



Kyuli & 6999 owners of Mavoko Town Block 12 v Muthemba & Njuguna (Being sued on their own behalf and as officials of Balozzy Welfare Group Association; Commissioner of Co-operatives Development Republic of Kenya & another (Intended Interested Party); Mohammed Koriyow Mohammed, Omar Khalif Adan, Mohammed Salat Ibrahim, Johana Njue, Maina & Olang (Being sued on their behalf and officials of Ganan Developers Ltd) & 3 others (Interested Parties); Nicholas Kasuru, Mutua Mbai, Daniel Mutua Mulinga & Jeremiah Mutisya Paul (Being sued on their own behalf and officials of Ngelani Associates (Third party) (Environment & Land Case 42 of 2014) [2022] KEELC 14661 (KLR) (9 November 2022) (Ruling)

Neutral citation: [2022] KEELC 14661 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 42 OF 2014
A NYUKURI, J
NOVEMBER 9, 2022

BETWEEN

**DANIEL KYULI & 6999 OWNERS OF MAVOKO TOWN BLOCK
 12 PLAINTIFF**

AND

**FELIX MUTHEMBA & JOSEPH NJUGUNA (BEING SUED ON THEIR
 OWN BEHALF AND AS OFFICIALS OF BALOZZY WELFARE GROUP
 ASSOCIATION) DEFENDANT**

AND

**COMMISSIONER OF CO-OPERATIVES DEVELOPMENT REPUBLIC OF
 KENYA INTENDED INTERESTED PARTY**
**DOLPHIN AREMO (DIRECTOR FOR CO-OPERATIVES , NAIROBI CITY
 COUNTY INTENDED INTERESTED PARTY**

AND

**MOHAMMED KORIYOW MOHAMMED, OMAR KHALIF ADAN,
 MOHAMMED SALAT IBRAHIM, JOHANA NJUE, MAINA & OLANG (BEING
 SUED ON THEIR BEHALF AND OFFICIALS OF GANAN DEVELOPERS
 LTD) INTERESTED PARTY**



**JOHN MATINGI MWANTHI, ABDALLA ALI & ABDUKASIM HASSAN(BEING
SUED ON THEIR OWN BEHALF AND OFFICIALS OF KATANI SELF HELP
GROUP) INTERESTED PARTY**

**FELIX MAINGI NGUI, PIUS MUSIMBA MUASYA, NORMAN MUTUA KIMILU
& JOHN NZOMO KIOKO (BEING SUED ON THEIR OWN BEHALF AND
ALLEGED OFFICIALS OF DRUMVALE FARMER'S CO-OPERATIVE SOCIETY
LTD) INTERESTED PARTY**

**DRUMVALE FARMERS CO-OPERATIVE SOCIETY LTD (IN
LIQUIDATION) INTERESTED PARTY**

AND

**NICHOLAS KASURU, MUTUA MBAI, DANIEL MUTUA MULINGA &
JEREMIAH MUTISYA PAUL (BEING SUED ON THEIR OWN BEHALF AND
OFFICIALS OF NGELANI ASSOCIATES THIRD PARTY**

RULING

Introduction

1. In the Notice of Motion dated September 26, 2022 brought under Sections 1A, 1B and 3A of the [Civil Procedure Act](#), Order 40 Rule 1 a, b, 2, 1, 2 and 3 of the [Civil Procedure Rules](#) and Section 62(2) of the Cooperative Society Act, the Plaintiffs/ Applicants sought for the following orders;
 - a. Spent
 - b. That this Honourable Court be pleased to enjoin the Commissioner for Cooperatives Development Republic of Kenya and Dolphin Aremo – Director of Cooperatives Nairobi City County.
 - c. That this Honourable Court be pleased to enjoin the 3rd, 4th, 5th and 6th Interested Party.
 - d. That pending hearing and determination of this suit the Commissioner of Co-operatives Development Republic of Kenya and Director of Co-operatives Nairobi City Council, their agents, workers, Auctioneers or anybody acting on their behalf be restrained from convening a revival meeting to functionalize the operations of Drumvale Farmer's Co-operative Society Limited (as 998) on October 11, 2022 at St Joseph's Catholic Church Kamulu, interfering in any manner whatsoever with the operations of Drumvale Farmer's Co-operative Society(in liquidation) cancellation of the registration order dated the August 28, 2009 forthwith.
 - e. Spent.
 - f. That the officer commanding Kamulu Police Station and Muungano Police Station to enforce the status quo orders meaning no meeting, no construction, no developing, no selling, no changing, no encroaching, no transfers or dealing with LR no Mavoko Town Block 12 formally LR No 2529/1, 3673 and 7283/1 for tranquillity, peace and compliance.
 - g. That costs of this application be provided for.
2. The application is anchored on the grounds on its face as well as the affidavit of Daniel Kyuli, the 1st Plaintiff. The Applicants' case is that the Director of Co-operatives Nairobi City County has contrary



