and Nairobi or in any other way interfering with the operations of the said motor vehicles.**

3. It is important to note that in seeking the above prayers Elijah pleaded in his plaint, in additions to the facts set out above, as follows:-

“The defendant's actions to deny the plaintiff's motor vehicle to receive services at the 1st defendant's stage is unlawful, unprocedural and illegal and the same is null and void.”

4. Elijah in filing his plaint before the Tribunal simultaneously filed a Notice of Motion application seeking interlocutory orders of injunction from the Tribunal. The Tribunal on 9th December 2015 granted the following order ex parte.

“That the respondents be hereby ordered to allow the applicant's motor vehicles registration No. KBW 830V and kbw 474 Z to pick and drop passengers from the respondent's bus state pending hearing interpartes.”

5. Elijah by his chamber summons application before this court and dated 15th February 2016, seeking leave to file for prerogative orders, stated that it was not until the society file a reply affidavit on 22nd December 2015 in response to the interlocutory Notice of Motion application before the Tribunal that he realized the exclusion of his vehicle from the Society's bus stage was as a result of a decision reached by the society's management committee captured in minute 4/15/11/2015 and minute 3/27/11/2015. That it was that decision which suspended Elijah motor vehicles from accessing the bus stage and further expelled Elijah from the Society's membership. It is those decisions that led Elijah to seek prayers for leave to file for prerogative orders of certiorari, mandamus and prohibition. Elijah also by his chamber summons before this court seeks for stay of the Tribunal case.

6. The particular paragraphs of the replying affidavit filed by the society's vice chairman before the Tribunal, which provoked this action filed by Elijah before this court, was in the following terms:-

Paragraph 8: That the Management Committed held a meeting on 1st November, 2015 and the issue of the plaintiff's non-production of the ownership documents of motor vehicle registration number KBW 474 Z were discussed and the fact that he failed to appear for the meeting though invited in writing and it was therefore resolved that the matter be referred to the Special General Meeting of 27th November, 2015 and his motor vehicles in the meantime be suspended from operation. I annex hereto minutes of the Management Committee held on 15th November, 2015 the letter dated 6th November 2015 inviting him for the meeting and the delivery note for the letter all marked NO/460/I, NO/460/II, and NO/460/III.

Paragraph 9: That during the Special General Meeting held on 27th November, 2015, which the plaintiff also attended, the members under minute 3/27/11/2015 unanimously resolved to expel the plaintiff from the Society for failure to follow the Sacco rules, carrying passengers by force, refusing to wear uniforms and being arrogant to the stage attendants. I annex hereto a photocopy of the minutes of the

Special General Meeting held on 27th November 2015 marked NO/460/IV.

Paragraph 10: That in the year 2013, during the Special General Meeting held on 30th November, 2013, the members had a under minutes 6/30/11/2013 resolved to give the plaintiff a final warning for his indiscipline and warned that he would be expelled if he does not stop. I annex hereto a photocopy of the minutes of Special General Meeting held on 30th November, 2013 marked NO/460/V.

Paragraph 11: That the action by the First Defendant is not unlawful or meant to cause financial embarrassment or bankruptcy to the Applicant/Plaintiff but he is the author of his own misfortune for failure to comply with the law.”

7. This matter before this court was first filed at the High court at Nyeri. Justice J. Mativo on 16th February 2016 certified the chamber summons for leave to seek prerogative orders as urgent but ordered that it be heard inter partes. In other words the learned Judge ordered the issue of granting leave to file for prerogative orders be heard inter partes. The file since it fell under the jurisdiction of Nanyuki High Court was transferred to Nanyuki High court. It is under those circumstances that this court entertained the inter partes hearing the chamber summons.

Submissions on Behalf of Elijah

8. Learned counsel Mr. Abwuor appeared on behalf of Elijah. He submitted that under the Fair Administrative Action Act No. 4 of 2015 this court has jurisdiction to entertain Elijah’s prayers for prerogative orders. This he said is because the society is a public creature as provided under section 3 of Act 4 of 2015. That is, the definition of the Action which defines administration action to include:-

- i. **The powers, functions and duties exercised by authorities or quasi – judicial tribunals; or**
- ii. **Any act, omission or decision of any person body or authority that affects the legal rights or interests of any person to whom such action relates.**

9. In considering application for leave to file for prerogative orders learned counsel submitted that the court was required to consider whether Elijah has shown a prima facie case. That therefore the court at this stage should involve itself in a filtering process as was stated in the case of **Lady Justice Joyce N. Khaminwa vs Judicial Service commission & another (2014) eKLR.**

10. Learned counsel also submitted that in view of Order 53 Rule 2 of the Civil Procedure rule, Elijah was confined to the six months period in which he could seek the order of certiorari. It is because of that time limitation that Elijah filed the Chamber Summons seeking leave to file, amongst other orders, certiorari.

