



**Duone Farm Limited v Commissioner for Co-operative Development & another;  
Borop Multipurpose Co-operative Society (Interested Party) (Judicial Review  
Application E18 of 2023) [2025] KEHC 12888 (KLR) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12888 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
JUDICIAL REVIEW APPLICATION E18 OF 2023**

**JM NANG'EA, J**

**SEPTEMBER 17, 2025**

**IN THE MATTER OF AN APPLICATION BY DUONE FARM  
LIMITED FOR LEAVE TO APPLY FOR JUDICIAL REVIEW  
ORDERS OF MANDAMUS**

**AND**

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW  
REFORMS ACT CAP 26 LAWS OF KENYA**

**AND**

**IN THE MATTER OF SECTIONS 58, 59, 60, 61, 63 & 64 OF  
THE CO-OPERATIVE SOCIETIES ACT NO. 12 OF 1997**

**AND**

**IN THE MATTER OF ORDER 53 OF THE CIVIL  
PROCEDURE RULES 2010**

**BETWEEN**

**DUONE FARM LIMITED ..... EX PARTE APPLICANT**

**AND**

**THE COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT .... 1<sup>ST</sup>  
RESPONDENT**

**THE CO-OPERATIVE COMMISSIONER NAKURU ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**BOROP MULTIPURPOSE CO-OPERATIVE SOCIETY ..... INTERESTED PARTY**



## RULING

1. Pursuant to leave of the court granted on 20<sup>th</sup> September 2023 the Applicant brought a Notice of Motion dated 21<sup>st</sup> September 2023 for the following reliefs;-
  - a. That the Honourable Court be and is hereby pleased to issue an Order of mandamus directed at the Respondents to compel them to take up their mandated functions/roles under the Co-operative Societies Act and the Rules thereunder, and to act within the laws as provided under the Cooperative Societies Act and in particular perform the following:
    - i. Act on and/or implement the recommendations of its report dated 17<sup>th</sup> June 2022.
    - ii. Dissolve the interested party herein, Borop Multipurpose Co-operative Society within 30 days of delivery of the Court's decision herein.
  - b. Costs of these proceedings be borne by the Respondents.
2. The Application is grounded on the Applicant's Statutory Statement dated 21<sup>st</sup> September 2023 as well as a Verifying Affidavit of the Applicant's Director (Richard Kay Muir) sworn on the same date.
3. The Applicant's contention inter alia is that it had obtained judgement against the Interested Party in Milimani Civil Suit No. 1561 of 2002 followed by a decree issued on 17<sup>th</sup> May 2012 and Certificate of Taxation of Costs dated 8<sup>th</sup> November 2019. Furthermore, the Applicant was issued with a Certificate of Costs on 24<sup>th</sup> August 2021 arising from a court order granted in Nakuru Civil Appeal No, 189 of 2012. More Certificate of Costs were issued against the Interested Party in Molo SPMCC Nos. 80 of 2005; 194 of 2005 and 63 of 2004 for various sums stated in the Certificates. In sum, the Applicant claims that the Interested Party is indebted to it to the tune of Kshs. 2,306,727/= exclusive of interest, which debt has not been satisfied.
4. The Applicant further states that it inquired from the Respondents on the operations of the Interested Party whereupon the latter was found to have failed to comply with the provisions of Section 25 of the Co-operative Societies Act Cap 490. By the Respondent's Report in this regard dated 17<sup>th</sup> June 2022, the Interested Party was given a grace period of 3 months within which to settle the judgement debt owed to the Applicant or risk being declared insolvent.
5. The Applicant laments that despite several reminders the Respondents have failed to dissolve the Interested Party over the debt and cancel its registration as required in law hence this Application.
6. The Respondents have not replied to the Application.
7. The Interested Party responded by filing a Notice of Preliminary Objection to the Application dated 1<sup>st</sup> December 2023, arguing that leave to bring the Application was improperly granted. My brother (H. M. Nyaga, J) dismissed Objection by ruling delivered on 12<sup>th</sup> June 2024.
8. The Interested Party also filed an affidavit in reply through its Chairman (Philip Kirui). He avers inter alia on advice by his Counsel that the Application is unmerited since the Applicant has not exhausted other available remedies including levying execution of the decrees in its favour. The Application is also faulted for not showing that efforts were made to recover the debt from individual members of the Interested Party. It is further contended that dissolution of the Interested Party would occasion prejudice to it as it is yet to achieve its objectives that include dairy farming, land buying and settlement of its members as appreciated in the Respondents' Report dated 17<sup>th</sup> June 2022 aforementioned.