to the provisions of Sections 61, 62 and 63 of the *Co-operative Societies Act*, illegally and unilaterally issued a Notice to convene a Special General Meeting for the revival of the society in the local Daily Newspaper of the 'Daily Nation' of September 20, 2022, calling for a meeting on October 11, 2022, to be held at St Joseph's Catholic Church Kamulu. Further that the Plaintiffs are absolute owners of parcel No Mavoko Town Block 12; which ownership is protected under the law.

3. The Applicants further stated that on October 7, 2016, in Nairobi Misc Application No 255 of 2016 the court found that the suit property is in Mavoko Town Block 12, further that Drumvale Farmers' Co-operative Society was registered in 1963 with the main objective of farming and subsequently acquired land in Mavoko and Athi River estates in Machakos County and Nairobi. They also stated that the society undertook farming on behalf of its members until the 1990s when the members agreed to subdivide the farm, allocate it to themselves and dissolve the society.
4. According to the Applicants, in 2009 the Commissioner of Co-operatives Development through an inspection recommended that the society's registration be cancelled and that the society be placed under liquidation for failure to file annual returns. That some of the parcels acquired by the society were LR No 8529/1, 7283/1 and 3673 which were consolidated to form Mavoko Town Block 12 which block was sub-divided and allocated to members who sold it to members of public who were issued with title deeds.
5. The Applicants' averred that they were horrified by the Notice of the Commissioner of Lands and they will be prejudiced and exposed to loss of land; and the same is mischievous coming 3 years after the liquidation.
6. The application was opposed. The 5th Interested Party filed a preliminary objection seeking for the application to be struck out on the following grounds;
 - a. The application offends the Doctrine of non-exhaustion; disputes relating to elections in a co-operative society are engendered under Section 61(2) of the Co-operative Society's Act Chapter 490 Laws of Kenya. It provides that:
 - (2) Any member of a co-operative society who feels aggrieved by an Order under Sub-section (1) may, within two months after the making of such order, appeal against the order to the Minister with a final appeal to the High Court.

The Applicant has failed and/or has not demonstrated that they first wrote to the 'Minister' as per the definition under Section 2 of the *Co-operative Societies Act* Chapter 490 Laws of Kenya. That in any case, the High Court is only to exercise Appellate Jurisdiction and not original jurisdiction

 - 1.1 Jurisdiction in such disputes under Section 61 of the Act is a presence of the 'Minister' and the High Court has only on the issue of appeal. The primary jurisdiction is a presence of the Co-operative Tribunal.
 - b. Sub-judice and Material Non -disclosure: The Applicant has failed to disclose that there are existing orders of the Co-operatives Tribunal in CTC 720/2016 orders which the previous liquidation has refused and/or declined to obey. The alleged dispute regarding reinstatement of the society can only be dealt with at the Co-operative Tribunal.
 - c. The Intended 5th Interested Party particularly Felix Maingi is not a party to ELC No 42 of 2017 and has never been a party to it. In any case, if the Applicant wants to challenge the gazette notice the same should be done in the proper forum.



