



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. JUDICIAL REVIEW APPLICATION NO. 45 OF 2018**

**(Formerly Judicial Review Misc. Appln. No. 78 of 2018- Kitui)**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT**

**THE PRINCIPAL SECRETARY**

**MINISTRY OF EAST AFRICAN COMMUNITY**

**LABOUR AND SOCIAL PROTECTION.....2<sup>ND</sup> RESPONDENT**

**AND**

**PATRICIA KISIO KIMANZI.....1<sup>ST</sup> INTERESTED PARTY**

**KALUNDA KILONZI.....2<sup>ND</sup> INTERESTED PARTY**

**AGELINAH SYOKAU KILONZI MUTUNGA.....3<sup>RD</sup> INTERESTED PARTY**

**CHRISTOPHER MBEVI MWONI.....4<sup>TH</sup> INTERESTED PARTY**

**AND**

**AVIA MBITHA NGINDU.....EX-PARTE APPLICANT**

**RULING**

1. In the Notice of Motion dated 16<sup>th</sup> April, 2019, Avia Mbitha Ngindu, the Ex-parte Applicant (*the Applicant*) has prayed for the following orders:

***a) An order of mandamus directed to the 2<sup>nd</sup> Respondent's agent, Social Development officer for Mwingi Central Sub-County to deregister the Interested Parties as officials of Wendo Wa Mwingi Women Group.***

***b) An order of certiorari to quash the decision of the 2<sup>nd</sup> Respondent's agent, Social Development Officer for Mwingi Central Sub-County of registering the Interested Parties as officials of Wendo Wa Mwingi Women Group.***

***c) That the costs of this Application be awarded to the Applicant.***

2. In the Statement of Facts relied upon, the Applicant averred that she is the chairperson and founder of Wendo Wa Mwingi Women Group which was established in 1990 and that the said group owns several properties including parcel of land Plot No. Mwingi/Mwingi/1288.

3. The Applicant averred that the 2<sup>nd</sup> Respondent's agent, the Social Development Officer for Mwingi Central Sub-County, called for a meeting purportedly to resolve a dispute over the sale of land parcel Mwingi/Mwingi/1288 following a complaint by Angelina Syokau

Mutunga; that the said Angelina Syokau Mutunga was not a member of Wendo Wa Mwingi Women Group and that the meeting was converted into an election in contravention of the Group's Constitution.

4. It was the Applicant's gravamen that on 22<sup>nd</sup> February, 2018, the 2<sup>nd</sup> Respondent's agent, the Social Development Officer for Mwingi Central Sub-County, went ahead to conduct an election of interim committee/officials of Wendo Wa Mwingi Women Group and that as a result, and in violation of the Group's Constitution, non-members were elected. The Applicant averred that the purported election was also in violation of the Constitution of the Wendo Wa Mwingi Women Group which provides that an election is to be held after every five (5) years.

5. The Applicant further stated that on 4<sup>th</sup> May, 2018 and 12<sup>th</sup> April, 2018, the Social Development Officer for Mwingi Central Sub-County, wrote to the Applicant demanding for the handover of the Group's documents, including the Title Deed for Mwingi/Mwingi 1288 and threatened to use force to obtain the same. The Applicant informed the court of the suit that was filed on 17<sup>th</sup> August, 2018 by the Interested Parties seeking orders to restrain the Applicant, *inter alia*, from transacting the affairs of the Wendo Wa Mwingi Women Group.

6. The Applicant averred that the Social Development Officer for Mwingi Central Sub-County has been harassing and intimidating her; that the said officer has prejudiced the conduct of the affairs of the women group and that the officer has abused his discretion and powers contrary to the principles enshrined in the Fair Administrative Action Act.

7. In her Verifying Affidavit, the Applicant reiterated the contents of the statement and annexed a copy of the Group's Constitution; a copy of the minutes of the Group's meeting; the letter summoning the Group members for a meeting; the document indicating that non-members of the Group were elected as officials; the letter ordering for the handover of the Group's documents; the replies by the Applicant and the copy of pleadings in Mwingi Law Courts ELC 16 of 2018.

8. The Interested Parties filed Grounds of Opposition in which they averred that the Application is bad in law and incompetent; that Judicial Review is concerned with the decision making process and not the merit of the decision itself and that the Applicant was given a fair and reasonable opportunity to be heard.

9. In his Replying Affidavit, the 1<sup>st</sup> Interested Party deponed that the Applicant was not elected on 3<sup>rd</sup> July, 2014 as alleged; that the Applicant has been mishandling the affairs of the Women Group; that parcel number Mwingi/Mwingi/1288 is not the subject of the dispute and that although the said land was purchased by the Women Group, the Applicant changed the ownership of the land and had it registered in the name of Trustees.