As a Co-operative Society, the Interested Party is said to be active as shown by a Special General Meeting it held on 12<sup>th</sup> July 2024 during which various named officials were elected to steer its affairs. On 8<sup>th</sup> October 2024 the Interested Party purportedly filed its returns for the year 2023, further demonstrating its commitments to its members and compliance with the law.

9. According to the Interested Party's Chairman, there is therefore no proof that their society has failed to attain its objectives to warrant its dissolution. Besides, the Applicant is said to be involved in other litigation with the Interested Party seeking to recover some land in dispute, and therefore a judicial review order in the nature of mandamus as sought cannot issue. The court is impressed upon to let the other courts adjudicate the disputes so that the Applicant does not "steal a match against the Interested Party" by seeking this remedy when other related litigation is pending. The Interested Party surmises that the Applicant is using these proceedings to have it dissolved so that it is not able to protect its interests in the pending suits.
10. Contrary to the Applicant's claim in the Application; the Interested Party asserts that it has a physical address at Borop Farm where its elections alluded to hereinabove were held and that the Applicant acknowledged the fact by filing documents bearing the address.
11. The Interested Party further contends that, in any event, the Applicant and "its surrogates" also owe them costs of litigation in Nakuru ELC No. 142 of 2019 (formerly Civil Suit No. 86 of 2002); Nakuru ELC E013 of 2022 and Nakuru CACA No. E083 of 2021.
12. The Interested Party in the premises pleads to be afforded the right to be heard in the suits pitting it against the Applicant. It insists that there are no valid grounds for its dissolution by the Respondents as craved in this Application.
13. On 17<sup>th</sup> February 2025 when the matter came up for mention, the Applicant intimated that it would file a supplementary affidavit in answer to the averments in the Interested Party's affidavit. No such affidavit evidence has, however, been put in as at the time of writing this ruling.
14. Learned Counsel for the Applicant and Interested Party filed Written Submissions. Counsel for the Applicant submits inter alia citing Section 58 of the *Co-operative Societies Act* that the 1<sup>st</sup> Respondent is mandated to inspect books of accounts of a Co-operative Society either on its own motion or upon application by a Creditor of the society. In terms of Section 62 of the Act the 1<sup>st</sup> Respondent is empowered to dissolve a non-compliant Co-operative Society if he;-

".... is of the opinion that the society ought to be dissolved....."

15. The Applicant submits that the Interested Party has taken an unreasonably long time to pay the judgement debt yet the Respondents have not dissolved it in compliance with the law. The Court is therefore urged to compel the Respondents to exercise their discretionary power to dissolve the Interested Party for the stated infraction. Reference is made to the judicial determination in *Republic vs Commissions for Co-operative Societies & 2 Others* (2006) eKLR regarding exercise of such discretion where the Court observed as follows;-

"Relevant consideration to bear in mind is that the discretionary powers must always be exercised in good faith, for the purpose for which they were granted and within the limits of the Act or other instrument confirming the power. Discretion must also be exercised fairly, not capriciously and in accordance with proper legal principles and these standards imply that all relevant considerations must be taken into account and that extraneous considerations be disregarded by the person or body of persons exercising the power."



16. The Applicant therefore states that an order of mandamus compelling the Respondents to perform their statutory duty is merited in the circumstances of this matter. Guidance is sought from the Court of Appeal's decision in *Republic vs Kenya National Examinations Council Ex-parte Gathenji & Others* Civil Appeal No. 234 of 1996 on the nature and effect of mandamus. The Superior Court observed thus:-

“This principle means that an order of mandamus compels the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.”

17. In *Republic vs Jomo Kenyatta University of Agriculture & Technology Ex-parte Elijah Kamau Mwangi* (2021) eKLR also cited in reliance by the Applicant's advocates it was held that the following conditions must be fulfilled before an order of mandamus issues to an Applicant:-

- a. It must be shown that the Public Officer has failed to perform his duty;
- b. The court will not grant mandamus where there is an alternative remedy available to the Applicant;
- c. Mandamus may be refused if enforcement of the order will pose implementation challenges that require the court's supervision.

