



REPUBLIC OF KENYA

IN THE HIGH COURT

AT BUNGOMA

MISC. APPL. NO.70 OF 2011

**IN THE MATTER OF AN APPLICATION FOR LEAVE BY PRIDGEON BARASA MASAKE
TO APPLY FOR**

JUDICIAL REVIEW ORDERS OF CERTIORARI PROHIBITION AND MANDAMUS

AND

IN THE MATTER OF THE COMPANIES ACT CAP 486 LAWS OF KENYA

AND

IN THE MATTER OF THE DECISION BY NZOIA OUTGROWERS COMPANY LTD

BETWEEN

REPUBLICAPPLICANT

~VRS~

**THE NZOIA OUTGROWERS COMPANY
LTD.....RESPONDENT**

EX-PARTE

**PRIDGEON BARASA
MASAKE.....APPLICANT**

RULING

This is a ruling on a preliminary objection raised by the Respondent against the application of the Ex-parte Applicant for leave to institute judicial review proceedings. The Exparte Applicant Pridgeon Barasa Masake is aggrieved by the decision of the Respondent Nzoia Outgrowers Company Limited of failing to clear him to contest as a director representing District 4. This led to the applicant filing this application.

Mr. Masinde for the Respondent relied on two grounds:

- 1) That this court has no jurisdiction to entertain the dispute for the reason that the Kenya Sugar Arbitration Tribunal is possessed of such jurisdiction.**
- 2) That the Respondent is a private limited liability company and not a public body and thus not subject to judicial review proceedings.**

Mr. Onchiri submitted that the directors of the company including the managing director are drawn from public bodies being the Kenya Sugar Board, Ministry of Agriculture and other public institutions.

I have looked at the annexures to the application and to its opposition. The certificate of incorporation for Nzoia Outgrowers Company Limited issued on the 9th May 1991 showing that it is a company limited by guarantee. The company is governed by Articles and Memorandum of Association. The company being in the sugar industry is regulated, co-coordinated and facilitated in way of resources by the Kenya Sugar Board. The composition of the sugar board is drawn from the growers representatives seven appointed by the relevant minister, through nomination by millers, the Permanent Secretary in the Ministry of Agriculture, treasury, Director of Agriculture. The Board then appoints the Executive Secretary. In essence, the Nzoia Sugar Company is a private company which is regulated by a Government parastatal. The issue of regulating the company by the parastatal does not remove it from the operation of company law. It is still governed by its Memorandum and Articles of Association.

The new Civil Procedure Rules Order 53 Rule 1 requires that leave of the court to file judicial review proceedings be granted in accordance with the provisions of the law. Order 53 is applicable to decisions made by public bodies. Nzoia Sugar Company is not a public body and therefore judicial review proceedings do not apply.

Section 31 of Sugar Act establishes a tribunal for the purposes of arbitrating on disputes arising between parties under this Act. The purpose of this tribunal is to offload the courts of law with too many disputes which can be resolved by other bodies which are best placed to deal with the subject. This does not mean that this court lacks jurisdiction to adjudicate on any matters arising from the Act. However, in a case where the tribunal fails to do its duty, the High Court may adjudicate on such disputes. The provision for arbitration before the tribunal does not give the parties any choice between the High Court and the tribunal. Where the law provides for a procedure to be followed, the parties are bound to follow that procedure before they can resort to a court of law. In the matter before me, the ex-parte Applicant ought to have approached the arbitration tribunal to resolve the dispute in question.

It was held in the case of **NAROK COUNTY COUNCIL VRS TRANS MARA COUNTY COUNCIL CIVIL APPEAL NO.25 OF 2000 E.A 161** that:

“Although section 60 of the Constitution (former constitution) gives the High Court inherent unlimited jurisdiction, it can not be understood to mean that it can be used to clothe the High court with jurisdiction to deal with matters which a statute has directed should be done by another body as part of its statutory duty. Otherwise where the statute is silent on what is to be done, the parties are not precluded from seeking a remedy in a court of law.”

I am satisfied that the points raised in the preliminary objection are valid. I hereby uphold the objection and strike out the ex-parte application with costs.

F. N. MUCHEMI

JUDGE

Ruling dated and delivered in the presence of Mr Juma for Onchiri for ex-parte Applicant and Mr Kweyu for Masinde for the Respondent on the 9th day of June, 2011.

F. N. MUCHEMI

JUDGE