**Republic v Commisioner for Cooperatives Development; Kenya North America Diaspora Sacco Society Limited (Interested Party); Goetz & 3 others (Ex parte Applicants) (Judicial Review E171 of 2022) [2025] KEHC 8759 (KLR) (Judicial Review) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8759 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**JUDICIAL REVIEW**

**JUDICIAL REVIEW E171 OF 2022**

**JM CHIGITI, J**

**JUNE 19, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE COMMISIONER FOR COOPERATIVES DEVELOPMENT RESPONDENT**

**AND**

**KENYA NORTH AMERICA DIASPORA SACCO SOCIETY LIMITED ..... INTERESTED PARTY**

**AND**

**MARYANNE WANGECI GOETZ ..... EX PARTE APPLICANT**

**REGINA MBUTE MWISA ..... EX PARTE APPLICANT**

**JANE WANGARI NDUNGU ..... EX PARTE APPLICANT**

**PURITY WARINGA ATEKU ..... EX PARTE APPLICANT**

## JUDGMENT

1. The Exparte Applicants are before this Court vide a Notice of Motion application dated 29th November, 2023 and filed under Articles 23(3) (f) and 47 of *The Constitution* of Kenya, 2010; Sections 8 and 9 of The *Law Reform Act*, Order 53 of the Civil Procedure Rules and all other enabling provisions of the law.

2. The application is seeking the following orders:

1. That an order of certiorari do issue to remove into the High Court and quash the inquiry report dated the 26th February, 2022, consequential findings, recommendations, actions and orders of the said report, the prepared by the Respondent which effectively removed the Exparte applicants from office as Members of the Management Committee of the Interested Party.

2. That an order of prohibition do issue prohibiting the Respondent, its agents, servants, nominees, assigns or anyone acting on its behalf from implementing and / or proceeding with recommendations given pursuant to the inquiry report of 26th February, 2022.

3. That an order of prohibition do issue prohibiting the surcharging of the members of the Interested Party's management committee.

4. That an order do issue declaring the decision of the Respondent to remove the Applicants from office as ultra vires and void ab initio.

5. That this Honourable Court be pleased to grant any other or further relief that it may deem just and fit to grant in the circumstances.

6. That the costs of this Application be in the cause.

**Applicants Case;**

3. The Applicants are members of the Kenya North America Diaspora Sacco Limited (hereinafter referred to as the SACCO). The SACCO has 1,537 members.

4. It is averred that by dint of section 38 *Sacco Societies Act*, 2008 (hereinafter referred to as the Act) a SACCO is prohibited from owning investment land.

5. According to them, in 2017 to operationalize the members desire to have a broad-based investments strategy including investment in land, and 621 members agreed that the funds were to be deposited into the SACCO's bank account as the participants continued consulting on the best legal vehicle.

6. They argue that this decision was based on the understanding that was a trust that any legal interest in property purchased through the Nyaga Funds would be owned by the participants in the 'Nyaga Challenge'.

7. During an Annual General Meeting held in Dallas on the 30th day of March 2019, interested members voted to buy Nanyuki Marura Block II/3XX3 (KARIUNGA).

8. In recognition of the restriction of Section 38 of the Act, the Chairperson of the board wrote an email to the Commissioner applying for a letter of no objection on 16th day of May, 2019 which approval was granted vide a letter dated the 24th day of May,2019.

9. This then led to a sale agreement being entered into on 11th day of July 2019, between Goshen Acquisitions Limited and Kenya North America Diaspora Sacco Limited, acting on behalf of the shareholders of the Investment Company in formation.

10. KNADS PLC's sole purpose being owning property on behalf of the shareholders who had contributed towards the purchase. They also appointed its directors with Maryanne Wangeci Goetze being one of the said directors.

11. Thereafter, on the 27th day of November, 2019, a Title deed was registered to KNADS PLC and a Title Deed was issued on 3rd December 2019.

12. It is their case that one Nancy Wangithi Muchina later joined the Interested Party herein as a member.

13. Nancy together with thirteen other members made an application to the Commissioner for Co-operative Development to initiate an inquiry under section 58 of the Cooperatives Act on the principal ground that the land owned by the participants in the 'Nyaga Challenge' be reverted to the SACCO against the provisions of the *Sacco Societies Act*.

14. The Respondent vide a letter dated 29th September 2021 appointed Stephen Njoroge and Peter Njoroge Okul to carry out an inquiry and a Special General Meeting was scheduled for 26th day of February 2022, for the presentation of the Inquiry report.