- d. That the 5th Interested Party particularly Pius Muasya Musimba is deceased. He passed away in 2020 and therefore has no capacity to be sued save for his estate a fact which is known by the Advocate for the Applicant since he is still the one in CTC No 720 of 2016 where the deceased is a Claimant and the matter is pending ruling before the Honourable Tribunal.
 - e. Therefore, the application dated September 20, 2022 is frivolous, vexatious since it has failed to disclose that there are pending matters at the Tribunal and other courts. The application should be dismissed with costs to the 5th Intended Interested Party one particularly Felix Maingi.
7. The application was also opposed by the third party who are officials of Ngelani Associates. Daniel Mutua Mulinga swore a replying affidavit on October 17, 2022, in opposition of the application. He deponed that there is no evidence that he had breached the order of maintenance of status quo issued on November 16, 2021 and that the allegations that Ngelani Associates Limited had fraudulently acquired registration certificates for LR no 8529/7 does not hold water. Further that the society is still under liquidation. According to him, the application is a witch-hunt aimed at side lining Ngelani Associates Limited from enjoying the fruits of justice.
 8. Jeremiah Mutisya Paul Another official of Ngelani Associates Limited filed a replying affidavit sworn on October 21, 2022. He deponed that the application was unfounded, incompetent, bad in law and an abuse of the court process. Further that they are Interested Party and not third parties as determined by the order of this court made in March 31, 2021. They also stated that the application having not been brought under Order 1 Rule 10 of the Civil Procedure Rules, the same is unfounded in law.
 9. He further deposed that this court has no jurisdiction to determine the application which did not concern a land matter but involved a dispute between members of a society which falls within the purview of the Co-operative Society Tribunal. He also stated that the application was mischievous as it sought to join persons to the suit who had no interest in the suit properties, and that the application is meant to delay the matter.
 10. He also deposed that the Applicants had not demonstrated that the Intended Interested Parties had a stake in the proceedings or interest in the suit property.
 11. Dolphin Aremo, the County Director of Co-operatives within Nairobi City County also swore a replying affidavit dated October 14, 2022, in opposition to the application. She averred that this court has no jurisdiction to determine this matter as the dispute is not a land matter but a dispute between the members of a co-operative society, hence it is the Co-operative Tribunal with jurisdiction.
 12. She further deponed that the Commissioner of Co-operatives has power to appoint and revoke or cancel appointment of liquidation under the Co-operative Society's' Act as spelt out in Section 62 to 67 thereof. Her position was that the Applicants' allegation that reverting the society to the members will interfere with the case lacked any supporting evidence.
 13. Her position is that the issue before court is on land ownership, yet the application seeks to introduce another aspect to the suit, that is about the management of the affairs of Drumvale Farmers Co-operatives Society which was in liquidation, and that persons to be elected by members have nothing to do with the dispute pending before this court.
 14. She maintained that the liquidation had appointed the firm of Wachakaa & Co Advocates to represent him in several matters where he has filed cases spread out between the High Court in Nairobi, Court of Appeal, High Court in Machakos and the Co-operative Tribunal, and that the Applicants have not made material disclosure.



15. That the Liquidator has been in office for over 12 years without giving any account to the 5 Commissioners who have been in office and to the members. That the Liquidator cannot sell property without approved scheme of distribution in accordance with the law. Further, that due to the lack of transparency in the part of the Liquidator, there have been complaints against him in Parliament, DCI, Ant-corruption Authority which has led to the intervention by the County Government of Machakos, the Senate and the Cabinet Secretary who have advised that the society be returned to members. She maintained that all she did was to execute her mandate. Her position was that it is not correct that the society is in Machakos as it was registered as having its operating offices in Nairobi and that is where it is supervised from.
16. She further deposed that the Applicants had not come to court with clean hands and that it is the Liquidator/Applicant sponsoring these proceedings and not the purported 1,600 plus persons.
17. On October 6, 2022, the court directed that both the preliminary objection dated 4th October 2022, and the application dated September 26, 2022, shall be heard together and directed parties to file and exchange written submissions in respect of the same. On record are the Applicants' submissions dated October 13, 2022, the 2nd Interested Party's submissions dated October 17, 2022, the submissions by Jeremiah Mutisya Paul(2nd Interested Party) dated October 21, 2022, and the submissions of the 5th Interested Party's submissions dated October 19, 2022.

