



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

JUDICIAL REVIEW NO. 8 OF 2016

IN THE MATTER OF AN APPLICATION BY TURBO MUNYAKA CO-OPERATIVE SOCIETIES LIMITED FOR LEAVE TO APPLY FOR AN ORDER OF MANDUMUS DIRECTED TO THE COUNTY LAND REGISTRAR, TRANS-NZOIA

AND

IN THE MATTER OF THE LAND REGISTRATION ACT NO. 3 OF 2012

AND

IN THE MATTER OF THE LAW REFORM ACT CAP 26 OF THE LAWS OF KENYA

BETWEEN

REPUBLIC.....APPLICANT

AND

LAND REGISTRAR TRANS-NZOIA COUNTY.....1ST RESPONDENT

HON. ATTORNEY GENERAL.....2ND RESPONDENT

TURBO MUNYAKA

CO-OPERATIVE SOCIETY LTD.....EX-PARTE APPLICANT

1. JOSEPH MBUGUA HOSEA

2. DAVID GATIBA KIMANI

3. JOEL NGASHA

4. JOHN KAMAU MUIGAL...PROPOSED INTERESTED PARTY/APPLICANTS

RULING

INTRODUCTION

1. The matter before this Honourable Court for determination is a Preliminary Objection dated 7th July 2017 filed by the *Ex-Parte* Applicant. The foregoing Preliminary Objection has been raised the Chamber Summons dated 20th March 2017 filed by the Intended Interested Parties/Applicants seeking *inter alia* to be enjoined and consequently the review of the judgment of the Honourable Court delivered on 17th March 2017.

2. The *Ex-Parte* Applicant has opposed the said Chamber Summons vide the said Preliminary Objection which raises the following grounds:

1. That the order made vide the judgment of 17th March 2017 is final and only amenable to an appeal but not review.

2. That the application is a clear affront to the provisions of Section 8(5) of the Law Reform Act.

3. That the provisions of the Civil Procedure Act and the rules made there under are not applicable to Judicial Review applications made under the Law Reform Act and Order 53 of the Civil Procedure Rules.

4. That the Chamber Summons application dated 10th March 2017 is not properly before the court and it should be struck out with costs.

5. Those parties cannot be enjoined in a suit that is already finally determined.

6. That the Hon. Court does not have jurisdiction to grant the reliefs sought in the application.

Submissions By The *Ex-Parte* Applicant

3. The Respondent filed the Preliminary Objection dated 7th July 2017. It relied on written submissions dated 15th September 2017. It submitted as follows:-

“The submission made in favour of the Preliminary Objection is that the orders made on 17th March 2017 are only amenable to an appeal and not a review. It is also submitted that the application before the court is a clearly an affront to the provisions of section 8(3) as read with subsection (5) of the Law Reform Act, Cap 26 of the Laws of Kenya and that as it stands this Honourable Court is now *functus officio* and has no jurisdiction to make the orders sought”.

4. On the issue of jurisdiction as envisaged under *Section 8(3) & (5) of the Law Reform Act* it is submitted that the question before this Honourable Court is whether this court has jurisdiction to grant the orders sought by the proposed interested parties.

5. Relying on the provisions of *Section 8(5) of the Law Reform Act*, counsel for the Respondent submitted that once a final order as was made by this Honourable Court on **17th March 2017** is made, the court became *functus officio* and it has no jurisdiction to review and or set aside the final order. To this end counsel relied on the holding in the case of **Republic v C Lutta Kasamani t/a Kasamani & Co. Advocates ex parte United Insurance Company Ltd [2005] eKLR, H.C at Nairobi Misc. Civil Application No. 1047 Of 2004** where the learned judge, Makhandia J. reiterated the decision in the case of **Kuria Mbae Vs The Land Adjudication Officer Chuka & Anor, Misc. Appl. No. 257 Of 1983**. In the **Kuria Mbae case**, it was stated that a party aggrieved by the decision of this Court in granting or refusing an Order of Certiorari is entitled to Appeal to the Court of Appeal and that according to *Section 8 (3) of the Law Reform Act*, this Court’s order on such application is final and cannot be the subject of pleadings or prohibition.

6. It is further submitted that in view of the foregoing holding that once the court issued a final order on 17th March 2017, it ceased its jurisdiction to make any return to the orders, and only an appeal may lie. It is submitted that this position should be distinguished from instances where the court grants interim orders or leave to an *Ex-Parte* applicant.