15. It is the Applicants' case that the Respondent did not notify them of any allegations against them in the Inquiry Report neither did the Inquiry Team interview them despite them being available for interviewing via zoom.

16. According to them, the Respondent disenfranchised them for failing to give them an opportunity to vote for the recommendations in the report.

17. It is contended that the Respondent acted in an arbitrary manner that is likely to cause irreparable damage to the Applicants and in contravention of 22 of the Cooperative Society Rules, which requires that voting at a General Meeting is decided by a majority of votes.

18. The Applicants also argue that the Respondent recommended that they be removed from the management position and barred from holding any elective position in any cooperative.

19. On the issue of ownership of property, the Applicants contend that the Respondent acted ultra vires by giving a directive for a property belonging to a different entity (KNADS PLC) to be registered in the name of the Interested party within 45 days, which in principle would be usurping the jurisdiction of the Environment and Lands Court.

20. It is also their case that the Respondent recommended that the Interested Party officials who signed for the purchase of Nanyuki Marura Block II/3XX3 (KARIUNGA) be surcharged to the tune of Kenya Shillings 10,424,000. This is despite the fact that the land was acquired after seeking approval from the Respondent, the Management Committee, the Annual General Meeting and the Advisory Board.

21. It is their case that they stand to be greatly prejudiced in the event those orders are implemented.

22. The applicants canvassed their application by written submissions dated 24th January, 2024.

23. It is submitted that the Respondent offends Section 4 (3) and (5) of the *Fair Administrative Action Act* and Article 47 of *the Constitution* of Kenya, 2010.

24. It is their submission that there was procedural impropriety in making the impugned decision and that they were denied a fair hearing in violation of the law and that the Respondent acted ultra vires.

25. The Applicants place reliance in the case of Animistic -vs- Foreign Compensation Commission where Lord Reid held that: -

> "... But there are many cases where, although the tribunal had jurisdiction to enter on the inquiry, it has done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the inquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have

based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive. But if it decides a question remitted to it for decision without committing any of these errors it is as much entitled to decide that question wrongly as it is to decide it rightly."

26. On the issue of costs it is their submission that by dint of Section 27 of the *Civil Procedure Act* (Cap. 21) Laws of Kenya costs should follow the event.

27. The Applicants argue that they have established grounds to warrant judicial review and urge this Honourable Court to allow the application dated the 29th day of November, 2023 and grant the orders as prayed.

**The Respondent's case;**

28. It is the Respondent's case that Kenya North America Diaspora (KNAD) Sacco Society Limited (KNAD Sacco) was duly registered on 20th November 2016, certificate of registration number CS/20938 under the Co-operatives *Societies Act*, Cap 490 (hereinafter referred to as the Act).

29. The membership of the KNAD Sacco is drawn from women of Kenyan citizenship residing and in gainful employment in North America and women of Kenyan citizenship previously residing North America and in gainful employment and in good standing for not less than one year prior to returning to Kenya. Its objective is to organize and promote the welfare and economic interest of its members. KNAD Sacco, in the attainment of its objectives may do acts that are permissible under the Act, Co-operative Societies Rules and By-laws including but not limited to acquiring property and chattels.

30. According to the Respondents, pursuant to complaints raised by some of the members of KNAD Sacco with some of the issues that were raised in the complaint as follows:

    a. Lack of democracy and consultation by the management committee;

    b. The registration of land known as Nanyuki Marura Block II/3XX3 (Kariunga) measuring 13.954 hectares purchased by the members to a Company, KNAD Plc.;

    c. Overvaluation of the said land;

    d. The membership and ownership in respect to KNAD Sacco and KNAD Plc.,

    e. Relationship between KNAD Sacco and KNAD Plc. and;

    f. Failure by the management committee to address their concerns.

31. Thereafter, vide a letter dated 29th September 2021, the Respondent ordered an inquiry into: by-Laws; workings, financial conditions and governance structures; and the conduct of management committee, past or present members or officers of KNAD Sacco.