The Applicants' Submissions

18. Counsel for the Applicant reiterated the averments in the application and submitted that the following are the issues that have arisen herein;
 - a. Whether the ownership of the suit property is the issue pending for determination before this court.
 - b. Whether shareholders of Drumvale Farmers' Co-operative Society Ltd can be liquidated and other non-members received individual titles of the suit property.
 - c. Whether on October 7, 2016, the High Court in Nairobi Misc Application No 255 of 2016 confirmed that Mavoko Town Block 12 belongs to the Applicants.
 - d. Whether the Interested Parties on their behalf and on behalf of Ngelani Associates fraudulently acquired land parcel no LR 8529/7 (formerly 8529/1) which is non-existent.
 - e. Whether the officials of Ganan Developers Ltd fraudulently acquired LR No 8529/10.
 - f. Whether the Commissioner for Co-operatives Development by Gazette Notice No 8428 of July 15, 2022, can lawfully revoke the cancellation order issued in 2009 and reinstate Drumvale Farmers' Co-operative Society members into full operations, when the above issues are still pending before this court and when the subject matter was transferred during the liquidation process.
 - g. Whether the Directors of Co-operative in Nairobi County has jurisdiction to issue a notice conveying a special general meeting for the removal of the society vide the Daily Nation of September 20, 2022, despite the issues pending before this court.
 - h. Whether it is fair to disrupt the status quo when different groups are interested in the suit property to the extent that the Applicants are unable to access the same.



- i. Whether the Respondents and Interested Parties are imposters, who do not reside on the suit property as the Applicants have resided thereon for over 20 years.
 - j. Whether this court has a duty to ensure that its authority is respected by all.
19. It was further submitted by the Applicant that the Commissioner for Co-operatives acted outside the law when he lifted the liquidation and reinstated the registration of Drumvale Farmers' Co-operative Society Ltd. According to counsel, Section 61 of the [Co-operative Societies Act](#) provides that any person aggrieved by the decision of the Commission may appeal to the Minister within 30 days of the order, with a final appeal to the High Court. His view was that an appeal coming up 13 years later is time barred and hence the Commissioners actions are a blatant abuse of his office.
 20. Counsel also argued that although Section 68 of the Act prescribes the Commissioners powers during liquidation, there is no provision for lifting liquidation and reinstating registration of a liquidated society. Counsel's view was that even Section 93 does not grant the Commissioner such powers. Further, that Section 66 gives a Liquidator power to sue and be sued to defend members' interests.
 21. Counsel contended that Section 23 of the Co-operatives [Societies Act](#) provided that the effect of cancellation of registration is that the society ceases to exist as a corporate body. Hence the Commissioners attempt to convene the meeting of the society were ultra vires. Counsel argued that Schedule 4 of the [Constitution](#) had devolved co-operative functions and therefore Drumvale Farmers' Co-operative Society Limited was domiciled in Machakos County and not Nairobi County.
 22. Reliance was placed on the case of *Giella vs Cassman Brown* (1973) EA 358 for the proposition that the Applicant had met the threshold for grant of temporary injunction, which conditions were said to be a demonstration of a prima facie case, and demonstration of irreparable injury. Counsel argued that the Plaintiffs have a legal right to the suit property under Article 40 of the [Constitution](#) as they are registered proprietors. Thereof Counsel took the position that the Applicants will suffer irreparable injury if the liquidator who sold the suit property is removed exposing the Applicants to massive financial loss, damage, and loss of property. Counsel referred to the case of [Pius Kipchirchir Kogo vs Frank Kimeli Tenai\(2018\) eKLR](#) for the proposition that irreparable injury is injury that cannot be adequately compensated in damages.

Submissions by Daniel Mutua Mulinga one of the Officials of Ngelani Associates (2nd Interested Party)

23. Counsel for the 2nd Interested Party's official Daniel Mutua Mulinga, submitted that the actions of the Commissioner of Co-operative Development may hinder justice hence he should be restrained by this court. Counsel referred to Section 24(a) and (b) 25(1), 26(1), 30(3) and 35(1) of the [Land Registration Act](#) No 3 of 2012 and the case of [Willy Kipsongok Morogo v Albert K Morogo\(2017\) eKLR](#) and argued that the application be considered in the interests of justice.