7. While referring to the provisions of **Section 8(3) of the Law Reform Act**, it is submitted that the court has jurisdiction to review orders made in the interim as opposed to final order. To this end counsel cited the holding in the case of **Nakumatt Holdings Limited v Commissioner of Value Added Tax [2011] eKLR, C.A at Nairobi Civil Appeal No. 200 of 2003**, where the Court of Appeal allowed the appeal and stated that the judge should have corrected his own mistake, having observed that the law cited and which the learned judge used to deny leave, had been repealed at the time he declined to grant leave.

8. On the applicability of the Civil Procedure Act it is submitted that the application by the Interested Parties/Applicants is brought under the provisions of **Sections 1A, 1B, 3A and Order 1 Rule 10, Order 45 Rule 1 of the Civil Procedure Act, 2010**. It is submitted that the rules of the Civil Procedure Act do not apply in proceedings commenced under the Law Reform Act. The respondent has submitted that in exercising the power to issue prerogative writs, the courts cannot be said to be applying civil or criminal jurisdiction, and hence the procedural rules thereunder are not applicable. To this end counsel relied on the holding in the case of **Welamondi Vs. The Chairman, Electoral Commission of Kenya [2002]1KLR 486** where the learned Judge, Ringera J. relied on the decision in the case of **Commissioner of Lands vs. Kunste Hotel Ltd, Civil Appeal No. 252 of 1996** and reiterated that in exercising the powers under **Order 53 of the Civil Procedure Rules**, the court is exercising neither a civil nor a criminal jurisdiction in the strict sense of the word and that it is exercising a jurisdiction *sui generis*. The learned judge further noted that it follows therefore that it is incompetent to invoke the provisions of the Civil Procedure Rules. (In that case, **Section 3A and Order 1 Rule 8 of the Civil Procedure Rules** as they were then).

9. Counsel further cited the holding in the case of **Republic v C Lutta Kasamani t/a Kasamani & Co. Advocates ex parte United Insurance Company Ltd, supra**, where the Court of Appeal stated that the provisions of **Section 8 and 9 of the Law Reform Act** which vests in the High Court of Kenya the power to issue orders of Mandamus, Prohibition and Certiorari are not subject to any other Act of Parliament and that apart from **Order 53**, no other provisions of the Civil Procedure Act and the Rules are applicable to proceedings commenced under **Order 53**. It is further submitted that the present application having been brought under the provisions of the Civil Procedure Act and Civil Procedure Rules, it is incompetent, incurably defective and only fit for striking out.

10. On Joinder of Parties it is submitted that the provisions of Joinder of Parties under **Order 1 Rule 10 of the CPR** after judgment is in clear breach of **Section 8(5) of the Law Reform Act** and that the only option the intended interested parties have is to appeal to the Court of Appeal. It is submitted that pursuant to the provisions of **section 8(5) of the Law Reform Act**, the aggrieved Interested Parties are still allowed to appeal as if they were parties to the Judicial Review application herein.

Submissions By The Intended Interested Parties/Applicants

11. The Intended Interested Parties/Applicants through the firm of M/S Teti & Co. Advocates filed their written submissions dated 18th September 2017 and submitted as follows:-

“On the issue of Jurisdiction it is submitted that the applicants were not aware of the instant Judicial Review process herein since they were not served and that the judgment of the court delivered on the 17th March 2017 will make the applicants lose their lands and that the applicants have now moved to court with evidence of truth which was concealed from the court”.

12. It is further submitted that the Honourable Court should not fold its hands even after being informed that it was misled to make a judicial review order with grave consequences. It is submitted that the decision of this Honourable Court given on 17th March 2017 was erroneous to the extent that this court

acted on mistaken belief that the *Ex-Parte* Applicant Turbo Munyaka Cooperative Society existed and that one Onesmus Gichiri Mburu was its chairman.

13. It is submitted that **Section 8(3) and (5) of the Law Reform Act**, do not specifically exclude either the inherent power of the court to do justice and prevent an abuse of its process. For this proposition, counsel relied on the holding in the case of **Republic vs. The Chief Land Registrar & Another Ex-Parte James Njoroge Njuguna [2013] eKLR, H.C at Nairobi** where the learned judge Majanja J. at paragraph 30 of the judgment differed with the holding in ***Kuria Mbae Case***, and opined that first **Section 8(3) and (5) of the Law Reform Act** do not specifically exclude either the inherent power of the court to do justice and prevent an abuse of its process, and that secondly, **Order 53 rule 2 of the Civil Procedure Rules** (as a matter of correction of this submission, it should be **Order 53 Rule (3) (2) and not Order 53 Rule 2**) which gives practical effect to prerogative orders requires that all persons directly affected be served with the motion. The learned judge Majanja J. on relying on the holdings in ***Magon vs. Ottoman Bank [1967] EA 609, Mulira vs. Dass [1971] EA 227, Ali Bin Khamis vs. Salim Kirobe [1956] EACA 1956*** at paragraph 31 of his judgment he further reiterated that where there is no specific provision to set aside, the court's power or jurisdiction would spring from inherent powers of the court and that whereas ordinary jurisdiction stems from Acts of Parliament or statutes, the inherent powers stem from the character and the nature of the court itself and that it is empowered to do justice in all situations.