18. This decision also makes reference to the case of *Republic vs Kenya National Examinations Council Ex-parte Gathenji & Others* supra where the Court of Appeal further delivered itself thus regarding the remit of mandamus:-

“Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.”

19. The Applicant argues that a Co-operative Society can only be dissolved under Section 61(5) of the *Co-operative Societies Act* by the Respondents and therefore there is no alternative remedy to aid the Applicant, and if any exists, it would be less convenient, beneficial and effectual. According to the Applicant, no enforcement challenges would also arise in the dissolution of the Interested Party.

20. Learned Counsel for the Applicant in the premises underscore their submission that the Interested Party sought to be dissolved, observing that it has not challenged the Respondent's Report of 17<sup>th</sup> June 2022 by appealing to the concerned Minister pursuant to the Provisions of Section 61 of the *Co-operative Societies Act*.

21. The Applicant continues to submit that existence of other cases in court involving the parties herein is not a reason to decline to issue the prerogative writ of mandamus. If dissolved as prayed, it is suggested that the Interested Party may still pursue its interests in the suits through a liquidator.

22. For the stated reasons among others, the Applicant maintains that its Application has merit and ought to be allowed.

23. The Interested Party retorts that the Application lacks in merit. Learned Counsel for this party submit in the main that mandamus should be declined for the reason that there is an alternative remedy available to the Applicant to wit; execution of the court's Decrees in its favour. In support of this



Submission, the Interested Party alludes to the judicial determination in Republic vs Nairobi City Council and Hannah Waithira Gatundu Ex-parte Boniface Wachira Gichimu (2016) eKLR where it was observed in part thus:-

“..... it is now a cardinal principle that save in the most exceptional circumstances, judicial review jurisdiction would not be exercised and the court must not exercise it where there exists an alternative remedy or the decision of the court is likely to affect third parties or buyer for value without notice and without affording such parties an effective remedy.”

24. To buttress this legal position the Interested Party refers the court to similar findings and holdings in Republic vs National Environment Management Authority (2011) eKLR and Speaker of the National Assembly vs Karume (1992) eKLR inter alia.

25. In Republic vs Permanent Secretary Ministry of State for Provincial Administration and Internal Security (2012) eKLR also relied upon by the Interested Party the court observed as follows concerning enforcement of court Judgements and/or Decrees:-

“..... In ordinary circumstances once a judgement has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day...”

26. Further reference is made to Republic vs Commissioner of Co-operatives Ex parte Kirinyaga Tea Growers Co-operative Savings & Credit Society Limited (1997) eKLR where the court held;-

“..... A Co-operative Society should not be dissolved arbitrarily without considering the interests of its members and the objectives for which it was established ..... it is axiomatic that statutory powers can only be exercised validly if they are exercised reasonably. No statute ever allows anyone on whom it confers a power to exercise such power arbitrarily, capriciously or in bad faith....”

27. The Interested Party points out that on 16<sup>th</sup> March 2009 the then Minister in Charge of Co-operatives Development (Hon. Joseph W. N. Nyagah) in an appeal to him for liquidation of the Interested Party, declined to dissolve the society for reasons that the society had not achieved its objectives and that the society members were engaged in other activities like Dairy and Dip activities. The court is told that this decision remains unchallenged.

28. The Interested Party therefore submits that it is actually pursuing its objectives and is properly and lawfully carrying out its operations.

29. The Advocates for the Interested Party rightly restate the nature of an order of mandamus as observed in the case of Kenya National Examinations Council vs Republic Ex-parte Gathenji & Others supra as follows:-

“.....an order of mandamus compels the performance of a public duty imposed by statute where the person or body of persons on whom the duty is imposed fails or refuses to perform the same .If the complaint is that the duty has been wrongly performed, i.e. that the duty has not been performed according to the law, then mandamus is the wrong remedy to apply because, like an order of prohibition, an order of mandamus cannot quash what has already been done...”