32. The recommendations of the inquiry included;

    a. The amendment of the By-laws of KNAD Sacco to define among other gaps the quorum of the general meeting and the number of the members of the management committee.

    b. The land known as Nanyuki Marura Block II/3XX3(Kariunga) measuring 13.954 hectares purchased by the members of KNAD Sacco at the cost of Kshs.46,581,024.65 and registered in the name of KNAD Plc. be reverted to KNAD Sacco within forty five (45) days from the date of reading of the inquiry at the cost of the directors of KNAD Plc. failure to which the five management committee members who subscribed to the formation of KNAD Plc. be

surcharged the purchase price of Ksh. 46,581,024.65 plus accrued interest at market rate on such total sum from the time such payments were made.

c. The officials of KNAD Sacco who approved and signed for the purchase of land known as Nanyuki Marura Block II/3XX3(Kariunga) measuring 13.954 hectares above the purchase price recommendation be surcharged Ksh. 10,424,000.

d. Pursuant to Section 58 (4) (a), the management committee of KNAD Sacco stood dissolved for failure to perform its duties as prescribed in the Act and in the by-laws of the Society.

e. The elections of the management committee by the members of KNAD Sacco were to be held immediately in accordance with Section 58 (4) of the Act. It is worth noting that in a meeting held on 16th March 2022, it was resolved that the membership of the interim management committee be reconstituted to five members pursuant to Section 58 (4) of the Act.

f. The named management committee members were culpable of an offence under the Act pursuant to Section 94 of the Act and consequently barred from membership of a Committee by virtue of Section 28(4) (K) of the Act.

33. It is posited that the inquiry was conducted lawfully and procedurally in accordance with the Act and all the requisite persons were afforded an opportunity to be heard.

34. Section 73 of the Act provides that upon inquiry, the Commissioner is mandated to make an order requiring the aggrieved persons(s) to repay or restore the money or property or any part thereof to the co-operative society together with interest at the rate as the Commissioner thinks just or to contribute such sum to the assets of the society by way of compensation as the Commissioner deems just.

35. Section 74 of the Act grants the Co-operative Tribunal the jurisdiction to hear and determine an appeal against a surcharge order.

36. Once a surcharge order is issued, the person aggrieved has thirty (30) days to file an appeal to the Co-operative Tribunal.

37. It is the Respondent's case that the Applicants in the instant suit ought to exhaust the mechanism for appeal as provided in the Act before instituting the current proceedings. The Respondent filed written submissions dated 12th May, 2025.

38. According to the Respondent, an Order of "Prohibition" issues where there is an assumption of unlawful jurisdiction or excess of jurisdiction. It's an order from the High Court directed to an inferior tribunal or body. It is submitted that inquiry was made pursuant to Section 58 as read together with Section 73 of the Act.

39. Section 73 of the Act provides that upon inquiry, the Commissioner is mandated to make an order requiring the aggrieved persons(s) to repay or restore the money or property or any part thereof to the co-operative society together with interest at the rate as the Commissioner thinks just or to contribute such sum to the assets of the society by way of compensation as the Commissioner deems just.

40. It is contended that Judicial review proceedings do not deal with the merits of a decision but with the decision-making process as held in various judicial decisions, including Municipal Council of Mombasa vs. Republic & Umoja Consultants Ltd Civil Appeal No. 185 of 2001 and Republic vs. Kenya Revenue Authority Exparte Yaya Towers Limited [2008] eKLR.

41. The Respondent also submits that Section 74 of the Act grants the Co-operative Tribunal the jurisdiction to hear and determine an appeal against a surcharge order.

42. They invoke Section 90 of the *Fair Administrative Action Act* provides for the Doctrine of Exhaustion.

43. The Doctrine of Exhaustion is defined in Black's Law Dictionary 10th Edition as follows: -

> "exhaustion of remedies. The doctrine that, if an administrative remedy is provided by statute, a claimant must seek relief first from the administrative body before judicial relief is available. The Doctrine's purpose is to maintain comity between the courts and administrative agencies and to ensure that courts will not be burdened by cases in which juridical relief is unnecessary"

44. Reliance is placed in the case of Republic v National Environment Management Authority Ex parte Sound Equipment Ltd, [2011] eKLR, and Court of Appeal decision in Secretary, County Public Service Board & another v Hulbhai Gedi Abdille [2017] eKLR where the court's pronounced themselves on the doctrine of exhaustion.

45. It is the Respondent's submission where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament that procedure must be followed strictly before parties come to court.

46. Section 74 of the Act provides that the Co-operative Tribunal is the Court of first instance to hear and determine an appeal against a surcharge order.

47. It is the Respondent's case that the Applicants have not exhausted the remedies as set out in the Co-operatives *Societies Act*.

48. In the case of Speaker of the National Assembly v James Njenga Karume [1992] eKLR, where the Court of Appeal held that:

> "... In our view, there is considerable merit in the submission that 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. We observed without expressing a concluded view that order 53 of the Civil Procedure Rules cannot oust clear constitutional and statutory provisions...."

