



**Republic v Commissioner of Cooperative Development & another; Mwangi & 17 others
(Interested Party); Njau & 3 others (Exparte Applicant) (Judicial Review Application
E013 of 2023) [2025] KEHC 6609 (KLR) (Judicial Review) (21 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6609 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW APPLICATION E013 OF 2023**

RE ABURILI, J

MAY 21, 2025

BETWEEN

REPUBLIC APPLICANT

AND

COMMISSIONER OF COOPERATIVE DEVELOPMENT 1ST RESPONDENT

HONOURABLE ATTORNEY GENERAL 2ND RESPONDENT

AND

BENSON NGANGA MWANGI & 17 OTHERS INTERESTED PARTY

AND

DUNCAN CHEGE NJAU & 3 OTHERS EXPARTE APPLICANT

JUDGMENT

1. This judgment determines the Notice of Motion dated 14th February 2022 and is expressed to be brought under section 8 (2) of the *Law Reform Act*, Cap. 26 and Order 53 rules 1, 2 and 3 of the Civil Procedure Rules. The applicants seek for the following orders:

1. That this Honorable court be pleased to issue orders of certiorari directed to the 1st, 2nd and 3rd respondents, by themselves their servants and/or agents or any other officer acting under their authority to bring before this court for the purpose of being quashed the inquiry order dated 20th April 2022, for the dissolution of the management and supervisory boards of Metropolitan National Sacco, all administrative actions, decisions or measures initiated or put in process/



motion by the Respondents or their agents and hinged or founded on the impugned inquiry report of the servants and/or the 1st Respondent.

2. That this Honorable court be pleased to issue orders of prohibition directed to the 1st, 2nd and 3rd (sic) respondents, by themselves their servants and/or agents or any other officer acting under their authority from dealing in any way with the impugned inquiry report, decision, finding/recommendations in whatsoever manner detrimental to the applicants.
3. That the cost of this application be provided for.
2. The application is based on a statutory statement dated 2nd February 2023 and an affidavit verifying the facts relied on sworn on even date by Mr. Duncan Chege Njau.
3. The above documents indicate that, through Kenya Gazette Notice No. 4558 Vol. CXXIV No. 71 dated 22nd April 2022, the respondents initiated an inquiry into the affairs of a co-operative society known as Metropolitan National Sacco. The inquiry order specifically referenced the society's by-laws, financial and operational practices, and the conduct of both current and former directors in the management of the Sacco. The inquiry team consisted of officials from the office of the 1st respondent the Commissioner of Cooperative Development and the Sacco Societies Regulatory Authority, SASRA.
4. The inquiry began on 26th April 2022 and continued beyond September 2022. The applicants contend that this exceeded the fifteen-day duration stated in Gazette Notice No. 4558, as well as the maximum sixty-day period set out under Rule 46(1) of the Co-operative Society Rules, 2004. A summary of the inquiry findings was presented at the General Meeting of Metropolitan National Sacco held on 29th October 2022.
5. The applicants claim that although the inquiry was initially meant to review a ten-year period, the summary presented covered 1997 to 2022 a span of twenty-five years. They assert that no records were made available at the meeting to support this extended period. Further, that the inclusion of the period from 1997 is alleged to contravene the provisions of the *Co-operative Societies Act*, Cap. 490. Additionally, the report summary allegedly suggested that the society's financial statements were falsified.
6. The applicants take issue with the report, particularly because members of the management committee among them the applicants were negatively mentioned without being given an opportunity to respond. They contend that they were condemned without a hearing, and that no discussion on the report summary took place at the general meeting.
7. The applicants also claim that the County Director of Co-operatives had already indicated that the 1st respondent intended to act on the inquiry report even before it was formally presented to the members. They argue that this suggests the outcome was predetermined, and that they were denied a fair hearing. As such, they believe the dismissal of the Management Committee and the Supervisory Board was unfair.

Responses by the Respondents

8. The respondents filed a replying affidavit sworn by Mr. David K. Obonyo the Commissioner of Cooperatives on 13th April 2023. It appears that paragraphs 2 to 6 are missing from the version uploaded to the portal. However, based on the remaining content, Mr. Obonyo asserts that the challenged inquiry was conducted lawfully, procedurally, and in accordance with the law. He denies the applicants' allegations and states that the applicants were given a fair opportunity to be heard.