14. Counsel also cited the holding in **Republic vs. Public Service Commission of Kenya & 2 Others Ex-Parte Julius Odol Noberts & 27 Others [2013]Eklr H.C at Nairobi JR Case No. 1365 of 2004** where the learned judge Korir J. relied on the holding by Majanja J. in **Republic vs. The Chief Land Registrar & Another Ex-Parte James Njoroge Njuguna, supra**, and stated that the court can review its decision under the guidelines of **Order 45 of the Civil Procedure Rules** and that the court has inherent jurisdiction to do which is right.

15. It is submitted further that this Honourable Court has jurisdiction to review its judicial review orders to obviate hardship and injustice to a party who is otherwise, not to blame for circumstances he finds himself like in the present case. To this end counsel cited the cases of **Nakumatt Holdings Limited v Commissioner of Value Added Tax, supra**, and **Aga Khan Education Service Kenya vs. Republic Through Ali Seif Benson Nairagu, Joseph Ngethe Gitau and The Attorney General, Civil Appeal No. 257 of 2003** that was cited in the foregoing **Nakumatt Case**.

16. It is submitted that in the instant case the Intended interested Parties/Applicants were not served with the application which led to the Judicial Review orders being sought to be set aside. Counsel argued that service is an integral part of the rules of natural justice. To this end counsel cited the case of **Republic V Vice Chancellor Jomo Kenyatta University Of Agriculture and Technology [2008] eKLR H.C at Nairobi Misc. Civil Application No. 30 of 2007** where the learned Judge Nyamu J. observed that the rules of natural justice dictate that a party should not be condemned unheard. Counsel also referred the court to the holding in the case of **Republic vs. The Chief Land Registrar & Another Ex-Parte James Njoroge Njuguna, supra**, where the learned judge Majanja J. at paragraph 35 opined that it is now established that where orders are obtained in breach of the rules of natural justice such orders cannot survive judicial scrutiny.

17. It is submitted that the court was mistaken on the correct position on the ground after being misled by the *Ex-Parte* Applicant and that the Intended/Interested Parties/applicants have acted promptly and sought an order reviewing the erroneous order. It is submitted that if the judgment of this Honourable Court made on 17th March 2017 is not reviewed the applicants who are among the original members of Munyaka Trading Centre shall be adversely affected by the order of Mandamus issued herein since the implementation of the said order would make the applicants and other original members of Munyaka Trading Centre to lose their plots.

18. It is submitted that in view of the Holding in ***Nakumatt Case*, supra**, this Honourable Court has residual power to correct its own mistake even where the applicant has moved the court by citing a wrong provision of the law and of which cannot not deprive the court the power of correcting its own mistake *per se*. Finally counsel submitted that the *Ex-Parte's* Applicant's argument that this court has no

jurisdiction to entertain this application is misplaced and the same should be dismissed with costs.

Determination

19. Before laying out the issues for determination it is important to briefly state the historical background of this matter. The *Ex-Parte* Applicant Turbo Munyaka Co-operative Society Limited on 16th November 2016, filed the Judicial Review Application by a Notice of Motion *vide* **Mr. Onesmus Gichiri Njoroge** who was said to be its Chairman, seeking that this Honourable Court be pleased to issue an Order of Mandamus, compelling the County Land Registrar, Trans-Nzoia to register 31 leases for various parcels of land within Munyaka Trading Centre and that the same be released to the *Ex-Parte* Applicant. The parties to this Motion included Land Registrar Trans-Nzoia County, 1st Respondent, the Hon. Attorney General, the 2nd Respondent and the *Ex-Parte* Applicant, Turbo Munyaka Co-operative Society Limited. Apparently this Motion was not defended and finally the Honourable Court on the 17th March 2017 delivered the impugned judgment herein.

