



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JR CASE NO. 271 OF 2013

REPUBLICAPPLICANT

VERSUS

CHAIRMAN, CO-OPERATIVE TRIBUNAL1ST RESPONDENT

COMMISSIONER FOR CO-OPERATIVE

DEVELOPMENT.....2ND RESPONDENT

EX-PARTE

**MANAGEMENT COMMITTEE KONZA RANCHING &
FARMING COOPERATIVE SOCIETY LIMITED**

RULING

Through the chamber summons application dated 22nd July, 2013 the Applicant, the Management Committee of Konza Ranching and Farming Co-operative Society Ltd seeks the leave of the court to commence judicial review proceedings in respect of a decision of the 1st Respondent, the Chairman of the Co-operatives Tribunal, made on 19th July, 2013 in Tribunal Case No. 410 of 2012.

The 2nd Respondent is the Commissioner for Co-operative Development. John Mulwa Kang'attu, Paul Muthoka Mbole, Muli Kathuku, William Mwilu Kitinga, Stephen Kimuyu Muthembwa, John Mutuku Mbuvi and Mbai kala Muluni who are the interested parties opposed the application.

In his ruling of 19th July, 2013 the 1st Respondent stated, inter alia:-

“It is possible that by the time the appeal is heard and determined the claimants’ application may have been overtaken by events. In order to cure the said mischief, the Tribunal will grant stay on condition that an interim committee is appointed to run the affairs of the Respondent Society pending the hearing and determination of the appeal.

The Commissioner for Co-operative Development is thus hereby ordered to exercise his power under Section 3(3) of the Co-operative Societies Act Cap. 490 and organize for the election of Interim Committee members who will direct the affairs of the Respondent Society

only for the duration of the pendency of the appeal.”

It is the Applicant's case that by issuing the said orders, the 1st Respondent exceeded his jurisdiction and thus the reason for these judicial review proceedings.

At this stage, I need not go into detailed analysis of the Applicant's case. What the Applicant's needs to establish is that it has an arguable case and once it does so, then leave should be granted. The reasoning behind the need to seek leave before commencing judicial review application was well captured by Edward M Mureithi, J in **REPUBLIC v THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION & 2 OTHERS EX-PARTE IBRAHIM HUSSEIN WASHENGA [2013] eKLR** when he observed at paragraph 18 of his judgment that:-

“As held in the Court of Appeal decision of Meixner & Another v A. G. (2005) 1KLR 189, the leave of the court is a prerequisite to making a substantive application for judicial review with a view to filtering out frivolous applications and the grant or refusal of leave involves an exercise of judicial discretion and the test to be applied is whether the applicant has an arguable case. An ex-parte applicant is also obliged to make full and frank disclosure of the case and where the applicant conceals material facts, the court will refuse to deal with the merits of the case and discharge any order or remove any benefit that an ex-parte applicant would have received on account of the concealment or non-disclosure of material facts.”

The 2nd Respondent is not opposed to the application for leave and the said leave operating as stay of the 1st Respondent's decision. The 1st Respondent and the interested parties are however opposed to the grant of leave and if leave is granted then they pray that the said leave should not operate as stay.

I have carefully considered the 1st Respondent's impugned decision and I agree with the Applicant that the 1st Respondent may have exceeded his jurisdiction or acted unreasonably in issuing the order in question. I need not say more lest I prejudice the positions of the parties to this case. I am satisfied that the Applicant has established a prima facie case for the grant of leave and leave is therefore granted to the Applicant to commence judicial review proceedings in the terms of the application for leave.

The next question is whether the said leave should operate as stay of the decision. The 1st Respondent and the interested parties are of the opinion that stay of proceedings will lead to delay in the finalization of the case before the 1st Respondent. They also argue that the Applicant is using these proceedings and the appeal already filed in the High Court to delay the hearing of the case before the 1st Respondent. The Applicant argued that it has not prosecuted the appeal in the High Court because the 1st Respondent has refused to release proceedings for purposes of appeal. This is a serious allegation by the Applicant but the respondents and interested parties did not respond to the allegation.

Considering the fact that the Applicant is entitled to appeal against the decision of the 1st Respondent, it would be unfair to deny the Applicant stay and yet it is the 1st Respondent who is frustrating the Applicant's appeal. For that reason alone, I grant stay to the Applicant. The leave granted herein shall operate as stay of the decision of the 1st Respondent for a period of 60 days only during which time these proceedings will hopefully be heard and determined.

In order to hasten the hearing of this matter, I direct that the Applicant will file and serve the substantive notice of motion together with skeletal submissions within ten days from today's date. The respondents and the interested parties will file and serve their replies together skeletal submissions within ten days from the date of service. The Applicant will then have five days after being served by the respondents and the interested parties within which to file and serve further affidavits and submissions. Any party who fails to comply with the above directions will not be allowed to participate in these proceedings. The mention date for confirming compliance with the directions will be fixed on the date of the delivery of this ruling.

Dated, signed and delivered at Nairobi this 28th day of August, 2013

W. K. KORIR,

JUDGE