



REPUBLIC OF KENYA

REPUBLICAPPLICANT

VERSUS

THE REGISTRAR OF COOPERATIVE SOCIETIES.....1ST RESPONDENT

GAKUNDU FARMERS COOPERATIVE SOCIETY LTD. 2ND RESPONDENT

EX-PARTE – EPHANTUS MVURIA KWENJA & 8 OTHERS

RULING

Before me is a Notice of Motion dated and filed on 14th November 2008 filed by Mr. Gitonga Muriuki & Company Advocates. The Notice of Motion was said to be brought under section 3, 3A, and 63(e) of the Civil Procedure Act, (Cap.21) and Order 50 Rule1 – and Order 21 Rule 22(1) (2) of the Civil Procedure Rules. It seeks for four orders, one of which has been spent. The said orders sought are as follows —

(a) *(spent)*

(b) *The Show Cause Notice or any other Execution application applied by the Respondent particularly Notices coming for hearing on 17th November 2008 be stayed pending the hearing of this application interpartes.*

(c) *That the Show Cause Notice issued by the Respondent/Decree Holder against the Applicant/Judgment Debtor be stayed pending the period which the Applicants are to be supplied.*

(i) *the reasons in the taxation and*

(ii) *the certified proceedings and judgment in this cause to enable them file an appeal.*

(d) *Costs of this application.*

The application has grounds on the face of the Notice of Motion. It is also supported by the affidavit sworn on 14th November 2008 by **IRERI NGURU CHIGINAH**, the 9th Applicant.

The grounds of the application are, inter alia, that the Applicants applied for certified copies of judgment and proceedings (*in a case determined by Ang'awa J.*) and up to this day, they have never been supplied with the same. The applicants had continued to ask for these proceedings but in vain. The Applicants had filed a Notice of Appeal on 5th August 2005, and had also filed an objection to the taxation on 25th January 2008, but no reasons for the taxation had ever been given to the Applicants by the Deputy Registrar, as required by law.

The application was opposed and a replying affidavit sworn on 4th December 2008 by **SIMON GICHOVI NJIRU**, the secretary manager of the 2nd Respondent was filed. It was deposed in the replying affidavit, inter alia, that when the judicial review application by the applicants was dismissed on 25th July 2005, the respondents were awarded costs. It was also deposed that none of the delays complained of could be attributed to the 2nd respondent, and that there was an inordinate delay in bringing this application. It was also deposed that the applicants had not offered any security to secure the monies due. It was, in addition, deposed that delays in obtaining certified proceedings or reasons for the taxation from the Deputy Registrar could not be blamed on the 2nd respondent.

On the hearing date, Mr. Muriuki made submissions on behalf of the applicants, while Mr. Mogege made submissions on behalf of the 2nd respondent. The 1st respondent was not represented.

I have considered the application, documents filed, and submissions of counsel for the parties who appeared before me. I will observe at the outset that interim stay was granted by Nyamu J. on the 24th November 2008, when the application was given a hearing date. That dispenses with prayer (b).

It is not disputed that the judicial review application was dismissed or struck out by Angawa J. on 23rd July 2005. It is not in dispute that the applicant filed a Notice of Appeal and asked for certified copy of the proceedings and ruling and, though they have written a number of reminders, the same had not been supplied to them to date. It is also not in dispute that taxation has now been done and that the applicants have asked for the reasons, probably with a view to challenge the same, but the Deputy Registrar again has not provided the same. It is not in dispute that the respondents now want to execute the taxation award.

In my view, this is a case where I will allow the application. The reason is that the cause of the apparent injustice is the Deputy Registrar of this court. It is the same Deputy Registrar who has failed and or neglected to provide certified proceedings and judgment to file an appeal, and has also not provided the reasons for taxation, thus necessitating this application. This is an indictment on the court and court officials, which should never have happened. It also cannot be condoned by this court, because it tarnishes the name of the whole Judiciary, which will appear in the eyes of the public as impending rather than dispensing justice.

Consequently, I order as follows —

(1) The Show Cause Notice issued by the Respondent/Decree Holder against the Applicant/Judgment Debtor is hereby stayed pending the period in which the Applicants are supplied with

(a) the reasons in the taxation

(b) the certified proceedings and judgment in this case to enable the applicants file an appeal.

(2) The Deputy Registrar will provide the said certified reasons in the taxation and proceedings and judgment by 30th June 2009, subject to payment for same by the applicants. The matter will be mentioned on 1st July 2009 to confirm compliance by the Deputy Registrar with this court's directives.

Costs in the cause.

Dated and delivered at Nairobi this 11th day of May 2009.

GEORGE DULU

JUDGE.

In the presence of

Mr. Muriuki for the applicants

Mr. Mogele for 2nd respondent.

Kevin Court clerk