10. The 1<sup>st</sup> Interested Party deponed that on 6<sup>th</sup> April, 2018, the members procedurally called for elections wherefore the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Interested Parties were elected as the officials of the Women Group and that after the said elections, the Applicant declined to hand over the official documents to the group.

11. The 1<sup>st</sup> Interested Party finally deponed that the Applicant has secretly tried to sell the suit property; that the Applicant is interfering with the management of the Group and that the 2<sup>nd</sup> Respondent acted within his mandate in registering the officials of the Group.

12. The Application was canvassed vide written submissions. According to counsel for the Applicant, the process through which the Interested Parties were registered as officials of the Group was unprocedural, illegal and in total violation of the Group's Constitution. Reliance was placed on the case of *Republic vs. Public Procurement Administrative Review Board & 2 Others Ex parte; Rongo University (2018) eKLR* where the court held that Judicial Review is more concerned with the manner in which a decision is made, and not the merit of the decision.

13. The Applicant's counsel submitted that the Applicant has demonstrated how the 2<sup>nd</sup> Respondent's Agent acted unreasonably in registering the Interested Parties as officials of the group despite the fact that they were not members of the Group; that the Applicant's term in the office was still valid for over a year and that the entire process of electing new officials of the Group was illegal.

14. According to submissions filed on 31<sup>st</sup> October, 2019 by counsel for the 1<sup>st</sup> to 3<sup>rd</sup> Interested Parties' advocate, their election was conducted in accordance with the law and the laid down procedures as required by the 2<sup>nd</sup> Respondent; that the election of the Applicant as the chairperson of the Group is not supported by any documents and that the Applicant has no *locus standi* to run the affairs of the Group.

15. Counsel submitted that the challenged elections of the Group were conducted in accordance with the Constitution of the Group; that the Applicant has not shown how the 2<sup>nd</sup> Respondent acted in excess of jurisdiction and that the Application should be dismissed.

16. On behalf of the 4<sup>th</sup> Interested Party, it was submitted that it had not been established that the Group was registered as a self-help group; that the 4<sup>th</sup> Interested Party had dealings in respect of parcel number Mwingi/Mwingi/1284 with people who appeared in the register as Trustees and that the 4<sup>th</sup> Interested Party has been sued in Mwingi PMCC No. 16 of 2016 by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties.

17. It was submitted that the conduct of elections midstream and contrary to the Constitution of the Group was without legal basis and ought to be quashed by way of Judicial Review and that the rights to parcel of land known as Mwingi/ Mwingi/ 1284 that was acquired by the 4<sup>th</sup> Interested Party by way of purchase ought to be protected by this court.

18. The singular order that the Applicant is seeking in the current Application is the quashing of the decision of the 2<sup>nd</sup> Respondent of registering the Interested Parties as the officials of Wendo Wa Mwingi Women Group. Indeed, as admitted by the Applicant and the Interested Parties, the issue of the sale of land parcel number Mwingi/Mwingi/1288 is currently before Mwingi Principal ELC No. 16 of 2018 by the 1<sup>st</sup> to 3<sup>rd</sup> Interested Parties as the officials of the Wendo Wa Mwingi Women Group.

19. The issue of the validity of the elections of the Wendo Wa Mwingi Women Group will be crucial in determining the *bona fide* Plaintiffs in the Mwingi PMCC No. 16 of 2018 which has not been heard and determined.

20. The issue of ownership of the suit property will therefore be determined by the lower court in Mwingi PMCC No. 16 of 2018, with an Appeal lying in this court. The jurisdiction of this court is provided for by the Constitution and the Environment and Land Court. Article 162(2)(b) of the Constitution provides as follows:

***“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to–***

***(b) the environment and the use and occupation of, and title to, land.”***

21. To the extent that the Notice of Motion dated 16<sup>th</sup> April, 2019 is seeking for an order quashing the election of the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Interested Parties as the officials of Wendo Wa Mwingi Women Group, it is my findings that this court does not have jurisdiction to determine the dispute. It is the High Court that has the jurisdiction of determining the validity of the elections of Wendo Wa Mwingi Women Group, and not this court.

22. Considering that this matter was filed in the High Court, Kitui, I re-transfer the matter to the High Court, Kitui for hearing and determination.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 15<sup>TH</sup> DAY OF JULY, 2020.**

**O.A. ANGOTE**

**JUDGE**