



**REPUBLIC OF KENYA**

**High Court at Bungoma**

**Petition 7 of 2012**

**1. ALEX MALIKHE WAFUBWA**

**2. SAMUEL NGATI**

**3. DAVID KIBERENGE**

**4. TOM KUKUBO.....PETITIONERS**

**5. EDWARD KISIANGANI**

**6. ERASTUS WECHULI**

**7. BENAINA SISUNGO**

**8. ROBERT MAMAYI**

**(KRAIDO & COMPANY ADVOCATES)**

**VERSUS**

**1. ELIAS NAMBAKHA WAMITA**

**2. JONATHAN WAFULA**

**3. BENARD SIANGU.....RESPONDENTS**

**4. MARTIN LUSWETI**

**5. COMMISSIONER FOR CO-OPERATIVES)**

**RULING**

**THE PRELIMINARY OBJECTION**

[1] The issue at hand is one: Whether this court has jurisdiction to determine this matter. This issue was ably argued by counsels herein and a full rendition of their arguments is reproduced below.

**ARGUMENTS BY THE 1<sup>ST</sup> – 5<sup>TH</sup> RESPONDENTS**

[2] The 1<sup>st</sup> – 5<sup>th</sup> Respondents raised a Preliminary Objection (hereafter PO) by a notice filed on 6.11.2012 through their advocates M/S A.W. KITUYI & Company Advocates, where the jurisdiction of the court on this matter has been questioned. In support of their PO, they filed a list and a host of judicial authorities on 9<sup>th</sup> November 2012.

[3] Mr. Kituyi argued the case for the 1<sup>st</sup> – 5<sup>th</sup> Respondents and urged the court to down tools for lack of jurisdiction over this matter which, according to him, relates to disputes involving Bungoma District Cooperative Union Limited-a Co-operative Union established under the Co-operative Societies Act.

[3] To Mr. Kituyi, this matter should be handled by the Co-operative Tribunal established under section 77 of the Co-operative Societies Act. The petition and the application attendant thereto are based on the Constitution of Kenya, 2010 and the Co-operative Societies Act. The Co-operative Societies Act, he argued, has its own mechanisms on elections and resolution of disputes affecting members of a co-operative society. He says that, it is not in dispute that the Petitioners are members of the various co-operative societies that constitute the Co-operative Union in this case. It is also not in dispute that the issue of elections being raised herein is a matter that ought to be taken to the Tribunal. More specifically, this dispute is governed by section 27(2) (a) of the Co-operative Societies Act.

[4] Mr. Kituyi further posits that the Petitioners herein have not filed any dispute before the Tribunal.

[5] Being guided by the decision of the Court of Appeal in **NBI COURT OF APPEAL NO. 114 OF 1997 ERNEST MUIRURI NJOROGI & 28 OTHERS VS KABIRU KARANJA & 4 OTHERS**, Mr. Kituyi told the court that the High Court does not have jurisdiction on a dispute that falls within the jurisdiction of the Co-operative Tribunal under the Co-operative Societies Act. He also quoted other cases to wit; a) **COURT OF APPEAL AT KSM NO. 25 OF 2002, NAROK COUNTY COUNCIL V TRANSMARA COUNTY COUNCIL & ANOTHER**, b) **KISII HC CONST. PET. NO. 3 OF 2010 PETER OHARA ARAM & 3 OTHERS VS CDF BOARD & 3 OTHERS**, and c) **BGM HCCC NO. 141 OF 2011 JOHN WASIKE & AG & ANOTHER**, which support his view that the High Court has no jurisdiction on matters reserved for a Quasi-Judicial Tribunal created by an Act of Parliament.

[6] In particular, Mr. Kituyi referred the court to the judgment of Makhandia J (as he then was) in the case of **KISII HC CONST PET. NO.3 OF 2010** above quoted. The relevant paragraph states:

***“Statutes such as the Co-operative Societies Act, Rent Restriction Act, Land Disputes Tribunals Act, Landlord and Tenant (Shops, Hotels and Catering establishments) Acts which have inbuilt and established dispute resolution mechanisms outside the Constitution were rendered otiose by the stroke of the new Constitution. These acts have not been repealed and as long as they are not inconsistent or repugnant to the constitution, they continue to apply and should be applied to resolve disputes akin to them. I do not see anything void or repugnant if the dispute herein was first forwarded to the 1<sup>st</sup> respondent for resolution as required by section 52 of the Constituency Development Fund Act”***

[7] Mr. Kituyi contends that Acts such as the Co-operative Societies Act and others with inbuilt dispute resolution mechanisms are self-embodiment and cannot be wished away at the altar of the Bill of Rights. The mechanisms provided under these Acts for dispute resolution must be respected.