20. In the said Judgment this court granted the Mandamus orders that were sought and directed that an order of mandamus compelling the 1st Respondent to register the leases and release the same to the *Ex-Parte* Applicant forthwith. It is as a result of the foregoing judgment/order of mandamus that the Intended Interested Parties (“intended” because initially they were not parties to these proceedings), are aggrieved with and are now seeking for the same to be set aside or be reviewed. In this regard the Intended Interested Parties; **Joseph Mbugua Hosea, Joseph Gatiba Kimani, Joel Ngasha and Joel Kamau Muigai** filed Chamber Summons dated 20th March 2017, barely three days after the delivery of the judgment herein seeking that they be enjoined to the instant suit as interested parties; that pending the hearing of their application there be a stay of the execution of the order of mandamus herein; that the said order of mandamus be set aside/reviewed and that the Honourable Court be pleased to cancel the proposed 31 leases and to allow the applicants and other members to process and register their leases as their plan No. KTL/1998/2013/01.

21. It is the foregoing application that triggered the instant Preliminary Objection. The gist of the instant Preliminary Objection being that the Honourable Court is *functus officio* and that pursuant to the provisions of the Law Reform Act - **Section 8 (3) & (5)** in particular - the court lacks jurisdiction. It follows therefore that the main issue for determination is *whether the Honourable Court has jurisdiction to entertain an application for review in respect to an Order of Mandamus?*

Issues for Determination

22. In view of the pleadings herein and the foregoing rival submissions, the salient issue for determination is whether the Honourable Court has jurisdiction to entertain an application for review in respect to an Order of Mandamus.

Whether the Honourable Court has jurisdiction to entertain an application for review in respect to an Order of Mandamus?

23. The Interested Parties’ Chamber Summons is brought pursuant to the provisions of **Section 1A, 1B, and 3A of the Civil Procedure Act, Order 1 Rule 10, Order 45 rule 1 of the Civil Procedure Rules and Article 159(2) of the Constitution of Kenya 2010.**

The *Ex-Parte* Applicant apart from contending that the court lacks jurisdiction to entertain the instant Chamber Summons seeking review of the impugned judgment herein pursuant to the provisions of section 8(3) & (5) of the Law Reform Act, has also contended that the cited Rules of Civil Procedure by the Applicants are not applicable in the Judicial Review Matters. On the other hand the Intended/Interested Parties/Applicants have argued that the *Ex-Parte* Applicant failed to notify and or serve them with the Judicial Review Proceedings herein and hence being condemned unheard.

24. Judicial Review proceedings are governed by **Order 53 of the Civil Procedure Rules and the Law**

Reform Act Cap 26 Laws of Kenya. Section 8 of the Law Reform Act states as follows:-

“8. Orders of mandamus, prohibition and certiorari substituted for writs

(1) The High Court shall not, whether in the exercise of its civil or criminal jurisdiction, issue any of the prerogative writs of *mandamus*, prohibition or *certiorari*.

(2) In any case in which the High Court in England is, by virtue of the provisions of section 7 of the Administration of Justice (Miscellaneous Provisions) Act, 1938, (1 and 2, Geo. 6, c. 63) of the United Kingdom empowered to make an order of *mandamus*, prohibition or *certiorari*, the High Court shall have power to make a like order.

(3) No return shall be made to any such order, and no pleadings in prohibition shall be allowed, but the order shall be final, subject to the right of appeal therefrom conferred by subsection (5) of this section.

(4) In any written law, references to any writ of *mandamus*, prohibition or *certiorari* shall be construed as references to the corresponding order, and references to the issue or award of any such writ shall be construed as references to the making of the corresponding order.

(5) Any person aggrieved by an order made in the exercise of the civil jurisdiction of the High Court under this section may appeal therefrom to the Court of Appeal.” (Emphasis added)

25. Order 53 Rule 3(1) & (2) of the Civil Procedure Rules states as follows-

“3. (1) When leave has been granted to apply for an order of mandamus, prohibition or certiorari, the application shall be made within twenty-one days by notice of motion to the High Court, and there shall, unless the judge granting leave has otherwise directed, be at least eight clear days between the service of the notice of motion and the day named therein for the hearing.

(2) The notice shall be served on all persons directly affected, and where it relates to any proceedings in or before a court, and the object is either to compel the court or an officer thereof to do any action in relation to the proceedings or to quash them or any order made therein, the notice of motion shall be served on the presiding officer of the court and on all parties to the proceedings.” (Emphasis added)

26. In the case of *Biren Amritlal Shah & another v Republic & 3 others [2013] eKLR, Court of Appeal at Nairobi, Civil Appeal No. 186 OF 2004* the Court of Appeal observed as follows;

“With respect to judicial review the Court is exercising powers under Order 53 of the Rules wherein the procedure of judicial review are set out. It is noteworthy that there is no provision for review by the Superior Court of its own decisions in judicial review, once rendered.

