



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Misc Civ appli 1700 of 2004 & 5 of 2005**

**REPUBLIC .....**

**APPLICANT**

**VERSUS**

**MINISTER OF CO-OPERATIVE DEVELOPMENT AND MARKETING ..... 1<sup>ST</sup>**  
**RESPONDENT**

**COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT ..... 2<sup>ND</sup>**  
**RESPONDENT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup>**  
**RESPONDENT**

**AND**

**3GS COFFEE GOWERS CO-OPERATIVE SOCIETY LIMITED**

**KANYONI FARMERS CO-OPERATIVE SOCIETY LIMITED .....**  
**APPLICANTS**

**CONSOLIDATED WITH**

**MISCELLANEOUS CIVIL APPLICATION NO. 5 OF 2005**

**REPUBLIC .....**

**APPLICANT**

**AND**

**THE MINISTER FOR CO-OPERATIVE DEVELOPMENT AND MARKETING**

**DISTRICT CO-OPERATIVE OFFICER – THIKA .....**  
**RESPONDENT**

**AND**

**BUCHANA COFFEE GROWERS CO-OPERATIVE SOCIETY LIMITED ..... INTERESTED**  
**PARTY**

**RULING**

The application dated 19<sup>th</sup> September 2005 seeks, the review of the order issued on 12<sup>th</sup> September 2005 which order was signed by the Deputy Registrar of the High Court on the strength of a letter dated 30<sup>th</sup> August, 2005 signed by the Attorney General and the law firm of Khaminwa and Khaminwa on behalf of the respondents. The Attorney General signed on behalf of the applicants/Interested parties.

Prior to this there were two judicial review applications namely HC Misc 51 of 2005 and HC Misc 1700 of 2004. The parties in the first matter were Buchana Coffee General Co-operative Society Ltd as (IP) and applicant and the Minister for Corporative Development and Marketing, the District Cooperative Officer and the Commissioner for Cooperatives and Development as respondents. The parties in respect of the second matter but first in time, were Buchana Coffee Growers Cooperative Society Ltd as Interested Party and the same respondents as described in 1700/2004. The application for judicial review was filed on 17<sup>th</sup> January 2005 seeking order for certiorari and Mandamus against Minister as the Commissioner for co-operative Development respectively.

I have read the affidavits filed by all the parties including skeleton arguments and the authorities cited.

The court finds that these are principal issues for determination namely:

- 1) Who were the advocates for Buchana Coffee Growers Cooperative Society Ltd as at the date of the consent order referred to herein.
- 2) Is the consent order dated 12<sup>th</sup> September, 2005 valid in law
- 3) Tied to 2 above is whether the court should vary or set aside the order of 12<sup>th</sup> September, 2005.

Granted that the Civil Procedure Rules do not apply to judicial review, Order III on agents does not apply. The firm of Khaminwa and Khaminwa did serve a notice of change after the consent order had been recorded and signed by them, but this was done the 16<sup>th</sup> of September, 2005. It was in turn accepted by the firm of C.N. Mwihi then, acting for the Buchana. It is therefore clear to the court that the firm which was properly on record as at the time of the challenged order which is 6<sup>th</sup> September, 2005, is first of C.N. Mwihi advocates and the notice served on them if valid could only have taken effect after service. I dare say even, among advocates the rules of natural justice do apply and where an advocate is on record notwithstanding the non application of Order III where he is not properly and sufficiently informed of the change it cannot possibly be effective under the rules of natural justice nor can the notice have a retroactive effect. As at 6<sup>th</sup> September, 2006 or 12<sup>th</sup> September, 2006 the firm of Khaminwa & Khaminwa had no authority to sign the consent order because they were technically not on record. It is also unethical for a new firm or advocate to come on record without notifying the previous advocate. For this reason M/s Khaminwa & Khaminwa was not properly on record. Although parties have the right to choose advocates of their choice to represent them they cannot be allowed to abuse the court process by failing to effectively terminate a previous appointment first before appointing new advocates. I find that coming on record by ambush is an abuse of the court process and this court has inherent powers to set aside any orders obtained during the "ambush." Rules of professional etiquette demand that the incoming advocates inform their colleagues of the changes.

As regards issue 2 and 3 I find that in judicial review the Deputy registrar had no authority to sign and enter the consent order of 12<sup>th</sup> September, 2005 because the entering of such an order is a matter for the judges and not a ministerial act. The termination of judicial review proceedings is a matter for the court and not for the Deputy Registrar I therefore reiterate the reasoning, I adopted in the case of **R v REGISTRAR OF SOCIETIES EX PARTE JUSTUS NYANGAYA (SDP) HC Misc 1133 of 2000** where in almost similar circumstances I set aside an order entered by the Deputy registrar. I hold that the Deputy registrar had no power to enter the order in this matter and pursuant to the inherent powers of the court, and to prevent the abuse of its process and to do justice in all situations, the order of 12<sup>th</sup> September, 2005 is hereby set aside and costs awarded to the original applicants in both judicial review applications.

DATED and delivered at Nairobi this 16<sup>th</sup> day of June, 2006.

J.G. NYAMU

JUDGE