

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL APPEAL NO. E104 OF 2023

SABATIA FARMERS CO-OPERATIVE

SOCIETY.....APPELLANT/APPLICAN

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VERSUS

BARINGO DISTRICT CO-OPERATIVE SOCIETY.....

RESPONDENT

RULING

1. By the Notice of Motion dated 2nd September 2025 the appellant/applicant prays for the following orders;

- i. Spent.***
- ii. That this honourable court be pleased to authorize the appellant/applicant to undertake construction and/or renovation works on its premises situate on the suit property, LR. No. 498/309 to the extent only necessary for complying with the County Government of Baringo's statutory notice dated 4th July, 2025 and any other statutory notice that may arise during the pendency of the Appeal.***
- iii. That the costs of this application be provided for.***

2. The application is premised on the grounds on its face as well as the affidavit of the applicant's chairman. He deponed that on 4th July, 2025, they received a County Government of Baringo Public Health Department statutory notice dated 4th July, 2025 requiring it to construct some sanitary facilities /amenities within a period of ninety (90) days lest its premises on the suit property would be closed. He stated that the appellant operates a milk-processing plant on the suit premises with more than twenty employees in the premises. Thus, closure of the said premises would occasion substantial detriment to the appellant/applicant, its members and its employees. He added that the appellant is unable to undertake any construction and/or renovation works necessary for complying with the statutory notice in light of the prevailing order by the tribunal.
3. The respondent in response filed a replying affidavit sworn on 15th September, 2025 by the respondent's chairman. He averred among other things that the statutory notice purportedly issued by the county government does not clearly identify the suit property. Thus, in the absence of clear and precise identification of the subject property, the said notice is rendered defective and incapable of sustaining any lawful orders of this court.
4. The appellant/applicant filed a supplementary affidavit sworn by its chairman on 25th September 2025. He admitted that the statutory notice dated 4th July, 2025 did not specifically identify the suit property. Further, that the

court having issued orders for preparation of a report by the county government of Baringo public health officer, the said officer would substantiate the location of the milk processing plant. That the claim that there was no milk plant on the suit property was vexatious and malicious. He denied the contents of paragraphs 1, 5, 7-16 and the respondent was put to strict proof thereof.

5. The respondent filed a further replying affidavit sworn by its chairman on 7th October 2025 where he reiterated the contents of his earlier replying affidavit and added that he denied the allegation that he was not the respondent's chairman.
6. The application was canvassed by way of written submissions. However, only the respondent's counsel filed submissions. The appellant/applicant did not file any submissions, the same are not in the court file or CTS portal.
7. The applicant's submissions were filed by Mutunga Justus & Associate Advocates and are dated 15th October 2025. Counsel gave brief facts of the case and identified two issues for determination.
8. The first issue is whether the applicant operates a milk processing plant on the suit property. Counsel while citing the **Dairy Industry (Regulation, Licensing, Cess and Levy) Regulations** submitted that the single permit annexed by the appellant/applicant does not authorize the operation of a milk processing plant. Further, that the said permit authorises the appellant/applicant to operate a

milk cooling plant and not a processing plant. In addition, that the NEMA licence was invalid having expired on 12th December 2023.

9. The second issue, is whether the statutory notice and purported report of the Public Health officer produced by the applicant are admissible. Counsel cited section 80 of the Evidence Act and submitted in the negative and urged the court to expunge them from the court record since it had been produced by the appellant/applicant instead of its maker. Further, that the report filed on 3rd October 2025 did not identify the suit property and the same were also not filed

by the public health officer.

10. In conclusion, counsel submitted that the appellant /applicant had not sufficiently demonstrated to this honourable court why the orders sought should be granted. He urged to dismiss the application with costs.

Analysis and determination

11. I have considered the application which is the subject of this ruling and the submissions made on behalf of the appellant /applicant. In my opinion the only issue for determination is whether the application dated 2nd September 2025 is merited.

12. There is no doubt that the parties herein entered into a consent on 16th October 2025 that status quo be maintained pending the hearing and determination of this application. In the said application it is the appellant/applicant's prayer that it be authorized to

undertake construction and/or renovation works on its premises situate on the suit property to the extent only necessary for complying with the Baringo county government's statutory notice dated 4th July, 2025 and any other statutory notice that may arise during the pendency of the Appeal.

13. The respondent on its part has opposed the application arguing that the said statutory notice does not clearly identify the suit property and it was therefore defective and incapable of sustaining any lawful orders of this court.

14. In **Republic v National Environment Tribunal, Ex - Parte Palm Homes Limited & Another [2013] eKLR**, Odunga J. stated as follows: -

“When a court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve the existing state of affairs...Status quo must therefore be interpreted with respect to existing factual scenario...”
(Emphasis mine)

15. Further, in **Kenya Airline Pilots Association (KALPA) v Co-operative Bank of Kenya Limited & another [2020] eKLR** the purpose of a status quo order was explained as follows: -

“...By maintaining the status quo, the court strives to safeguard the situation so that the substratum of

the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision.”
(Emphasis mine)

16. I have carefully perused the said statutory notice/letter dated 4th July 2025, the same is addressed to the appellant /applicant. The public health officer from Baringo county government raised concerns about the appellant/applicant sanitary facilities which are in a poor state and needed renovations. Further, due to the increased number of employees more sanitary facilities needed to be constructed to accommodate all of them. The appellant/applicant was given 90 days to comply failure to which its premises would be closed. In the report dated 6th October 2025 addressed to the deputy registrar Nakuru law courts, the same confirmed that the sanitary facilities at the appellant/applicant premises were in a poor state of affairs.

17. Clearly, in the event this court grants the orders sought by the appellant/applicant this will mean the existing state of affairs (status quo) will be interfered with. However, from the said notice and report I note that the sanitary facilities are already in place and what is needed is for them to be renovated with an addition of new ones. So basically, what is sought to be constructed by the

appellant/applicant in compliance with the statutory notice already existed before the filing of this appeal.

18. In my considered view the appellant faces risk of closure if the orders sought are not granted. Further, there is a threat of violation of the appellant/applicant's and its employees' fundamental rights and freedoms enshrined under Article 43 (b) of the Constitution which provides in part that every person has the right to accessible and reasonable standards of sanitation. Additionally, if the appellant/applicant's premises is closed due to non-compliance then the status quo orders will be rendered nugatory and subsequently the Appeal. On its part the respondent has failed to demonstrate the prejudice it is likely to suffer if the application is allowed.

19. For the foregoing reasons, I find merit in this application which I allow as prayed.

20. Costs shall be in the cause.

21. Orders accordingly.

Delivered virtually, dated and signed this 28th day of November, 2025 in open court at Nakuru.

**H. I. ONG'UDI
JUDGE**