[8] Section 7(1) of Part 2 of the Sixth Schedule of the Constitution recognizes the current Acts which apply until they are amended or repealed. Kituyi therefore says that the Co-operative Societies Act is still in force and the inherent jurisdiction of the Co-operative Tribunal to deal with disputes under section 76(2)(a) has not been taken away.

[9] Mr. Kituyi further argues that section 19 of Part 5 of the Sixth Schedule of the Constitution provides that until the Chief Justice makes rules envisaged under Articles 22 and 23 of the Constitution, the Petitioners cannot bring any action on the Bill of Rights. According to him, the Petitioners cannot even purport to seek any remedy from the court. But the Co-operative Societies Act provides a way out of this and the Petitioners should channel their grievances through the Co-operative Tribunal. Mr. Kituyi wonders why the Petitioners have not taken their dispute to the Tribunal.

[10] He concludes by saying that this court cannot act as the trial and appellate court at the same time on matters emanating from the Co-operative Tribunal.

[11] For those reasons he urges the court to dismiss the petition.

### **ARGUMENTS BY THE 6<sup>TH</sup> RESPONDENT**

[12] The 6<sup>th</sup> Respondent through the State Counsel, M/S Mary Namichaba also raised a preliminary objection questioning the jurisdiction of this court.

[13] She filed a Preliminary Objection together with supporting judicial decisions on 8<sup>th</sup> November 2012.

[14] She totally associated herself with the arguments proffered by Mr. Kituyi for the 1<sup>st</sup>-5<sup>th</sup> Defendants on the question of jurisdiction.

[15] She however laid specific emphasis on the fact that the Petitioners did not exhaust the available mechanisms for dispute resolution under the Co-operative Societies Act. She says that the Petitioners are members of the Co-operative Union in question, and the 1<sup>st</sup>-5<sup>th</sup> Respondents are members of the Management Committee of that Union.

[16] She stresses that the Cooperatives Societies Act has elaborate procedures on dispute resolution under section 76 which are mandatory where the dispute involves members of the society, its management committee or between societies themselves.

[17] She posits that all disputes falling under section 76 are a preserve of the Tribunal established under section 77 of the Co-operative Societies Act.

[18] She says the matters in question are in the nature of the business of the society which has been well delimited in the case of **GATANGA COFFEE GROWERS v GITAU [1970] EA 361** that:

*‘.....business of the society’ is not confined to the Internal Management of the Society but covers every activity of the society within the ambit of its by-laws and rules .....*”

[19] Accordingly, this petition before the High Court relates to the business of the society which falls under section 76 of the Co-operative Societies Act.

[20] Under section 81 of that Act, the State Counsel submitted, a party who is dissatisfied by the award of the Tribunal may appeal to the High Court. And section 81(2) (e) of the said Act provides that the decision of the High Court on an appeal is final. To support this argument, counsel relied on the decision of the court in **NBI HCCC NO. 226 OF 2002 KIRINYAGA FARMERS SOCIETY v KIRINYAGA COOPERATIVE UNION** where the court held that, since the High Court is the final court in cooperative matters, it is not right for the court to assume both appellate and original jurisdictions.