Submissions of the 2nd Interested party's official Jeremiah Mutisya Paul(Official of Ngelani Associates)

24. Counsel for Jeremiah Mutisya Paul, on behalf of Ngelani Associates, argued that the latter were not third parties but Interested Parties vide an order for joinder made on March 31, 2021. Counsel reiterated the averments in their replying affidavit and submitted that the application is mischievous and meant to delay the determination of this suit.



25. It was further submitted for the 2nd Interested Party that the Applicants had not demonstrated that the Interested Parties had a stake in these proceedings and that their presence in the suit was necessary to assist the court effectively determine the issues herein as espoused in the Mumo Matemu case.
26. Reliance was placed on the cases of *Brek Sulum Hemed vs. Constituency Development Fund Board & Another (2014) eKLR*, *Trusted Society by Human Rights Alliance vs Mumo Matemo & 5 others, Judicial Service Commission vs Speaker of the National Assembly* and *Allan Njuguna T/A Mwireri & 2 others Civil Appeal No 165 of 1993*, which decisions the court has considered. Counsel urged the court to dismiss the application for lack of merit.

Submissions by the 5th Intended Interested Party

27. Counsel for the 5th Intended Interested Party submitted that although they raised the issue that there is a case before the Co-operatives Tribunal being CTC No 720 of 2016 regarding liquidation of Drumvale which is being handled by the same advocates for the Applicants, no affidavit was filed to rebut those claims. That the case is pending ruling on contempt against the liquidator.
28. In addition, Counsel submitted that this court has no jurisdiction to handle the application as the issues regarding elections and liquidation are not a preserve of the Environment and Land Court. Further, that the existence of CTC 720 of 2016 regarding the liquidation of Drumvale Farmers' Co-operative Society Limited has not been controverted.
29. Counsel argued that the application offends the doctrine of exhaustion. Reliance was placed on the case of *Geoffrey Muthinja Kabiru & 2 Others vs Samuel Munga Henry & 1756 Others (2015) eKLR*, for the proposition that where a dispute resolution mechanism exist outside courts, the same must be exhausted before the jurisdiction of the court is invoked.
30. Counsel also relied on the holding in the case of *Mutanga Tea & Coffee Company Ltd v Shikara Limited and Municipal Council of Mombasa (2015) eKLR*, on exhaustion of remedies before a matter is filed in court, which decision this court has taken into account.
31. It was further argued for the 5th Intended Interested Party that the Commissioner of Co-operative Development is vested with extensive powers under Sections 61 and 62 of the Co-operatives *Societies Act*, which provides for procedure when a party is aggrieved to the effect that an appeal against the decision of the Commissioner cancelling registration, may in two months appeal to the Minister with the final appeal lying to the High Court.
32. Counsel maintained that a party approaching the High Court can only do so by invoking the appellate jurisdiction of the High Court. Counsel argued that by approaching this court without exhausting other dispute resolution mechanisms and without leave of court, the Applicants have sought to move the court that has no jurisdiction. Reference was made to the case of *Republic vs Commissioner for Co-operatives Development; Exparte Mukenia Farmers' Co-operative Society Limited (2021) eKLR*, where the court stated that local remedies cannot be evaded in challenging an administrative decision.
33. It was pointed out on behalf of the 5th Intended Interested Party that the application was marred by material non-disclosure, of the existence of CTC No 720 of 2016. Counsel referred to the case of *Kenya Electricity Transmission Company Ltd vs Kibotu Limited (2019) eKLR*, for the proposition that in an application like the one in court, the Applicant is under obligation to make the fullest possible disclosure of material facts.



34. On whether the cause of action survived the death of Pius Musimba Muasya, Counsel submitted that the application seeks to join the said Pius Musimba Muasya who is deceased. Counsel argued that the cause of action does not survive the death of the deceased as the cause of action has abated.

