



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW

MISCELLANEOUS APPLICATION NO. 576 OF 2016

**IN THE MATTER OF THE 1ST SPECIAL GENERAL MEETING OF THE CBET
MATATU OWNERS SAVINGS AND CREDIT CO-OPERATIVE SOCIETY LIMITED
HELD ON THE 29TH AUGUST, 2016**

AND

**IN THE MATTER OF THE REFUSAL BY THE COMMISSIONER FOR THE CO-
OPERATIVE DEVELOPMENT TO RECOGNIZE THE RESOLUTIONS OF THE AGM
HELD ON 29TH AUGUST 2016 TO ISSUE A LETTER OF INTRODUCTION FOR OPENING
BANK ACCOUNT AND OFFICIAL SEARCH ON SACCO OFFICIALS**

BETWEEN

HENRY MATHEMBO MUINDI (CHAIRMAN)

TOM OLWE AKETCH (SECRETARY)

WILSON GITAHU MUCHOKI (TREASURER) OF

CBET MATATU OWNERS SAVINGS AND CREDIT

CO-OPERATIVE SOCIETY LIMITED.....APPLICANT

VERSUS

**COMMISSIONER FOR CO-OPERATIVE
DEVELOPMENT.....RESPONDENT**

RULING No.2

1. This court has just delivered an expeditious Ruling vacating the orders of this court made on 24th November 2016 and 25th November 2016 and gave reasons among others that the ex parte applicants failed to disclose to this court the fact that they had a dispute pending before the Co-operative Tribunal with the interested parties and that the Co-operative Tribunal did make an adverse order against them on 10th November 2016 which order was appealable as of right to this court but instead the ex parte applicants came to court, by way of Judicial Review and omitted the interested parties

and obtained ex parte orders which adversely affected the interested parties.

2. , that the applicants failed to disclose that the interested parties were in fact in office whether illegally or legally, to enable the court appreciate the dispute and make an informed decision and not a per incuriam decision.

3. This court having so found, on the application for leave to appeal and for stay, which orders are in the discretion of the court, the applicants must satisfy the court that they deserve the prayers sought. The prayer for leave to appeal is said to be based on 'abundant caution.' "Abundant caution" is not a ground upon which this court can exercise its discretion to grant leave to appeal especially where it is crystal clear that the applicant failed to disclose material facts before this court thereby embarrassing the court.

4. In the premises, I decline to grant leave to appeal as no reasons have been supplied to the court. On the prayer for stay of today's orders, I find that to stay those orders is tantamount to regularizing a fraud committed in the face of this court by the ex parte applicant's non disclosure of material facts.

5. This court, as earlier stated, has inherent power to vacate orders made per incuriam and once it does so, in the absence of any special circumstances it cannot stay its own orders. Accordingly, I decline to grant any stay and proceed to dismiss that prayer for stay.

6. On the issue of the notice of motion being filed in time, I note that the applicant's counsel Mr Ombwayo had his copy of the motion filed on 1st December 2016. It is paid for vide receipt No. 7965711 dated 28th November 2016. However, the said motion is not in the court file and I did allow Mr Ombwayo to peruse the court file to find out for himself. He could not find out for himself or trace any copy on the file.

7. For that reason, as it is not clear why the motion though filed is not on record, the filed motion is deemed to be filed in time. I have retained the copy held by Mr Ombwayo. The earlier order to the effect that there are no pending proceedings is hereby reviewed and set aside.

8. In the end, I dismiss the prayer for leave to appeal. I also dismiss the prayer for stay. I order that the ex parte applicants pay costs to the interested parties.

Orders accordingly.

Dated, signed and delivered at Nairobi this 20th day of December, 2016.

R.E.ABURILI

JUDGE

In the presence of:

Mr Omollo for the applicant interested parties

Mr Ombwayo for the ex parte applicant

CA: Lorna

FURTHER ORDERS

The ex parte applicant to serve the interested parties with the motion forthwith. This matter shall be heard by way of oral submission. The interested parties to file and serve their response within 10 days from to date. The applicant to file and serve a further affidavit if need be within 7 days from date of service.

Mention on 25th January 2017 to confirm compliance and to fix a hearing date. The applicant to serve the respondent. Orders accordingly.

R.E. ABURILI

JUDGE

20/12/2016