49. The Respondent argues that the Notice of Motion dated 29th November 2023 is an abuse of the court process and the same should be dismissed with costs.

**Analysis and determination:**

50. Following are the issues for determination:

    1. Whether or not the court has jurisdiction.

    2. Whether the applicants have made out a case for the grant of the orders sought.

    3. Who will bear the costs.

51. In MMM (Suing Through JMM as Guardian and Next Friend) v Attorney General & 8 others; Moi Primary School Kabarak – Nakuru (Interested Party) (Petition E488 of 2023) [2024] KEHC 4010 (KLR), the court expressed itself as follows on the question of the doctrine of exhaustion;

> "Equally, the Supreme Court in Albert Chaurembo Mumba & 7 others (sued on their own behalf and on behalf of predecessors and or successors in title in their capacities as the Registered Trustees of Kenya Ports Authority Pensions Scheme) v Maurice Munyao & 148

others (suing on their own behalf and on behalf of the Plaintiffs and other Members/ Beneficiaries of the Kenya Ports Authority Pensions Scheme) (2019) eKLR stated as follows:"... the Court must exercise restraint in exercising its jurisdiction under Article 165. Where there exist alternative methods of dispute resolution, the Court must exercise deference to the bodies statutorily mandated to deal with specific disputes in the first instance.... The foregoing verdict also finds support in an adage principle in administrative law of "Exhaustion of Administrative Remedies" and from the jurisprudence emanating from this Court and the lower Courts, which has been restated with notoriety to the effect that, where there exists an alternative method of dispute resolution established by legislation, the Courts must exercise restraint in exercising their Jurisdiction conferred by *the Constitution* and must give deference to the dispute resolution bodies established by statutes with the mandate to deal with such specific disputes in the first instance ...In the pursuit of such sound legal principles, it is our disposition that disputes disguised and pleaded with the erroneous intention of attracting the jurisdiction of superior courts is not a substitute for known legal procedures. Even where superior courts had jurisdiction to determine profound questions of law, first opportunity had to be given to relevant persons, bodies, tribunals or any other quasi-judicial authorities and organs to deal with the dispute as provided for in the relevant parent statute... Such a deferred jurisdiction and the postponement of judicial intervention and reliefs until the mandated statutory or constitutional bodies take action rests, not alone on the disinclination of the judiciary to interfere with the exercise of the statutory or any administrative powers, but on the fact of a legal presumption that no harm can result if the decision maker acts upon a claim or grievance. Such formulation underlies the analogous cases, frequently cited for the exhaustion doctrine, in which the court refuses to enjoin an administrative official from performing his statutory duties on the ground that until he has acted the complainant can show no more than an apprehension that he will perform his duty wrongly, a fear that courts will not allay. Such cases may be expressed in the formula that judicial intervention is premature in the absence of administrative action."

32. Nevertheless, there are exceptional cases where despite the existence of alternative forum for dispute resolution, the Court may find its intervention necessary especially if it determines that such forums are inadequate to meet the ends of justice in a matter. The Court of Appeal in Fleur Investments Limited vs Commissioner of Domestic Taxes & another [2018] eKLR reasoned:"

22. For this proposition the appellant called in aid this Court's finding in the case of Speaker of National Assembly vs Njenga Karume (1990-1994) EA 546 where the Court expressed itself in relevant part as follows: -"...where there was an alternative remedy and especially where parliament has provided a statutory procedure, it is only in exceptional circumstances that an order for judicial review would be granted, and that in determining whether an exception should be made and judicial review granted, it was necessary for the court to look carefully to the suitability of the statutory appeal in the context of the particular case and ask itself what, in the context of the statutory powers, was the real issue to be determined and whether the statutory appeal procedure was suitable to determine it..."

23. ... Whereas courts of Law are enjoined to defer to specialised Tribunals and other Alternative Dispute Resolution Statutory bodies created by Parliament to resolve certain specific disputes, the court cannot, being a bastion of Justice,

sit back and watch such institutions ride roughshod on the rights of citizens who seek refuge under *the Constitution* and other legislations for protection. The court is perfectly in order to intervene where there is clear abuse of discretion by such bodies, where arbitrariness, malice, capriciousness and disrespect of the Rules of natural justice are manifest. Persons charged with statutory powers and duties ought to exercise the same reasonably and fairly."