Analysis and Determination

35. I have carefully considered the application, supporting affidavit, replying affidavits, the preliminary objection, the submissions and the entire record. The issues that fall for determination are as follows;
- a. Whether this court has jurisdiction to issue a temporary injunction restraining the Commissioner of Co-operative Development and Director of Co-operatives Nairobi County from convening a special General meeting of the shareholders of Drumvale Farmers' Co-operative Society Limited.
 - b. Whether the Applicant has met the threshold for grant of injunctive orders and
 - c. Whether joinder of the Intended Interested Parties is necessary for the effectual determination of all the matters in dispute in this suit.
36. Jurisdiction is the power of the court to hear and determine a matter before it. Jurisdiction is everything and without it the court must down its tools. In the case of the *Owners of the Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Ltd (1989) eKLR*, the Court of Appeal held as follows:
- ' Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.'
37. A court's jurisdiction can only flow from the *Constitution* or statute or both. The court cannot arrogate itself jurisdiction that it does not have or apply judicial craft or innovation to expand its jurisdiction beyond the limits provided for in law. In the case of *Samuel Kamau Macharia & Another vs Kenya Commercial Bank & 2 Others(2012) eKLR*, Paragraph 68, the Supreme Court aptly captured the source of a court's jurisdiction as follows:
- (68) A court's jurisdiction flows from either the *Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as confened by the *Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is confened upon it by law.
- This court dealt with the question of jurisdiction extensively in, in the matter of the Interim Independent Electoral Commission (Applicant) Constitutional Application Number 2 of 2011. Where the *Constitution* exhaustively provides for the jurisdiction of a court of law, the court must operate within the Constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can parliament confer jurisdiction upon a court of law beyond the scope defined by the *Constitution* where the *Constitution* confers power upon parliament to set the jurisdiction of a court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by Statue Law.
38. In the instant application, the 5th Intended Interested Party has argued that this court lacks jurisdiction as the application offends the doctrine of exhaustion. The doctrine of exhaustion of administrative remedies is a matter that speaks on the question of at what point and to what extend should there be



judicial intervention in an administrative process. The doctrine that administrative remedies ought to be exhausted before judicial intervention is a rule of orderly procedure and in my view a jurisdiction issue because where the legislature has expressly granted jurisdiction to a quasi-judicial administrative agency to determine a matter, it is in order that, that administrative process is first exhausted before a court intervenes.

39. Peter A Devlin in *Jurisdiction, Exhaustion of Administrative remedies, and Constitutional Claims'*, *New York University Law Review*, Vol 93:1234, November 2018, stated as follows;

Exhaustion doctrine requires someone challenging an agency decision to pursue 'all administrative remedies before seeking judicial review'. The steps necessary to exhaust all remedies are specific to the statutory scheme.

There are two main purposes behind the judicially created doctrine. First, it seeks to protect administrative agency authority and autonomy. This authority is based on judicial deference to the congressional delegation that agencies, not the courts, should have primary responsibility over the programs they administer. Thus, exhaustion is especially a propos when the agency's discretionary power or special expertise is at stake. The doctrine helps give agencies a chance to correct their mistakes, for example through an internal appeals process, and discourages people from avoiding the agency's procedures.

Second, exhaustion promotes judicial efficiency. If an agency can correct its own errors, then there is no need for litigation.

Requiring exhaustion might also provide the court with a more useful record. The factual record may be more comprehensive and the agency would have had a chance to offer its expertise.

40. I am in agreement with the above position and hold the view that as long as an administrative agency's jurisdiction is anchored in law, the court ought to wait for the administration process to be exhausted before intervening and which intervention ought to be in compliance with the law. Courts are not the first port of call for all disputes, especially in matters where the legislature has provided quasi-judicial tribunals with specialized expertise to deal with specific matters. While this court appreciate that there are exceptions to the doctrine, for purposes of this ruling, the issue of exceptions to the doctrine of exhaustion did not arise and therefore this court will not address that aspect.