[21] In the perception of counsel, the Petitioners have not given any reason why they did not file this dispute in the Tribunal where this matter falls. As the right procedure is the one prescribed in the Co-operatives Societies Act, she urges, it must be strictly followed by any person seeking a remedy on a dispute under the Act, unless there is a good reason to by-pass that procedure. These her arguments, she contends, found support in the cases of the a) **SPEAKER OF THE NATIONAL ASSEMBLY v HON KARUME CIVIL APPEAL NO. 92 OF 1992**, b) **GEORGE & 15 OTHERS v LIMURU PYRETHRUM GROWERS CO-OP LTD & 9 OTHERS [1990] KLR 214**, and c) **KIBUNJA V AG & 12 OTHERS [2002] 2 KLR 1**. In the last case, the court ruled that section 76 of the Cooperative Societies Act ousted the jurisdiction of the High Court on matters concerning the business of a co-operative society. Likewise, Justice Mwera J (as he then was) in the case of **JOSEPHAT OMUNE & 10 OTHERS v COMMISSIONER FOR COOPERATIVE SOCIETY AND ANOTHER HCC**

**APPEAL NO. 35 OF 2007** struck out the case for want of jurisdiction.

[22] The State Counsel exhorts that the Constitution is supreme law of the land and has allocated power and responsibilities to institutions to carry out the objects of the Constitution. Therefore when Parliament passed section 76 of the Co-operative Societies Act, that procedure of setting grievances under the Act must be allowed to operate. Makhandia (J) (as he then was) in the case of **PETER OCHARA ANAM** stated:

***“I do not think it is right for a litigant to ignore a dispute resolution mechanism provided for in a statute and which would easily address his concerns and resort to this court under the guise of constitutional petition for alleged breach of constitutional rights under the bill of rights”***

[23] Relying on the pronouncements by Makhandia J (as he then was) Counsel posits that despite the unlimited jurisdiction of the High Court in civil cases, it is limited by statute when it curved out matters of cooperative societies for the Co-operative Tribunal under the Cooperative Societies Act, which Act is still in force. Judicial decisions on this Act which were made during the old Constitution are still good law. Therefore the Constitution should not be a substitute for ordinary procedures such as the one under section 76 of the Co-operative Societies Act as that could amount to trivializing or reducing the Constitution.

[24] To her, the Petitioners have deliberately avoided the procedure in the Cooperative Societies Act for settling dispute such as the ones being raised in the petition.

[25] Further concern that the Counsel raised is that the 6<sup>th</sup> Respondent is a public officer and his actions can only be challenged through the process set out in the Law Reform Act and Order 53 of the Civil Procedure Rules. Section 16 and 13 of the Government Proceedings Act have not been repealed and are applicable here.

[26] On these reasons she prays that the court finds that it has no jurisdiction and also discharge the interim orders issued herein as they are affecting the operation of the Union and its members who are about 200,000 people.

#### **THE P.O. WAS OPPOSED BY MUKHOOLI FOR PETITIONERS**

[27] Mr. Mukhooli opposed the preliminary objection herein on the following grounds.

[28] First, no single point that has been raised touching on the Petitioners’ case as brought. The petition is clear and seeks among other things: a declaration that the Petitioners have a right to vote under Article 38(2) of the Constitution. A cooperative society being an elective body is covered by Article 38 of the Constitution.

[29] The question therefore is whether the Tribunal can hear a case for constitutional rights?

[30] The manner in which rights under Article 38 of the Constitution are to be effected is provided for under Articles 22 and 23 of the Constitution.

[31] Article 23 is clear on the reliefs and this petition falls within that Article. Under the Article, even an injunction can be granted by the court.

[32] The other question is, whether this court has authority to issue reliefs sought herein?

[33] According to Mukhooli, this court has the power under article 165(3) (a) of the Constitution to issue reliefs sought herein and this case is properly before the court. The powers of the High Court are only being limited by article 165(5) of the Constitution.

[34] To him the petition here does not mention matters of the Co-operative Societies Act and it does

not relate to disputes under that Act, but rather relates to fundamental right to vote. That aspect is outside the jurisdiction of the Tribunal. He relied on the authorities they filed in court on 12.11.2012

[35] Mr. Mukhooli also relies on the decision by Majanja J. in **NBI HCC NO.504 OF 2008KBS LTD v MINISTER FOR TRANSPORT & 2 OTHERS** to the effect that section 13A of the Governments Proceedings Act violates Article 48 of the Constitution on access to justice, and is therefore unconstitutional.

[36] He rested his case by saying that the High Court has unlimited jurisdiction under Article 165 in accordance with the judgment of the court in **NBI HC JR NOS. 295,11,434,438 of 2012**.

[37] On those grounds, he submitted that the P.O. is not merited and should be dismissed. It is only aimed at delaying this case.