9. According to Mr. Obonyo, the *Co-operative Societies Act* requires all officers and members of a society to produce relevant financial records, documents, and other information as requested by the person conducting an inquiry. In this regard, that appropriate summons were issued to the relevant individuals to provide information necessary for the inquiry.
10. He further cites Section 58(3) of the Act, which mandates that the Commissioner must present the findings of an inquiry at a general meeting of the society and issue directions for implementing the inquiry's recommendations. In this case, he deposes that the inquiry findings were presented to the society's members at a General Meeting held on 29 October 2022. The inquiry concluded that the board and senior management, both current and former, had been conducting the society's affairs in violation of the *Co-operative Societies Act*, the *Sacco Societies Act*, 2008, and related regulations.
11. The report is also said to have found that the society was being run in a manner harmful to the interests of its members and the general public, in contravention of Section 51 of the *Sacco Societies Act* and Regulation 67 of the 2010 Regulations, thereby threatening the Sacco's sustainability and financial stability.
12. It is contended in deposition that the applicants were fully aware of the inquiry and participated in meetings, including the Annual General Meeting where the report was presented. That following that presentation and under Section 58(3), the report became a public document, accessible to all, including the applicants.
13. Additionally, the respondents, on the advice of their legal counsel, which they believe to be accurate, state that under Section 58(4) of the Act, the Commissioner is empowered to dissolve a society's committee and appoint an interim committee of up to five members for a maximum of ninety days, where it is found that the committee is not discharging its duties properly. That it was on this basis that the society's Board, Management, and Supervisory Board were dissolved. Moreover, that Section 28(4) (k) of the Act bars any individual adversely mentioned in an adopted Inquiry Report from serving on a committee.
14. The respondents maintain that the inquiry was conducted within the law and procedural fairness was observed, including adherence to the rules of natural justice. They assert that the findings were lawful and reasonable.

The Interested Party

15. The Interested Parties also filed a Replying Affidavit dated 11th March 2025 sworn by Mr. Benson Ng'ang'a Mwangi.
16. The Interested Parties' case just like that of the Ex parte Applicants which is that the inquiry was unlawfully extended beyond its legal mandate, in direct contravention of section 46 (1) of the Co-operative Societies Rules, 2004 which provides that Any inquiry held pursuant to section 58 of the Act shall not be conducted continuously for a period exceeding sixty days.
17. The interested parties assert that the summary report presented at the General Meeting was never signed by authorized officers from the office of the 1st respondent or any other member of the inquiry team. This according to them cast serious doubt on the credibility, legitimacy and ownership of the documents.
18. It is their case that the full report remained concealed, depriving them and Sacco members their right to access information relied upon to reach adverse conclusions against them. According to the Interested



- Parties, the summary report failed to provide substantive proof, specific discrepancies, or supporting evidence, rendering the findings speculative, unsubstantiated, and legally deficient.
19. The interested parties also state that the failure to grant them a hearing before making adverse findings constitutes a fundamental breach of the right to fair administrative action under Article 47 of *the Constitution* and the *Fair Administrative Action Act*, 2015.
 20. The 1st Respondent is said to have continued to take adverse administrative action placing reliance on the impugned report and even continuing to issue surcharge notices during the pendency of these proceedings in blatant disregard of the doctrine of sub judice.
 21. The interested parties also allege that the imposition of the surcharges was undertaken in violation of Section 58 of the *Co-operative Societies Act*, Section 4 of the *Fair Administrative Action Act* and Article 50 of *the Constitution*. 2025.
 22. The application was canvassed by way of written submissions which the court takes into consideration.

Analysis and Determination

23. I have considered the application, the verifying affidavit in support, the responses in opposition, and the parties' respective submissions. In my view, the main issue for determination is whether the judicial review orders sought are available to the applicants in the circumstances of this case.
24. The respondents have raised a pertinent issue that the applicants have not exhausted the appeal mechanism provided for under section 74 of the Cooperative *Societies Act*.
25. The law is settled that where a statutory framework establishes an alternative remedy, including an appellate process, a party must ordinarily exhaust that mechanism before invoking the judicial review jurisdiction of the court. In *Nyende v Advocates Disciplinary Tribunal & 3 others* [2025] KEHC 4533 (KLR), this Court observed:

“Where there exists an alternative effective remedy, or where the statute provides for appeal mechanisms from the decision which is sought to be challenged, then the court would be slow to interfere with the alternative dispute resolution mechanisms.”
26. In *Republic v Co-operative Tribunal & Another Ex parte Paul Mburu Mwaura* [2015] eKLR, it was similarly held that judicial review is not the appropriate remedy where the Co-operative Tribunal is available and the appeal procedure has not been exhausted.
27. The Court of Appeal reiterated this principle in *Speaker of the National Assembly v Njenga Karume* [1992] eKLR, stating:

“Where there is a clear procedure for the redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed.”
28. In the present case, the Applicants have challenged a decision made pursuant to an inquiry under Section 58 and 73 of the *Co-operative Societies Act*. They have faulted that inquiry, claiming that it was conducted beyond the timelines provided for in Rule 46(1) of the Cooperative Society rules, and that they were not given the opportunity to be heard.
29. Section 58 of the Cooperative *Societies Act* empower the Commissioner of Cooperatives to inquire into the affairs of any cooperative society or into the conduct of any person involved in the management of a co-operative society where misfeasance, misappropriation, or breach of trust is suspected.



