



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**

**Civil Misc. Appli. 49 of 2009**

**BISHOP PHILIP K MAKANGA ..... 1<sup>ST</sup> APPLICANT**  
**MARGARET MUTHONI ..... 2<sup>ND</sup> APPLICANT**  
**GEDION MACHARIA ..... 3<sup>RD</sup> APPLICANT**  
**PAULINE W NJINE ..... 4<sup>TH</sup> APPLICANT**

**VERSUS**

**THE REGISTRAR OF SOCIETIES ..... RESPONDENT**

**AND**

**JUSTUS NJUGUNA ..... 1<sup>ST</sup> INTERESTED PARTY**  
**CAPTAIN AUDI ODHIAMBO ..... 2<sup>ND</sup> INTERESTED PARTY**

**RULING**

1. The Application dated 18/2/2009 is premised on Order LIII Rule 1 of the Civil Procedure Rules and leave is sought **“for an order of prohibition restraining the Respondent from recognizing, continuing to recognize or accepting, dealing or in any way working with Justus Njuguna and Captain Audi Odhiambo or their proxies as officials of Settle Villagers Scheme.”**

2. From the Statement of Facts and the Verifying Affidavit, I note that Settle Villagers Scheme is a society registered under the Societies Act and the ex-parte Applicants and the 1<sup>st</sup> Interested Party were registered as its officials. That the 1<sup>st</sup> Interested Party made away with society documents and replaced the bona fide officials with strangers while the Respondent has registered those persons as officials despite a court order in **H.C.C.C 1/2009 (Machakos)** restraining the Interested Parties from doing certain things with regard to the society.

3. I have perused the annexures to the Verifying Affidavit and I am convinced that the ex-parte Applicants are going about the dispute the wrong way. I say so with respect because orders of prohibition are futuristic in nature and are intended to restrain an unlawful action that is threatened and has not yet been actualized. In this case, what is sought is a prohibitive order to stop recognition, continued recognition or acceptance of the Interested Parties as officials of Settle Villagers Scheme. No order of certiorari is sought to quash the decision to do so and yet in a letter dated 12/8/2008, the Respondent had written to confirm that the recognized, accepted officials of the society are the Interested Party. What else is left to prohibit? I submit none and for that reason alone, the summons must fail.

4. The Application for leave is badly thought out, is badly framed and cannot be allowed as such. Instead it is dismissed with no order as to costs.

5. Orders accordingly.

Dated and delivered at Machakos this **28<sup>th</sup>** day of **April 2009**.

ISAAC LENAOLA

JUDGE

In presence of: **N/A for Applicant**

ISAAC LENAOLA

JUDGE