30. The Interested Party complains that the Applicant is intent on using these proceedings to circumvent litigation between them in the cases alluded to hereinbefore. It pleads that its constitutional right to be heard in the pending cases should be protected from frustration by the Applicant.
31. The Interested Party therefore inter alia wants the court to dismiss this Application with costs.
32. Based on the parties' rival affidavit evidence and submissions, the following issues are identified for determination:-
- a. Whether an order of mandamus compelling the Respondents to dissolve the Interested Party is merited on the facts and in the circumstances of this matter.
  - b. The orders commending themselves to court including as to the costs of this Application.
33. Learned Counsel for the parties in the submissions correctly set out the nature and remit of the prerogative writ of mandamus as per the case law cited. It is a judicial review remedy that compels a public body to perform lawful duties. They are mandated to discharge. Such a remedy is generally not available to aggrieved party where there is an alternative sufficient avenue for redress unless exceptional circumstances are demonstrated. This principle was reiterated by the Court of Appeal in *Geoffrey Muthinja & Another V. Samuel Muguna Henry & 1756 Others* (2015)eKLR and *Paul Partoire Ole Kaika vs Orange Democratic Movement* [Petition No. 87 of 2014] eKLR
34. In *Republic vs Kenya Revenue Authority Ex-parte Yaya Towers Limited* (2008) eKLR it was further guided;
- “Judicial Review is concerned with the decision making process not with the merits of the decision itself.”
35. The Court will not therefore examine the merits of the Respondents' failure to dissolve the Interested Party as desired.
36. The Applicant's grievance is that the Interested Party has failed to satisfy its judgement debt and petitioned the Respondents by letter dated 1<sup>st</sup> November 2021 to dissolve it in line with the law for its unviability. In response to the Petition, the Respondents commissioned an inquiry into the operations of the Interested Party culminating in the report dated 17<sup>th</sup> June 2022. That report concludes and recommends to the 1<sup>st</sup> Respondent as hereunder;-
- “1. The Commissioner for Co-operatives Development may give a grace period of three months in which they should report to him clearly outlining the strategies put in place to settle the debt of the proprietor of Duone Farm.
  2. In case the above (1) is not complied with , the Commissioner may appoint a liquidator because he may: conclude that the society is insolvent as it has fulfilled its main objective of land buying and resettling its member. Notwithstanding, the Co-operative has not complied with other provisions of section 25 of the *Co-operative Societies Act* Cap 490 since their books of accounts were lastly registered by the Commissioner of Co-operatives in the year 2005 (sic).”



37. In its Petition to the Respondents, the Applicant expressed frustration in executing the Decrees in its favour on account of inability to:-

“trace any property of the society and the society’s registered office has been abandoned. It is notable that execution has since been returned unsatisfied in whole, which forms a basis for dissolving the said co-operative society.”

38. In its affidavit in verification of facts filed in support of this application, the applicant reiterates that despite several demands by its Auctioneers the Interested Party failed to satisfy the judgement debt thus making this mode of redress necessary. The Applicant’s Auctioneers (J. K. Wanderi Auctioneers) in their letter dated 11/8/2021 to the Applicant’s Advocates reported that their investigations did not yield any Interested Party’s property capable of being attached in realization of the decretal sums. It was further found out that the latter had no physical address from which it operated while it maintains that it has a physical address at Borop Farm, the Interested Party does not affirm that it has property capable of execution by the Applicant.

39. While the Court appreciates the Applicant’s predicament over inability to obtain satisfaction of the judgement debt owed to it, allowing this application would put into disarray the cases pending before other courts involving the parties and others. Such order as craved by the Applicant would also give an unfair advantage to the Applicant as contended by the Interested Party. It is therefore in the interests of justice to have the pending matters proceed to their logical conclusion and not suddenly cripple them by winding up of the Interested Party, further considering the interests of third parties involved in the other legal proceedings who have not been heard in this matter.

40. The upshot is that the Application is dismissed with no order as to costs.

**J. M. NANG’EA - JUDGE**

**RULING DELIVERED VIRTUALLY THIS 17<sup>TH</sup> DAY OF SEPTEMBER , 2025 IN THE PRESENCE OF:**

Ex-Parte Applicant’s Advocate, Mr Oduyo for Mr Ogola.

Respondents, Absent

Interested Party’s Advocate, Mr Kibet for Mr Arusei.

Court Assistant (Jeniffer).

**J. M. NANG’EA - JUDGE**