30. It is not disputed that the inquiry process under the said Sections culminated in the issuance of findings and sanctions by the 1st Respondent after presentation to the Society's AGM.
31. The *Co-operative Societies Act* under section 74 provides for a statutory appellate mechanism. The section provides as follows:
- (1) Any person aggrieved by an order of the Commissioner under section 73(1) may, within thirty days, appeal to the Tribunal.
 - (2) A party aggrieved by the decision of the Tribunal may within thirty days appeal to the High Court on matters of law.
32. This Section provides for an appeal to the Co-operative Tribunal against orders made under Section 73(1) by the Commissioner of Cooperatives. A further appeal on points of law lies to the High Court. The existence of this mechanism is undisputed.
33. Despite this, the applicants have not pursued or demonstrated any attempt to exhaust the appellate process. They have also not invoked Section 9(4) of the *Fair Administrative Action Act* to seek exemption from the requirement to exhaust alternative remedies. Neither have they demonstrated that the appeal process provided for in law is ineffective.
34. Courts have consistently emphasized that judicial review is a remedy of last resort. In *Republic v Architectural Association of Kenya & 3 others Ex Parte Paragon Ltd* [2017] eKLR, Odunga J. (as he then was) stated:
51. There is now a chain of authorities from the High Court as well as the Court of Appeal that where a statute has provided a remedy to a party, this Court must exercise restraint and first give an opportunity to the relevant bodies or State organs to deal with the dispute as provided in the relevant statute. See *Kipkalya Kones v Republic & Another ex-parte Kimani Wanyoike & 4 Others* (2008) 3 KLR (EP) 291, and *Francis Gitau Parsimei & 2 Others v National Alliance Party & 4 Others* Petition No.356 and 359 of 2012.
 52. This position has now acquired statutory underpinning vide section 9(2), (3) and (4) of the *Fair Administrative Action Act*, 2015 which provides:
 - (2) The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.
 - (3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under sub-section (1).
 - (4) Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.
35. The Applicants claim that the 1st Respondent failed to provide them with the full report of the inquiry and also that they were not given a chance to be heard before an adverse decision was made against them. If indeed that is so, it is a matter that can be properly be ventilated before the appellate bodies



- established under the *Co-operative Societies Act* namely, the Cooperatives Tribunal chaired by a judicial officer and all the way to the High Court on appeal.
36. This Court, sitting as a judicial review court, lacks jurisdiction to delve into the merits of the inquiry findings or to reassess the factual basis of the report. Such a role is reserved for the specialized appellate tribunal, which is better equipped to evaluate contested facts and evidence.
 37. Section 78 of the *Civil procedure Act* confers the appellate court with broad powers to reassess evidence, receive further evidence, remand cases, or even to order a new trial, powers that this Court lacks in its judicial review jurisdiction.
 38. The applicants and interested parties have also pleaded violation of constitutional rights under Articles 47 and 50. However, allegations of violation of rights does not automatically exempt a party from the duty to exhaust alternative remedies. The proper forum for addressing such complaints, arising within a statutory framework, remains the appeals mechanism unless the applicant shows exceptional circumstances and seeks an exception from resorting to those statutory mechanisms.
 39. Section 9 of the *Fair Administrative Action Act*, 2015 provides as follows:
 - (2) The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted. (4) Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.
 40. The above provisions are prohibitive which giving way for exemption where there is an application for such exemption, to be considered on its merit. Constitution at Article 159 mandates the courts to promote ADR and therefore the alternative mechanisms for resolving disputes are very well protected under *the Constitution*. The applicants in this matter have not applied for exemption under Section 9(4),
 41. In Republic vs Ministry of Interior and Coordination of National Government & Another ex parte ZTE Corporation [2013] eKLR, which was before enactment of the *Fair Administrative Action Act*, the court reaffirmed that judicial review should not be pursued unless alternative procedures are demonstrably inadequate or inappropriate which is not the case here.
 42. In Francis Gitau Parsimei & 2 Others v National Alliance Party & 4 Others Petition No. 356 and 359 of 2012 (consolidated), the court placed emphasis on the importance of respecting dispute resolution mechanisms established by statute, and deferring to those processes unless good reason is shown.
 43. The Court of Appeal has similarly affirmed the primacy of exhaustion in Republic v National Environment Management Authority Civil Appeal No. 84 of 2010 and Ndiara Enterprises Ltd v Nairobi City County Government [2018] eKLR. In both cases, the Court held that parties who fail to pursue or apply for exemption from statutory appeal procedures cannot invoke judicial review as a substitute remedy.
 44. Accordingly, this Court therefore finds that the applicants and the interested parties had a clear, available, and effective remedy under Section 74 of the *Co-operative Societies Act*, which they have failed to pursue and they have also not sought to be exempted from resorting to the appeal mechanisms stipulated in law.
 45. In the result, I find that the application dated 14th February 2022 offends the exhaustion doctrine and is premature.



46. The Notice of Motion is hereby struck out.
47. The applicants are directed, as stipulated in section 9(3) of the *Fair Administrative Action Act*, to pursue their grievances through the appellate mechanisms provided under Section 74 of the *Co-operative Societies Act*.
48. There shall be no order as to costs.
49. It is so ordered.
50. This file is closed.

DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 21ST DAY OF MAY, 2025.

R.E. ABURILI

JUDGE