11. It was also the contention of Elijah that the Tribunal had no jurisdiction to entertain prerogative orders and hence why this matter was filed in this court.

Submissions on Behalf of the Society

12. Learned counsel Mr. Wahome Gikonyo opposed the grant of leave as sought by Elijah. He termed the application as devoid of merit because it sought the leave to seek to quash the decision of the Management committee whereas that decision having been adopted by the Special General Meeting of the Society meant that the decision of the Management Committee had ceased to be.

13. Mr. Wahome stated that the decision of the society to exclude vehicles aforesated from being parked at Society’s Bus stage was preceded by Elijah’s failure to prove his ownership of the stated vehicles. That such proof of owner was a prerequisite to obtaining a letter from the society of approval to NTSA which would in turn permit the issuance of a TLB Licence. In this regard learned counsel Mr.

Gikonyo posed the question whether Elijah was then properly before the court. This question he posed was, as he submitted, to be answered when one considered that firstly Elijah was not the actual registered owner of the stated vehicles; secondly because Elijah had a pending case before the Co-operative Societies Tribunal; and thirdly in view of the provisions of Section 76 of Cap 490.

14. The court was taken through the responses to the three questions posed above. Firstly learned counsel for the society drew the court's attention to the documents attached to Elijah's interlocutory application before the Tribunal. Elijah attached a sale agreements dated 26th October 2015 witnessing the sale of motor vehicle KBW 474 Z. That vehicle by that agreement was sold by Bernard Njenga Nganga to Elijah. In that agreement Bernard Njenga Nganga, the vendor gave the following undertaking under clause (2) of that agreement:-

“The vendor herein covenants that the said motor vehicle is his and he bought the same from the registered owner thereof DENNIS KIPTOO LIMO and no other person has any claim in respect thereto particulars whereof are well known by the purchaser. (Elijah)”

15. Elijah has produced before this court the Registration Certificate in respect to vehicle registration KBW 474 Z. That certificate shows that the registered owner of that vehicle is Dennis Kiptoo Limo.

16. Elijah has also produced a sale agreement between himself and PATRICK K. NDANGILI. That agreement witnessed the sale of motor vehicle registration No. KBS 830V to Elijah by Ndangili. The agreement is dated 22nd May 2015 and produced before court. Produced before court is also the Registration Certificate in respect of motor vehicle KBS 830V which shows that that vehicle is registered in the name of JAP MOTORS LIMITED.

17. Learned counsel Mr. Gikonyo submitted that the filing of this action contravened section 6 of the Civil Procedure Act Cap 21. That section is in the following terms:-

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceedings between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

18. The contravention, as submitted by the society's counsel, was that this action should not proceed to hearing in view of the subsisting Tribunal matter which he argued was substantially similar to this action in court. The society argued that this action in view of its similarity to the one before the Tribunal, amounted to an abuse of the court process. The society in support of this submission relied on the case of **AGNES MUTHONI NYANJUI & 2 OTHERS V ANNAH NYAMBURA KIOI & 3 OTHERS (2015) eKLR** as follows which discussed what amounts to abuse of court:-

“Abuse of process arises when a party makes malicious and deliberate misuse of perversion of regular issued court process (civil or criminal) not justified by the underlying legal action. The action must be intentional. The element of abuse of process in most common law jurisdiction are as follows:

- i. The existence of an ulterior purpose or motive underlying the use of process, and (2) some act in the use of the legal process not proper in the regular prosecution of the proceedings.”**

19. The learned counsel for Elijah in response for the latter submission stated that the society fell in error in treating judicial review as a civil action because it was neither civil or criminal action.

20. The society further submitted that Elijah's present action amounted to abuse of court process because it amount to a gamble. That it was a gamble because Elijah sought to stay the Tribunal action so that if this action failed he would move back to the Tribunal but if he succeeded in this action he would

withdraw the Tribunal matter.

