



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICHO**

**JUDICIAL REVIEW NO. 3 OF 2014(JR)**

**KIPSIGIS HIGHLANDS MULTIPURPOSE**

**CO-OPERATIVE SOCIETY LTD.....APPLICANT**

**VERSUS**

**THE COUNTY GOVERNMENT OF**

**BOMET .....RESPONDENT**

**RULING**

Pursuant to an application for Chamber Summons seeking Leave to institute Judicial review proceedings filed on 15<sup>th</sup> April, 2014 together with Affidavit verifying the facts and statements. Leave was not granted *ex parte* and the applicant was directed to serve the application for interpartes hearing on 29<sup>th</sup> May, 2014 under Order 53 Rule(4). He was further granted Leave to file a Supplementary Affidavit.

During interpartes hearing on 23<sup>rd</sup> June, 2014 counsel for the respondent Mr. Matwere sought time to file a Replying affidavit. Mr. Orina did not object and the court granted the respondent two days to file his response.

The application came up for hearing before me on 26<sup>th</sup> June, 2013. Mr. Orina, counsel for the applicant urged this court to grant leave to the applicant to file a motion for Judicial review for orders of Prohibition against the respondent through its agents, employees, servants or otherwise from trespassing onto the Applicant's LR.NO. 7797/3 South of Kericho Municipality. He also sought that leave so granted do operate as a stay of the respondent's acts complained of or further acts of trespass until further orders of the court.

He submitted that the respondent in their Replying Affidavit sworn by Langat Kipkosgei on 24<sup>th</sup> June, 2014, did not deny that the respondent had carried out the said actions for the reason that the access road was a public road as per the National Government map.

Mr. Matwere counsel for the respondent did not object to the granting of Leave to institute the proceedings but submitted that there was nothing to be stayed as the public road had been in existence for a long time and was only been upgraded. This had already been done and the orders of stay would be futile.

In response Mr. Orina urged the court to grant a stay to stop the respondent from carrying out further actions detrimental to the Plaintiff.

After listening to both counsels, I am satisfied that the action complained off by the applicant was undertaken by the respondent and Leave is hereby granted to institute judiciary review proceedings.

I further order that the leave granted do operate as a stay for 60 days restraining the respondent from carrying out further activities on LR.No. 7797/3 South of Kericho Municipality detrimental to the Applicants pending interparties hearing of the substantive motion.

Dated, Signed and Delivered at Kericho on this 26<sup>th</sup> day of June 2014

**L.N. WAITHAKA**

**JUDGE**

In the presence of:

Mr. Orina for the Plaintiff/Applicant

N/A for the Respondent