



**REPUBLIC OF KENYA**

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

**ELC CASE NO.6 OF 2016 PETITION**

**IN THE MATTER OF ARTICLES 19, 20,21,22 AND 23 (1) & (3), 40(2), 47(1).  
50(1), 73(1), 73(2)(C) AND 159(2) OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF SECTION 96, 97 OF THE LAND ACT NO.6 OF 2012**

**AND**

**IN THE MATTER OF SECTION 49, 64, 65, AND 66(1)(A)(F)(I)(N) OF THE  
CO-OPERATIVES SOCIETIES ACT CAP 49 LAWS OF KENYA**

**AND**

**SECTION 3,4(1)(2)(3)(A)(B) & (G)(4), 6,7,(1) (A)(J)(I)(M)(O) OF THE FAIR  
ADMINISTRATIVE ACTIONS ACT, 2015**

**BETWEEN**

**GEORGE RUBIIK (Suing on behalf of the Comprehensive Course on  
FRANSISCAN MISSION CHARISM PROGRAM.....PETITIONER**

**VERSUS**

**OFFICIAL LIQUIDATOR OF CENT SACCO SOCIETY  
(IN LIQUIDATION ON BEHALF OF THE COMMISSIONER FOR  
CO-OPERATIVE SOCIETY DEVELOPMENT.....RESPONDENT**

**AND**

**MICRO ENTERPRISES SUPPORT &  
PROGRAMME TRUST (MESPT).....INTERESTED PARTY**

**RULING**

1. **George Rabiik (Suing on behalf of the Comprehensive Course on Franciscan Mission Charism Program)**, the Petitioner, seeks for conservatory order restraining **Micro Enterprises Support & Programme Trust [MESPT], the Interested Party**, by itself or agents from selling, dealing, interfering, alienating disposing of all that parcel of land known as **East/Kisumu/Dago/516** pending the hearing and determination of this petition. The application is based on the nine (9) grounds marked (i) to (ix) on its face, and is supported by the affidavit sworn by the Petitioner on the 28<sup>th</sup> September 2016. The application is also supported by the **Official Liquidator of Cent Sacco Society [In liquidation on behalf of the Commissioner for Co-operative Societies Development]**, the Respondent, through the affidavit sworn by Japheth Atuti, on the 27<sup>th</sup> October 2016.

2. The application is opposed by the Interested Party through the replying affidavit sworn by Raphael Kuria, the Head of Credit and Business Development, on the 3<sup>rd</sup> November 2016.

3. The application come up for hearing on the 6<sup>th</sup> December 2016 when directions on filing and exchanging written submissions were given. That consequently, the counsel for the Petitioner and Interested Party filed their submissions dated 19<sup>th</sup> May 2017 and 19<sup>th</sup> June 2017 respectively. That during the mention of the 4<sup>th</sup> December 2017, when this matter was fixed for ruling today, counsel for the Respondent informed the court that they were not filing any submissions.

4. The following are the issues for the court's determinations;

a. Whether the Petitioner has established an arguable case with a probability of success for issuance of conservatory order at this stage.

b. Who pays the costs.

5. The court has carefully considered the nine grounds on the notice of motion, affidavit evidence by the Petitioner, Respondent and Interested Party; plus submissions by counsel for the Petitioner and Interested Party and come to the following findings;

a. That paragraphs 5(a) to (h) of the ruling delivered today in **Kisumu ELC Petition No.5 of 2016** are adopted in this ruling as the two matters are related in almost all aspects except the name of the Petitioner and parcel number.

b. That accordingly the notice of motion dated 28<sup>th</sup> September 2016 is res judicata as it contravenes **Section 7 of the Civil Procedure Act**.

6. That for the reasons set out above the court orders as in Kisumu ELC Petition No.5 of 2016 as follows;

a. That the notice of motion dated 28<sup>th</sup> September 2016 is res judicata in view of the rulings in **Kisumu H C C C No.8 of 2011** and that of 19<sup>th</sup> April 2016 in **Kisumu ELC NO.10 of 2015**. That the application is therefore struck out with costs to the interested Party.

b. That in view of the court's ruling of the 19<sup>th</sup> April 2016 in **ELC Kisumu No.10 of 2015**, this petition is an abuse of the courts process and is hereby struck out with costs to the Interested Party.

Orders accordingly.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

DATED AND DELIVERED THIS 7<sup>TH</sup> .DAY OF MARCH 2018

In presence of;

Petitioner Absent

Respondent Absent

Interested Party Absent

Counsel Mr. Edward for Muma for Petitioner

Mr. Oguso for Respondent and Mr. Arikho for Nthinga for Inter4ested party.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**7/3/2018**

7/3/2016

S.M. Kibunja Judge

Joane Court assistant

Parties absent

Mr. Edward for Muma for Petitioner

Mr. Oguso for Respondent

Mr. Arikho for Nthiga for interested party.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**7/3/2018**