33. In Krystaline Salt Limited vs Kenya Revenue Authority (2019)eKLR the Court observed: "What constitutes exceptional circumstances depends on the facts and circumstances of the case and the nature of the administrative action at issue. Thus, where an internal remedy would not be effective and/ or where its pursuit would be futile, a court may permit a litigant to approach the court directly. So too where an internal appellate tribunal has developed a rigid policy which renders exhaustion futile....this court interprets exceptional circumstances to mean circumstances that are out of the ordinary and that render it inappropriate for the court to require an applicant first to pursue the available internal remedies. The circumstances must in other words be such as to require the immediate intervention of the court rather than to resort to the applicable internal remedy."

52. In the Supreme court case of United Millers Limited V KBS & 5 others Pet. No. 4 of 2021, the court upheld the Court of Appeal decision on the matter of the doctrine of exhaustion which was the following;

"On the first issue, the trial court found that the ex-parte applicant ought to have exhausted available dispute resolution mechanism before approaching it. The learned Judge therefore found that the judicial review application offended the doctrine of exhaustion of statutorily available remedies set out under Sections 11 and 14A (4) of the *Standards Act* and Section 9 (2) of the FAA Act, and further failed to satisfy the exceptional circumstances under section 9(4) of the FAA Act. It thus held that the application must fail. The court however did not down its tools upon making the determination that it lacked jurisdiction. It determined the second issue and found that the ex-parte applicant had failed to establish a case to warrant grant of judicial review orders.

(24) On appeal, the Court of Appeal delimited three issues for determination, namely: whether the High Court properly exercised its jurisdiction, whether it was right in invoking the principle of exhaustion, and whether it was right in finding that the substantive motion failed the threshold for grant of the judicial review. The Appellate Court upheld the trial court's determination and entirely endorsed its reasoning. It found that the trial court in reaching its determination was guided by the need to serve substantive justice to the parties and exercised it discretion soundly and on reasonable judicial principles. The Court of Appeal Petition (Application) No. 4 of 2021 10 opined that having failed to revert to the internal dispute resolution mechanisms provided for under Section 14A (4) of the *Standards Act* and Section 9 (2) of the FAA Act and having also failed to apply for exemption from this requirement as is provided for under Section 9 (4) of the FAA Act, the High Court was divested of jurisdiction to entertain the judicial review proceedings. The Court of appeal also found that having reached this conclusion on jurisdiction, the High Court ought to have downed its tools. Nonetheless, it considered the

third issue and agreed with the trial court that the substantive motion failed to satisfy the grounds for grant of judicial review."

53. In Abidha Nicholus *V Attorney General & Others Petition No. E007 of 2023*[2023] eKLR, the Supreme court expressed itself in this manner;

> "[104] Having considered the above complaints, we reiterate our earlier finding in this judgment that the mandate and jurisdiction to determine these questions lie with the ELC under Articles 22, 23(3) and 162(2)(b) of *the Constitution* as read with Section 4(1) of the Environment and *Land Act*. We say so because neither the NET, EPRA nor EPT have the jurisdiction to determine alleged violations of *the Constitution*. That right to access the court for redress of alleged constitutional violations, should not be impeded or stifled in a manner that frustrates the enforcement of fundamental rights and freedoms. We say this persuaded by the elegant reasoning in William Odhiambo Ramogi & 3 others v Attorney General & 6 others; Muslims for Human Rights & 2 others (Interested Parties) [2020] eKLR where the High Court (Achode (as she then was), Nyamweya (as she then was), & Ogola, JJ) stated: "In the instant case, the Petitioners allege violation of their fundamental rights. Where a suit primarily seeks to enforce fundamental rights and freedoms and it is demonstrated that the claimed constitutional violations are not mere "bootstraps" or merely framed in Bill of Rights language as a pretext to gain entry to the Court, it is not barred by the doctrine of exhaustion. This is especially so because the enforcement of fundamental rights or freedoms is a question which can only be determined by the High Court." [Emphasis ours]. [105] We agree with the above reasoning and find that the availability of an alternative remedy does not necessarily bar an individual from seeking constitutional relief. This is because the act of seeking constitutional relief is contingent upon the adequacy of an existing alternative means of redress. If the alternative remedy is deemed inadequate in addressing the issue at hand, then the court is not restrained from providing constitutional relief. But there is also a need to emphasize the need for the court to scrutinize the purpose for which a party is seeking relief, in determining whether the granting of such constitutional reliefs is appropriate in the given circumstances. This means that a nuanced approach to the relationship between constitutional reliefs for violation of rights and alternative means of redress, while also considering the specific circumstances of each case to determine the appropriateness of seeking such constitutional reliefs, is a necessary prerequisite on the part of any superior court. [106] The restraint and effective remedy rule, which we find favor in, is what led the Supreme Court of India in United Bank of India vs Satyawati Tondon & Others; (2010) 8 SCC to state as follows: " 44...we are conscious that the powers conferred upon the High Court under Article 226 of *the Constitution* to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of *the Constitution*.