21. The society submitted that the Tribunal has power to interrogate and investigate the conduct of the management committee contrary to what Elijah submitted. Accordingly the society argued there was no reason to stay the action before the tribunal.

Submissions on behalf of Co-operative Societies Tribunal

22. The Tribunal, the 2nd respondent herein, was represented by Ms. Masaka. Counsel for the Tribunal argued that this action was dis-similar to the action before the Tribunal because the action before the Tribunal was premised on Section 76 of Cap 490. That the Tribunal did not have power to grant prerogative orders premised on Act No. 4 of 2015.

Courts analysis and Determination

23. Elijah by his application seeks to challenge the decision of the society to deny the vehicle, he states he has beneficial interest, to park at the society's bus park in Nanyuki and Nairobi; and the society's expulsion of his membership to the society. As correctly submitted by Elijah Judicial Review action is neither civil or criminal in nature. It is a special procedure and this is clearly stated in **section 8** of the **Law Reform Act Cap 26**.

Section 8(1) provides:-

“The High Court shall not, where in the exercise of its civil or criminal jurisdiction, issue any of the prerogative writs of mandamus, prohibition or certiorari”.

24. It follows that Elijah was correct to state that section 6 of Cap 21 cannot be applicable in this action. Section 6 of Cap 21 relates to stay of civil proceedings where another case is directly or substantially in issue in the other suit. The fact that judicial review action is neither civil or criminal was stated in the case **REPUBLIC V NATIONAL TRANSPORT & SAFETY AUTHORITY & 10 OTHER EXPARTE JAMES MAINA MUGO (2015) eKLR viz:-**

“Therefore judicial review is concerned not with private rights or the merits of the decision being challenged but with the decision making process. Its purpose is to ensure that the individual is given fair treatment by the authority to which he has been subjected. See R v Secretary of state for Education and Science exparte Avon county Council (1991) 1 ALL ER 282, at P. 285.

55. It follows therefore that where the resolution of the dispute before the court requires the court to make a determination on disputed issues of fact that is not suitable case for judicial review. The rationale for this is that judicial review jurisdiction is a special jurisdiction which is neither civil nor criminal. It follows that where an applicant brings judicial review proceedings with a view to determining contested matters of facts and in effect determine the merits of the dispute the court would not have jurisdiction in a judicial review proceedings to determine such a dispute and would leave the parties to ventilate the merits of the dispute in the ordinary civil suits”.

25. What Elijah seeks by his chamber summon is leave to seek prerogative orders. The purpose for which an application for leave is made has often been discussed by the courts. The court in the case **LMN V RWK & 4 OTHERS (2015) eKLR stated:-**

“4. Waki, J (as he then was), on the other hand in Republic vs County Council of

Kwale & another ex parte Kondo & 57 Others Mombasa HCMCA No. 384 of 1996
put it thus:-

The purpose of application for leave to apply for judicial review is firstly to eliminate at an early stage an application for judicial review which are either 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 officer and authorities might be left as to whether they could safely proceed with administrative action while proceeding 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 investigation at a full interpartes hearing of the substantive application for judicial review. It is an exercise of the court discretion but as always it has to be exercised judicially.

26. Another case **Muigai International (K) Ltd v Resident Magistrate Milimani Commercial Courts & another (2015)eKLR** the court stated:-

“13. What comes out clearly from the foregoing is that the grant of leave to commence judicial review proceeding is not a mere formality and that leave is not granted as a matter of course. The applicant for leave is under an obligation to show to the court that he has prima facie arguable case for grant to leave. Whereas he is not required at that stage to go into the depth of the application, he has to show that he has not come to court after an inordinate delay and that the application is not frivolous, malicious and futile.”

27. Since the granting of leave is not a mere formality and its intention is to weed out or eliminate at an early stage applications for judicial review which are either frivolous, vexatious or hopeless this court is called up to do just that, that is to weed out or eliminate or filter.

28. The complaint by Elijah is that the society without notice to him has expelled him from membership and secondly has again without notice denied vehicles he has beneficial interest right to park at the society’s bus pack at both Nanyuki and Nairobi towns.