### **KITUUYI'S REJOINER**

[38] That rights under article 38 must be hinged somewhere. Mere claim that they have the right to vote is not enough. The same Constitution recognizes existing legislations. He distinguishes the authority relied upon by the Petitioner and says that it relates to a situation where the case in question had already been completed and was being challenged under the supervisory jurisdiction of the court.

### **THE FRAMEWORK**

[39] In determining the real issue herein, that is to say, whether this court has jurisdiction to adjudicate on this petition, the court, in essence, must discern if the petition herein relates to *a dispute concerning the business of a co-operative society* within section 76 of the Co-operative Societies Act. That is the framework in which the issue at hand should be determined.

#### **The Dispute According to Section 76 of the Act**

[40] Section 76 of the Co-operative Societies Act is the principal section that hems the scope of disputes which fall within the jurisdiction of the Co-operative Tribunal. It provides that;

**76. (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 a 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 personal 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 license or any other due, from the Authority.**

[42] The one major issue that emerges from the Act is that a dispute that falls under section 76 should be referred to the Tribunal.

[49] That proposition therefore calls for a careful consideration by the court of the claims before it to determine whether they amount to a *dispute concerning the business of the society* in the sense of section 76(1) and (2) of the Act. More trouble is found, when the court is confronted by those disputes that do not fit the plain words used or the category enumerated in section 76(2) of the Act. This difficulty is even seen in the case of **NBI HCCC NO. 226 OF 2002 KIRINYAGA FARMERS SOCIETY v KIRINYAGA COOPERATIVE UNION** when the court observed that the exercise of determining whether a dispute is one concerning the business of the society or not is a novel one; and resorted to examining an array of cases in which the courts had to determine that issue within the provisions of section 76 of the Act. And in cases where this issue has been decided, you find that, in some of cases, the court found the dispute to fall within the jurisdiction of the Tribunal while in others it found it is not a dispute within section 76 of the Act.

[50] Accordingly, I am of the considered view that not all grievances under the Cooperative Societies Act are disputes within the jurisdiction of the Tribunal, and therefore I need to discern whether the claims in the petition are disputes arising from the business of the Society in accordance with section 76 of the Act?

[51] But before I analyze the claims in the petition, let me say one thing. I think, the fact that the High Court is the final court in cooperative societies' matters, only reinforces the need for the court to ensure that a proper analysis is done to determine whether a dispute is one that falls within the jurisdiction of the Tribunal in order to avoid prejudice of the right of access to justice under the Constitution. That aspect should not however bear on the decision of the court as to refer a dispute to the Tribunal which in essence is not a dispute within the jurisdiction of the Tribunal. Thence, the observation by the court in the *Kirinyaga case* that it would be wrong for the High Court to assume both original and appellate jurisdiction in the same matter, should be understood in this context, and particularly, it refers to a situation where the dispute is found to be within the jurisdiction of the tribunal, in which case, the High Court should not arrogate itself a jurisdiction it does not have.

[52] To answer the difficult question herein, I need to really decipher what the petition entails; the nature and character of the claims in the petition, to determine whether they are disputes which must be referred to the Tribunal. The petition carries the following significant prayers:

**1. A declaration that the Bungoma District Co-operative Union is an elective public body and as such the petitioners have rights and fundamental freedoms under the Bill of Rights of the Constitution of Kenya including but not limited to free, fair and regular elections based on universal suffrage and the free expression of their will in their capacity as electors in the subject union.**

**2. A declaration that the respondents' current continuing act of holding office in their erstwhile elective capacities, after the lapse of one year since their term expired, offends the petitioner's rights and fundamental freedoms under the Bill of Rights of the Constitution of Kenya and is as such unconstitutional, unlawful, illegitimate and otherwise untenable in law.**

**3. A declaration that the resultant activities and actions made on the basis of the aforesaid respondent's act after the expiry of their term are null and void, for want of consistency with the Constitution.**

**4. A mandatory injunction compelling the respondents to conduct the Bungoma District Co-operative Union elections forthwith.**

[53] At this stage, the court is not determining the substantive issues in the case, but it should only look at the nature of the claims in light of section 76 of the Co-operative Societies Act to determine whether the court is possessed of the requisite jurisdiction. I will therefore refer only to the material that is pointedly relevant in aiding the court to unravel the issue before it.

