



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

MISC. CIVIL APPLICATION NO. 67 OF 2006

REPUBLIC.....APPLICANT

VERSUS

1. MINISTER OF ENVIRONMENT AND NATURAL RESOURCES

2. D. F. O – TRANS NZOIA

3. THE ATTORNEY GENERAL..... RESPONDENTS

R U L I N G

The applicant Chorlim Marketing Co-operative Society Limited applied by Chamber Summons for orders that it be substituted in these proceedings in place of Chorlim Multi purpose Co-operative Society Limited. The applicant contends that it was registered as a co-operative Society on 4/11/1993 vide registration number CS/6950 and a certificate of registration duly signed by the Commissioner of Co-operatives was issued.

On 9/2/1999 the society was allotted plot No. 6992/2 as per letter of allotment date 9/2/1999. The applicant contends that it learnt that the respondent moved to court and filed the present proceedings based on a letter of allotment issued to it as well as a certificate of registration which it claims is fraudulent.

The application is opposed through a replying affidavit sworn by John Kisa Ngeywa the chairman of the respondent. The respondent contends that it was initially registered under the name of Chorlim marketing Co-operative Society Limited. On 11/9/2001 at a general meeting, it was resolved that the name of the society be changed to Chorlim Multipurpose Co-operative Society. The proposed change of name was registered with the Registrar of co-operative societies and a certificate of change of name issued on 18/9/2001.

The respondent therefore contends that the applicant's application cannot be sustained as leave to bring the proceedings herein was sought and the same was granted to it and as such there is no way the respondent can be substituted by the applicant.

I have carefully considered the applicant's application as well as the opposition to the same by the respondent. There is no contention that the initial name of the society was Chorlim Marketing Co-operative Society Limited. There are documents annexed to the respondent's supporting affidavit which show that the name of the society was later changed to Chorlim Multipurpose Co-operative Society Limited.

A certificate of change of name has been exhibited by the respondent. This certificate of change of name is not contested by the applicant. It therefore follows that the name Chorlim Marketing Co-operative Society no longer exists and as such the applicant's application cannot stand.

It is apparent that officials of the society are wrangling. The applicant claims that the name was fraudulently changed. There is nothing which has been put forward by the applicants to demonstrate that this is the case. The applicant has annexed a certificate of registration dated 4/11/1993 in the name of Chorlim Multipurpose Co-operative Society. The source of this certificate of registration is not disclosed.

The change of name was sanctioned by the Registrar of Co-operatives. It is through the same co-operative system that the respondents were granted leave to commence these proceedings. As the applicants have not faulted the change of name, their application cannot be allowed. A non-existent society cannot be allowed to participate in proceedings in place of a society which is duly recognized.

I find that the applicant's application lacks merits. The same is hereby dismissed with costs to the respondent.

It is so ordered.

Dated, signed and delivered at Kitale on this 26th day of February, 2014.

E. OBAGA,

JUDGE

COURT: Ruling delivered in open court at 9.50 a.m. In the absence of parties. Parties can read the ruling at the registry. Court Clerk – Kassachoon.

E. OBAGA,

JUDGE

26/2/2014