



**Mbuva v Waicakehiri Farmers Society Ltd (Sued through the Chairman Robert Kimathi Marete); Rwere & another (Intended Interested Party) (Environment & Land Case 175 of 2002) [2024] KEELC 6771 (KLR) (9 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6771 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE 175 OF 2002  
CK NZILI, J  
OCTOBER 9, 2024**

**BETWEEN**

**JOSEPH MUTUA MBUVA ..... PLAINTIFF**

**AND**

**WAICAKEHIRI FARMERS SOCIETY LTD (SUED THROUGH THE  
CHAIRMAN ROBERT KIMATHI MARETE) ..... DEFENDANT**

**AND**

**FESTUS MURITANI RWERE ..... INTENDED INTERESTED PARTY**

**KEVIN MWIRIGI ..... INTENDED INTERESTED PARTY**

**RULING**

1. The court, by an application dated 14.8.2024, is asked to admit Festus Muritani Rwere and Kevin Mwirigi, the newly elected chairman and secretary of the defendant, as interested parties in this suit and to issue a stay of the execution of the decree herein. The reasons are contained in the affidavit of Kevin Mwirigi sworn on 14.8.2024. It is averred that the intended parties were elected on 9.3.2020.
2. It is further averred that there is an impending execution of the decree as per annexures KM 4 (a) & (b). The applicants aver that the issue of who are the bonafide officials of the defendant were yet to be determined for one Robert Kimathi Marete, who claims to be a lifelong chairman has been uncooperative.
3. The applicants aver that they are fearful that if the execution proceeds and the money claimed is paid by the judgment debtor it will be wasted away by Robert Kimathi Marete to the detriment of the defendant.



4. On 16.3.2022, this court declined to entertain a consent letter dated 23.2.2021, a notice to withdrawal dated 19.1.2021 and an application dated 15.11.2021 before the bonafide officials of the defendant were determined by the Cooperative Tribunal. The applicants admit that the directions of the court have not been complied with over two years down the line.
5. The capacity to sue and or join a suit cannot be assumed. There is no evidence that a competent authority under the Cooperatives *Societies Act* has determined the issue of the bonafide officials. In *Samuro Gituto Farmers Coop Society Ltd vs Imagulula Tuki & 15 others* (2019) eKLR, the court said that the proper forum to resolve leadership wrangles under Section 76 (b) & 77 of the Cooperative *Societies Act* was the Cooperative Tribunal. Until the issue is resolved I do not find any basis to allow the intended interested parties to join the suit at the execution stage. Similarly, I find no basis to stay the execution process.
6. The fear by the applicants is far-fetched, for the monies are recoverable, if the alleged person misuses the same. The application is dismissed with no orders as to costs.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU \*ON THIS 9<sup>TH</sup> DAY OF OCTOBER, 2024**

**HON. C K NZILI**

**JUDGE**

In presence of

C.A Kananu

Kaaria for the interested parties