[54] The petition is substantially founded on three major grounds.

[55] One, the Petitioners allege that the term of office of the 1st-5th Respondents in the Management Committee of the Bungoma Cooperative Union Limited expired over one year ago, and therefore their continued holding of office is contrary to the law, null and void.

[56] Second, it is alleged that the Management Committee of the Bungoma Cooperative Union Limited has failed and or refused to convene a general meeting as by the law required in order for the members, including the Petitioners to elect their office bearers. Their claim is that the law and by-laws on election of office bearers for Bungoma Cooperative Union Limited have been totally violated thereby taking away their right to vote and elect their office bearers.

[57] Third, the Petitioners also allege that the 6<sup>th</sup> Respondent has also neglected, ignored and/or refused to convene a special meeting of the Bungoma District Cooperative Union Limited where the Management Committee for the said Union has failed to do so.

[58] Fourth, the petitioners further allege that the Respondents, instead of convening a meeting for purposes of elections, have deployed armed policeman at the venue for holding of elections.

[59] Now, are these grievances the types that are hemmed within section 76 as disputes within the jurisdiction of the Tribunal?

[60] In construing a statute where a category of some descriptors is provided in a manner that is not closed as is in section 76(2) of the Act, the canon to be applied is that of *ejusdem generis*. Accordingly, as far as possible, anything else that is to be included in that category must be of the same kinds, class, or nature. In this sense, an overly wide meaning of such prescription should be avoided, and be restricted within the overall objective of the Act. I think, this is the proper construction that should be applied in the interpretation of section 76(2) of the Act since the issue here is one of ouster of the jurisdiction of the court. The jurisdiction of any quasi-judicial tribunal is never unlimited but is always circumscribed by the law creating it. That is the reason why the Honourable Justice Makhandia J (as he then was) adopted a subtle craft in the case of *Peter Ochara Anam* when he said:

*'These acts ((sic) ...continue to apply and should be applied to resolve disputes akin to them'* [Emphasis supplied]

[61] This approach of construction of statutes, and which is expressed in the words of Honourable Justice Makhandia J (as he then was), does not allow an expansion of open ended provisions of the law to the extent of covering matters that are not akin to or are strange to or are incompatible with or outside the essential jurisdictional bounds circumscribed by the Act.

[62] Going back to the issue in dispute as I have framed it, these are grievances by members of primary co-operative societies against a Co-operative Union, of which these primary societies are members; on matters of elections, illegal holding of office, failure to convene a general meeting by the management committee, or special general meeting by the Cooperative Commissioner; which are not akin to the powers of the Tribunal under section 76, 77 and 80 of the Act. In particular, the Tribunal does not have jurisdiction to issue a judicial review order to compel, particularly the 6<sup>th</sup> Respondent, to act in accordance with a statutory or legal obligation in relation to elections. Such relief or mandatory injunctions in the context of the petition can only be issued by the High Court. It should be clearly understood that judicial review is a relief under Article 23(3) (f) of the Constitution, and so nothing prevents a party from applying for judicial review in a constitutional petition, and if it is so applied, it will be granted, but of course on merit. It may therefore no longer be an apt argument to try and confine judicial review to the Law Reform Act or Order 53 of the Civil Procedure Rules as neither of the two establishes the remedy of judicial review but provide for the mechanisms which give effect to the relief of judicial review. Thus, separating judicial review from constitutional petitions will present, as it has already done, practical difficulties. See the observation of the court in **BGM HC MISC APPL NO 107 OF 2007 EX PARTE ELECTINA WANG'ONA** that;

***[48] Before I depart from the above objection, which I have found nothing much would turn on, I must say that, in developing the law in accordance with Article 259 of the Constitution, the jurisprudence by the court on the procedural exclusivity of judicial review, need be reconciled with the constitutional provisions on judicial review, particularly Article 23(3) (f) of the Constitution.***

