



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CIVIL MISC. APPL. NO.56 OF 2004

IN THE MATTER OF: AN APPLICATION BY MOGONGA FARMERS CO-OPERATIVE SOCIETY LIMITED FOR LEAVE TO APPLY FOR JUDICIAL REVIEW (CERTIORARI AND PROHIBITION)

AND

IN THE MATTER OF THE PERMANENT SECRETARY IN CHARGE OF THE PROVINCIAL ADMINISTRATION

AND

IN THE MATTER OF REPUBLIC

AND

PERMANENT SECRETARY IN CHARGE OF PROVINCIAL ADMINISTRATION..... 1ST RESPONDENT

THE DISTRICT COMMISSIONER GUCHA DISTRICT 2ND RESPONDENT.

EX-PARTE.

**MOGONGA FARMERS CO-OPERATIVE SOCIETY LIMITED
..... APPLICANT.**

RULING

The applicant prays for an order of judicial review in nature of certiorari to remove to this court and quash the 2nd Respondents decision to construct his official Residence on applicants parcel No.MAJOGE/BOOCHI/1495. He also prays for order of prohibition prohibiting the second Respondent from constructing on the said plot and from demolishing the applicants houses erected therein.

The applicant MOGONGA FARMERS CO-OPERATIVE SOCIETY LTD is a coffee Cooperative Society in Gucha District. One of its factories is NYAMONYO COFFEE FACTORY which is in OGEMBO town the headquarters of the District.

The factory is on plot No.MAJOGE/BOOCHI/1495. Court was told that initially this plot belonged to Gusii County Council. In 1968 it gave it to the applicant to construct a factory. Eventually a factory was built. The larger Kisii District was later divided and Gucha District came into existence with its

Headquarters at Ogembo town where the District Commissioner is based. In the month of May 2004 the District Commissioner moved into the applicants plot, demolished some structures and started building the D.C.'s official residence there without the applicants permission and hence this application. It was submitted that unless the Respondent is stopped by the court he will demolish the factory.

The 2nd respondent admitted moving the site and started building. However it was deponed that the decision to build the D.C.'s official residence on the plot was made by the District Development Committee. Present Ogembo Town Council discussed the issue and agreed that since the land was idle the D.C.'s residence be built there. The Society also held a meeting and agreed on the same. These resolutions were Tabled before the District Development Committee which approved the same. The Government provided funds to build the Residence and construction is at advanced stage. The court directed Gusii County Council who are the registered owners of the plot he served. The town clerk filed an affidavit and the council is supporting the building of the residence on the plot.

Official search in the lands office clearly show that the land in question is registered in the name of Gusii County Council though there is a caveat that it is for building a factory.

The applicant is therefore not the registered owner of the plot in question. The registered owner has no objection to the Respondent building a residence there. This is an indication that the land is free – or at least the position where the residence is being put. Since 1968 the applicant never made any move to regularize the ownership and cannot now claim to own it at the exclusion of others. The plot was to be utilized for the benefits of the public. Building a D.C.'s residence is one of such benefits. The applicant did not show that the decision to build the residence on the plot was made by the 2nd Respondent alone. He did not indicate when such decision, which he wanted quashed was made. On the other hand the respondent submitted that the decision was made by the D.D.C. which is made of representative of the public. It is therefore clear the decision was not made by the 2nd respondent alone.

As for the orders of prohibition court was told that construction has already started and has progressed quite far. The prayer therefore has been overtaken by events. All what I can direct is that the respondent should not demolish the factory but only use the unbuilt area.

All in all I find the application has no merit and the same is dismissed. Each party to bear its own costs.

KABURU BAUNI

JUDGE.

27/6/04

Dated and delivered on 27th July 2004 in presence of Mr. Kaburi for Applicant

Mr. Chirchir for

Respondent.

KABUR BAUNI

JUDGE.