29. Bearing the above in mind it is important to note that the society’s by-laws in clause 7 the qualifications of membership are set out therein. On clause 7(a) a person qualifies to be a member of the society when they are owners of matatu in Nanyuki

30. From that requirement and considering the exhibits produced by Elijah in this case, which exhibits were alluded to above, Elijah does not have that qualification to be a member. Vehicle registration number KBW 474 Z and KBS 830V are not registered in Elijah’s name. From the sale agreements that was exhibited in this case those vehicles were sold to Elijah on 26th October 2015 and 22nd May 2015 respectively. They were sold by persons whom themselves are not the registered owners. Those transactions were in contravention of the Traffic Act Cap 403 and even the continued use of them on the road contravene the same Act. This is as provided by **sections 8 and 9 (1) (2) and 4 of Cap 403** as follows:-

“8. Owner of vehicle

The person in whose name a vehicle is registered shall, unless the contrary is proved

be deemed to be the owner of the vehicle.

9. Change of ownership

(1) No motor vehicle or trailer the ownership of which has been transferred by the registered owner shall be used on a road for more than fourteen days after the date of such transfer unless the new owner is registered as the owner thereof.

(2) Upon the transfer of ownership of a motor vehicle or trailer, the registered owner thereof shall, within seven days from the date of the transfer, inform the Registrar in the prescribed form of the sale or disposition, name, postal and email addresses and telephone number of the new owner, the mileage recorded on the mileage recorder (if any) of the motor vehicle, and such other particulars as may be prescribed, and shall deliver the registration book in respect of such vehicle to the Registrar together with the transfer fee, whereupon the vehicle shall be registered in the name of the new owner.

Provided that, where in any case the registered owner of a motor vehicle fails to comply with the provisions of this subsection, the Authority may, on being satisfied that the registered owner has died, left Kenya, cannot be traced, or has refused to comply with the provisions of this subsection, cause the vehicle to be registered in the name of the new owner on payment of the prescribed fees.

3.

4. Application for registration of a new owner may be made before the actual transfer of the vehicle, but the registration of a new owner shall not be effective until the registration certificate has been surrendered to and re-issued by the Authority.

31. From the above provision it follows the continued use of the two motor vehicles on a road is illegal as per section 9(1) above. If the court does accede to the leave sought it follows the court may entertain the enforcement of an illegal act, that is order the use of a motor vehicle that is not registered in the name of the new owner, that is Elijah. That would be against the spirit of legal principle that no court shall enforce an illegal contract. This principle was discussed by the court of appeal in the case MAPIS INVESTMENT(K) LIMITED V KENYA RAILWAYS CORPORATION (2006)eKLR:-

“In the case of Mistry amar Singh v Serwano Wofunira Kuluby 1963 EA 408 the privy Council on appeal from a judgment and order of the East African Court of Appeal at Page 414 of the report of Lord Morris of Borth-y-Guest in his speech quoted with approval the following quotation from the judgment in Scott v Brown, Doering, McNab & Co (3), (1892) 2 QB724 Lindley LJ at P.728:-

“Ex turpi causa non oritur action. This old and well known legal maxim is found in good sense, and expressed a clear and well recognized legal principle, which is not confined to indictable offences. No court ought to enforce an illegal contract or allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal, if the illegality is fully brought to the notice of the court and if the person invoking the aid of the court is himself implicated in the illegality. It matters not whether the defendant has pleaded the illegality or whether he has not. If the evidence adduce by the plaintiff proves the illegality the court ought not to assist him.”

The illegality is more poignant in this case because those who allegedly sold the vehicles to Elijah were not themselves the owners.

32. The court cannot therefore allow a challenge be made to the decision of the society if such challenge would be tantamount to allowing an illegal act.

33. Further the Co-operative Societies Tribunal is seized of the action first filed by Elijah before this case. Elijah before that Tribunal sought the prayers sought herein before. It will be recalled that in the plaint before the Tribunal Elijah pleaded that the action by the society was unprocedural, illegal, null and void. Because of that Elijah sought compensation for loss he has incurred; and order to compel the society to re-instate his membership and the right to park the subject vehicles at the Society's bus park. Elijah also sought a permanent injunction against the society stopping it from interfering with motorvehicle KBW 474 Z and KBS 830 V.

