



Rapid PI Limited v Nitunze Savings & Credit Co-operative Society Limited (in Liquidation) & 3 others (Miscellaneous Application 38 of 2019) [2023] KEHC 20351 (KLR) (21 July 2023) (Ruling)

Neutral citation: [2023] KEHC 20351 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS APPLICATION 38 OF 2019
WM MUSYOKA, J
JULY 21, 2023**

BETWEEN

RAPID PI LIMITED APPLICANT

AND

NITUNZE SAVINGS & CREDIT CO-OPERATIVE SOCIETY LIMITED (IN LIQUIDATION) 1ST RESPONDENT

OFFICIAL LIQUIDATORS (NITUNZE SACCO SOCIETY LIMITED) 2ND RESPONDENT

COMMISSIONER OF CO-OPERATIVE SOCIETIES 3RD RESPONDENT

VALLEY AUCTIONEERS 4TH RESPONDENT

RULING

1. On October 29, 2021, I delivered a ruling herein, where I allowed the substantive motion, dated March 27, 2019.
2. Subsequent to that ruling of October 29, 2021, the applicant, Rapid PI Limited, brought a chamber summons herein, dated April 19, 2022, seeking *mandamus* orders, to compel the Commissioner of Co-operative Societies and the official receiver, to do a number of things, with respect to the assets and affairs of the 1st respondent herein, Nitunze Sacco Society Limited.
3. The application, dated April 19, 2019, is hopelessly misconceived and a non-starter.
4. Firstly, a *mandamus* order is not available for granting in interlocutory proceedings. It is available under the *Law Reform Act*, cap 26, Laws of Kenya and order 53 of the *Civil Procedure Rules*. A *mandamus* order is a prerogative relief, sought and obtained in substantive proceedings. The procedure is that leave is obtained first, by way of a summons in chambers, after which a substantive motion is filed.



Mandamus is one of those orders sought and obtained in judicial review proceedings, which are sui generis.

5. Secondly, the parties, against whom the *mandamus* order is sought, in the application, dated April 19, 2019, if it were a valid application, which it is not, are and were not original parties to these proceedings, they have never been joined to these proceedings, and leave has not been granted for their joinder. No case can lie against them in these proceedings.
6. The chamber summons, dated April 19, 2019, is filed in abuse of court process. It is for striking out. I hereby strike it out, with costs to the respondents. Orders accordingly.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS.....
21ST.....DAY OFJULY.....2023**

WM MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Appearances

Mr. Wangira, instructed by Wangira Okoba & Company, Advocates for the applicant.

Mr. Cheptarus, instructed by Joseph CK Cheptarus & Company, Advocates for the respondents.