***[49]. Doubtless, Article 23(3) (f) embodies a paradigm shift where judicial review is one of the reliefs that the court may grant, either alone or in combination with others. Therefore, and I believe I am not wrong, it will no longer be an apt argument that judicial review cannot be combined with other remedies such as constitutional remedies, declarations, injunctions and so on as it has been held before. This is a position of the Constitution that will materially shift from insistence that judicial review pleadings must take a particular form, to a more balanced approach that serves substantial justice. And without making a decision, so far as I am aware, the fact that judicial review can be applied for in a constitutional petition renders such strict insistence of form unsustainable in our jurisprudence. And further, I note, separation of judicial review from constitutional petitions may become almost practically impossible, if not redundant.***

[63] I am aware of Section 80(4) of the Act, which empowers the chairman to deal with temporary injunction but does not encompass mandatory injunction or order of mandamus. In fact judicial review is a constitutional relief falling within the supervisory jurisdiction of this court, and which the Tribunal cannot even pretend to have jurisdiction over. This is the jurisdiction being appealed to by the petitioners particularly with regard to the 6<sup>th</sup> Respondent. No doubt the 6<sup>th</sup> Respondent is a public officer as set out below;

***3. (1) There shall be a Commissioner for Co-operative Development whose office shall be an office in the public service.***

***(2) .....***

***(3) The Commissioner shall be responsible for the growth and development of co-operative societies for their organization, registration, operation, advancement and, dissolution and for administration of the provisions of this Act.***

[64] Before I close, I find the submissions by counsel for the 1<sup>st</sup>-5<sup>th</sup> Respondents on section 19 of the Sixth Schedule of the Constitution, to be short in their explication of the essence of that section on the enforcement of constitutional reliefs under Article 22 and 23 of the Constitution of Kenya, 2010. Those arguments may not be entirely defensible. The correct position and interpretation of section 19 of the Sixth Schedule of the Constitution, 2010, is that the *Constitution of Kenya (Supervisory Jurisdiction and Protection of fundamental rights and freedoms of the Individual) High Court Practice and Procedure Rules, 2006*, which are commonly known as the *Gicheru Rules*, will continue to apply in proceedings for enforcement of the Bill of Rights in the Constitution of Kenya, 2010, until the Chief Justice makes the rules anticipated under Article 22(3). Except the application of the existing rules will be with alterations, adaptation, qualifications and exceptions as may be necessary to bring them into conformity with Article 22 of the Constitution. Section 19 and Article 22(4) of the Constitution are crystal clear that the absence of the rules contemplated under Article 22(3) of the Constitution does not foreclose the right of litigants to apply for constitutional remedies from court. And, there is no amount of legal craft, that can make Section 19 of the Sixth Schedule of the Constitution, 2010, a potent ground for an objection to a proceeding for enforcement of the Bill of Rights.

## **THE DECISION**

[65] I therefore find that the disputes herein relate to; elections, illegal holding of office, failure to convene a general meeting by the management committee, or special general meeting by the Cooperative Commissioner which are not akin to the powers of the Cooperative Tribunal under section 76, 77 and 80 of the Act. In particular, the Tribunal does not have jurisdiction to issue judicial review orders which is one of the jurisdictions the Petitioners are seeking orders from.

[66] I am aware that the value of constitutional remedies will be greatly diminished if every legal complaint is elevated to a constitutional issue. But, in my assessment, the allegations in the Petition are not trivial complaints which have merely been inflated in the hope that they will pass for constitutional issues. They are issues which merit a trial by this court; it is the one with jurisdiction to hear and decide constitutional issues under Article 165 of the Constitution. The course I have taken does not offend the Cooperative Societies Act, neither is it a replacement of the dispute-resolution mechanism provided in the Act nor a prejudice to the right to access to justice. It is as a result of the finding of the court that the matters complained of herein raise constitutional issues on which the Tribunal will not have jurisdiction.

**Dated, signed, read and delivered in open court at Bungoma this 29th November 2012**

**F. GIKONYO**  
**JUDGE**  
**29.11.2012**

IN THE PRESENCE OF

Alusa-court clerk

Kituyi for 1st -5th Respondents

Mary Namichaba for 6th Respondent

M/s Makhoha for Petitioners

Court: Ruling Read and delivered in open court.

Kituyi - Grant leave to appeal. Give us temporary stay.

Mary-I also pray for same orders

Court: Leave to appeal granted. Stay for 14 days is granted under rule 33 of the Gicheru rules.

**F. GIKONYO**  
**JUDGE**  
**29.11.2012**