34. From the above pleading it becomes clear that what Elijah seeks through the present application is what he has sought before the Tribunal be as it may that the prayers are of a different nature. Essentially the relief Elijah will get if he succeeds before the Tribunal is the relief he will get if he succeeds in obtaining the prerogative orders except the damages he sought before the Tribunal. If that is so the application for leave to seek prerogative orders cannot be granted. It has often been said that judicial review is an alternative remedy of the last resort. See the case WEST KENYA SUGAR CO. LTD V KENYA SUGAR BOARD (2014)eKLR where the court stated:-

“I agree with the decision in Nasieku Tarayia vs Board of Directors, Agricultural Finance Corporation & Ano (2012)eKLR – that Judicial Review is an alternative remedy of last resort and where alternative remedies exist, the court has to be satisfied that judicial review is the more convenient, beneficial efficacious alternative remedy available, for the court to grant leave”.

35. In finding that the relief sought before this court is similar to that sought before the Tribunal I reject the submissions made by the learned counsel for Elijah and by the learned counsel for the Tribunal that the Tribunal has no jurisdiction to determine Elijah's Prayer under the Fair Administrative of Action Act No. 4 of 2015.

36. Section 2 interprets an administrative action. Although it is reproduced above I will repeat again. Administrative action includes:

- “(i) The powers, functions and duties exercised by authorities or quasi-judicial tribunal; or**
- ii. Any act, omission or decision of any person, body or authority that affects the legal rights or interests or any person to whom such action relates; within that Act”.**

37. That being so section 7(1) of Act No. 4 of 2015 provides what action an aggrieved person, in respect to administrative action should do. That section 7(1) provides:-

“(1) Any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to:

(a) a Court in accordance with section 8; or

(b) a tribunal in exercise of its jurisdiction conferred in that regard under any written law.”

38. Special notice should be made of Section 7(1) (b) above. It provides that a Tribunal, such as Co-operative Societies, Tribunal, has jurisdiction to entertain a claim under Act No. 4 of 2015. It follows that the submissions that the Tribunal cannot entertain such claim under Act No. 4 of 2015 was in error.

39. The backdrop of Act No. 4 of 2015 is the jurisdiction of the Tribunal in **section 76 of Cap 409**. In that section the Tribunal can entertain any dispute between co-operative societies and its members. Emphasis is laid on the word any. That section 76 of Cap 490 provides:-

76. Disputes

(1) If any dispute concerning the business of a co-operative society arises:-

a. among members, past members and persons claiming through members, past members and deceased members; or

b. Between members, past members or deceased members and the society, its committee or any officer of the society; or

c. between the society and any other co-operative society, It shall be referred to the Tribunal.

(2) A dispute for the purpose of this section shall include:-

(a) a claim by co-operative society for any debt or demand due to it from a member or past member, or from the nominee or personal representative of a deceased member, whether such debt or demand is admitted or not; or

(b) a claim by a member, past member or the nominee or person representative of a deceased member for any debt or demand due from a co-operative society, whether such debt or demand is admitted or not;

(c) a claim by a sacco society against a refusal to grant or a revocation of licence or any other due, from the authority.

40. The appeal from the Tribunal's decision lies to the High Court: See Section 81 of Cap 490.

41. Learned Counsel for Elijah correctly stated that a party seeking leave to file for prerogative orders needs to show a prima facie case.

Prima facie case does not necessary mean that it is one that must succeed. Considering my findings above, I find that Elijah has not show a prima facie case necessary for the grant leave as sought.

42. Finally Elijah sought to stay his action before the tribunal. It is not clear to what end the stay was to serve. Was it to stay for Elijah to proceed with that action after the judicial review action is over. If that is so Elijah is inviting two forums to adjudicate on the same matters. To do is in my view an abuse of the court process. If it were allowed there is every possibility that this court would reach one determination and the Tribunal another. That would un-necessarily bring disrepute to the judicial process and is undesirable. This court has inherent power to stem any abuse of the court process.

43. In the end **there is no merit in the chamber summons dated 15th February 2016. The same is dismissed with costs to the respondent.**

DATED AND DELIVERED THIS 31ST DAY OF MAY 2016.

MARY KASANGO

JUDGE

CORAM

Before Justice Mary Kasango

Court Assistant: Njue

For Exparte applicant:.....

For 1st Respondent:

For 2nd Respondent:

COURT

Ruling read in open court.

MARY KASANGO

JUDGE