41. In the case of *Geoffrey Mutbinja Kabiru & 2 Others vs Samuel Munga Henry & 1756 Others (2015) eKLR*, the Court of Appeal stated as follows;

It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews

The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the courts. These accords with Article 159 of the *Constitution* which commands courts to encourage alternative means of dispute resolution.

42. Similarly, in the case of *Speaker of National Assembly vs. Karume (1992) eKLR 21*, the Court of Appeal stated as follows;

Where there is a clear procedure for redress of any particular grievance prescribed by the *Constitution* or an Act of parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.



43. Essentially, a court's jurisdiction to interfere with an administrative process does not crystalize until the administrative process as provided for in law is exhausted, and the court can only take up the jurisdiction provided, whether for juridical review or appeal or otherwise as may be provided within the law.
44. The 5th Intended Interested Party argued that Sections 61 and 62 of the *Co-operative Societies Act* No 2 of 1997 Laws of Kenya, vests the power to hear disputes emanating from the decisions of the Commissioner of Co-operative Development, in the Minister, with the final appeal lying with the High Court.
45. In the instant application, the Plaintiffs have sought for an order to restrain the Commissioner of Co-operative Development and the Director of Co-operative Nairobi City County from convening a meeting to functionalize the operations of Drumvale Farmer's Co-operative Society Limited. They referred to a Gazette Notice No 8428 dated July 15, 2022 where the Commissioner for Co-operative Development revoked the cancellation of registration order and reinstated Drumvale Farmer's Co-operative Society Limited (CS 998) to full registration. The revocation was done allegedly pursuant to Section 62 of the *Co-operative Societies Act*. The Applicants also referred the court to a Notice by the Director of Co-operatives, Nairobi City County convening a meeting of members of Drumvale Farmer's Co-operative Society.
46. The Applicants have stated that they are aggrieved with the revocation of cancellation of registration of Drumvale Farmer's Co-operative Society, and that is why they have sought to restrain the Commissioner and Director of Co-operatives from convening a meeting of members of the said Co-operative Society. Does this court have jurisdiction to determine the questions of whether the Commissioners actions are lawful? I am of the considered view that this court has no jurisdiction to hear and determine that issue.
47. To begin with, the *Co-operative Societies Act* has express provisions as regards the forum where such a dispute ought to be filed. Section 62 provides that where a person is aggrieved by an order of the Commissioner cancelling registration such a person may appeal to the Minister within 30 days of the order. It is my view therefore, that the actions of the Commissioner which are said to have been done pursuant to Section 62 of the Co-operative Act ought to be challenged before the Minister. In the event that the same are to be challenged beyond the Minister, then that forum cannot be the Environment and Land Court.
48. This is because Article 162(2) (b) of the *Constitution* provides for the jurisdiction of the Environment and Land Court and states that this court can hear disputes relating to the environment and the use and occupation of, and title to, land. Section 13 of the *Environment and Land Court Act* specifies the extend of jurisdiction of the Environment and Land Court in so far as disputes concerning the environment and land are concerned.
49. While a Co-operative Society such as Drumvale Farmer's Co-operative Society Limited dealt or deals in land, that alone cannot confer jurisdiction on this court to determine the issue of the legality or otherwise of the Commissioner's revocation of cancellation of registration of Drumvale Farmers Co-operative Society. That is not a question touching on environment or land. And it cannot be a question within the purview of Article 162(2)(b) of the *Constitution* as read with Section 13 of the Environment and Land Act.
50. In the premises, I find and hold that this court lacks jurisdiction to hear and determine the Notice of Motion dated September 26, 2022, and the same is hereby struck out with costs to the Respondents.
51. Orders accordingly.



DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 9TH DAY OF NOVEMBER, 2022 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the Presence of;

Mr. Wachakana for the Applicant.

Mr. Muriuki for the 2nd Proposed Interested Party.

Mr. Keli for the 2nd 3rd Party.

Mr. Kiluva holding brief for Mr. Makundi for the 1st and 3rd Interested Parties.

Ms. Kiprop holding brief for Mr. Mutinda for the Defendant/Respondent.

Mr. Chimei for the 5th Intended Interested Party.

Court Assistant – Josphine.