54. In the instant suit, it is this court's finding that Section 73(1) of the Cooperative *Societies Act* provides that where it appears that any person who has taken part in the organization or management of a co-operative society, or any past or present officer or member of the society— (a) has misapplied or retained or become liable or accountable for any money or property of the society; or (b) has been guilty of misfeasance or breach of trust in relation to the society, the Commissioner may, on his own accord or

on the application of the liquidator or of any creditor or member, inquire into the conduct of such person. (2) Upon inquiry under subsection (1), the Commissioner may, if he considers it appropriate, make an order requiring the person to repay or restore the money or property or any part thereof to the co-operative society together with interest at such rate as the Commissioner thinks just or to contribute such sum to the assets of the society by way of compensation as the Commissioner deems just.(3) This section shall apply notwithstanding that the act or default by reason of which the order is made may constitute an offence under another law for which the person has been prosecuted, or is being or is likely to be prosecuted. [*Act No. 2 of 2004*, s. 32.]

55. Further, Section 74(1) of The Cooperative *Societies Act* stipulates that 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.

56. On 29th September 2021, the Respondent ordered an inquiry into: by-Laws; workings, financial conditions and governance structures; and the conduct of management committee, past or present members or officers of KNAD Sacco.

57. This culminated in recommendations of the inquiry which included;

    a. The amendment of the By-laws of KNAD Sacco to define among other gaps the quorum of the general meeting and the number of the members of the management committee.

    b. The land known as Nanyuki Marura Block II/3XX3(Kariunga) measuring 13.954 hectares purchased by the members of KNAD Sacco at the cost of Kshs.46,581,024.65 and registered in the name of KNAD Plc. be reverted to KNAD Sacco within forty five (45) days from the date of reading of the inquiry at the cost of the directors of KNAD Plc. failure to which the five management committee members who subscribed to the formation of KNAD Plc. be surcharged the purchase price of Ksh. 46,581,024.65 plus accrued interest at market rate on such total sum from the time such payments were made.

    c. The officials of KNAD Sacco who approved and signed for the purchase of land known as Nanyuki Marura Block II/3XX3(Kariunga) measuring 13.954 hectares above the purchase price recommendation be surcharged Ksh. 10,424,000.

    d. Pursuant to Section 58 (4) (a), the management committee of KNAD Sacco stood dissolved for failure to perform its duties as prescribed in the Act and in the by-laws of the Society.

    e. The elections of the management committee by the members of KNAD Sacco were to be held immediately in accordance with Section 58 (4) of the Act. It is worth noting that in a meeting held on 16th March 2022, it was resolved that the membership of the interim management committee be reconstituted to five members pursuant to Section 58 (4) of the Act.

    f. The named management committee members were culpable of an offence under the Act pursuant to Section 94 of the Act and consequently barred from membership of a Committee by virtue of Section 28(4) (K) of the Act.

58. It is this court's finding that where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament that procedure must be followed strictly before parties come to court.

59. Section 74 of the Act provides that the Co-operative Tribunal is the Court of first instance to hear and determine an appeal against a surcharge order.

60. Having also failed to apply for exemption from this requirement as is provided for under Section 9 (4) of the FAA Act, this Court was divested of jurisdiction to entertain the judicial review proceedings.

61. The High Court sitting on an appeal from the findings under Section 74 of the Co-operative Tribunal has the power to deal with all the concerns that the Applicant has advanced in this suit.

62. The Applicants made no case to demonstrate that they could not appeal or that the High Court would not have granted them redress.

63. They do not demonstrate to the court why they did not approach the High Court under Section 74 or that the High Court lacked the appropriate jurisdiction to deal with their appeal and I so hold.

64. An order of prohibition shall serve no useful purpose in the circumstances and the same is not allowed.

65. Costs shall follow the event.

**Disposition:**

66. The Applicant has not proven its case.

**Order:**

67. The Application is dismissed with costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF JUNE, 2025.**

**…….**

**J. CHIGITI (SC)**

**JUDGE**