Section 8(5) of the Law Reform Act does however specify that:-

“Any person aggrieved by an order made in the exercise of the civil jurisdiction of the High Court under this section may appeal therefrom to the Court of Appeal.”

It is therefore quite clear that appeals in respect of orders made under judicial review lie with the Court of Appeal. Therefore, in answering the question whether the High Court had jurisdiction to entertain a review application, we agree with the learned judge of the High Court that, in exercising its special jurisdiction under the Law Reform Act, the High Court had no jurisdiction to review its previous order” (Emphasis added)

27. In view of the foregoing holding by the Court of Appeal, it appears that a party aggrieved by a prerogative order issued by the Superior Court can only appeal against the same to the Court of Appeal and hence there is no room for review.

28. The foregoing notwithstanding, it is apparently clear that pursuant to the provisions of **Order 53 Rule 3(2) of the Civil Procedure Rules**, all parties affected by the Judicial Review proceedings must be notified. The Intended/Interested Parties/Applicants have contended that they were not notified and or served with the instant Judicial Review proceedings and that a **Mr. Onesmus Gichiri Njoroge** misled the court purporting to be the chairman of the *Ex-Parte* Applicant which he is not.

29. According to the Applicants' Chamber Summons dated **20th March 2017**, it is deponed at **paragraph 5** of the Supporting Affidavit sworn by **Joseph Mbugua Hosea** that the application leading to the issuance of the said order of Mandamus was made by one Onesmus Gichiri Mburu (perhaps he meant Onesmus Gichiri Njoroge, the one who swore the Affidavit in support of the Judicial Review Proceedings herein) who misrepresented himself as the current chairman of the *Ex-Parte* Applicant (**Turbo Munyaka Co-Operative Society**) while the said society ceased to exist in the said name on 7/04/1986 and does not own land parcel No. Makutano/Kapsara Block 2/247. To this end a Certificate of Change of Name marked "**JMH 4**" has been attached.

30. A close look at the said annexure "**JMH 4**", it reveals that **Turbo Munyaka Co-Operative Society Limited** changed its name to **Munyaka Marketing Co-Operative Society Limited** on **7th April 1986**. The Intended Interested Parties/Applicant through a Mr. Joseph Mbugua Hosea swore the Supporting Affidavit in support of the said Chamber Summons dated 20th March 2017 where he deposed that he is the current chairman of **Munyaka Trading Centre** and that he swore the said Supporting Affidavit on behalf of 54 members of **Munyaka Trading Centre**. To this end there is annexed a list of members marked "**JMH 1.**" It follows therefore that the lease certificates herein that were directed to be issued to the *Ex-Parte* Applicant will have adverse effect on the property rights of other members of the society who ought to have been notified the pendency of this matter in court.

31. This Honourable Court may lack jurisdiction to review its Judicial Review Orders granted under **Order 53 of the Civil Procedure Rules by dint of the provisions of Section 8(3) & (5) of the Law Reform Act** and also in view of the holding in **Biren Amritlal Shah & another v Republic & 3 others** where the Court of Appeal held that an order made under Order 53 of the Civil Procedure Rules is final and that the aggrieved party may appeal to the Court of Appeal and hence the High Court has no jurisdiction to review its previous order. Whereas this appears to be the correct position, the instant case presents a peculiar situation in the sense that there is no evidence on record to demonstrate that the parties, that is the applicants, herein that are adversely affected by the order of mandamus issued by this Honourable court were notified and or served with the instant proceedings in accordance with the provisions of **Order 53 Rule 3(2) of the Civil Procedure Rules**. The question that follows therefore is whether this Honourable Court should turn a blind eye on failure on part of the *Ex-Parte* Applicant to notify all the affected parties and condemn the Intended Interested Parties/Applicants unheard. The *Ex-Parte* Applicant had a duty to serve upon and/or notify the members of the Co-Operative Societies herein the applicants included, of these proceedings.

32. In the cases of **Republic vs. The Chief Land Registrar & Another Ex-Parte James Njoroge Njuguna** *supra*, and **Republic vs. Public Service Commission of Kenya & 2 Others Ex-Parte Julius Odol Noberts & 27 Others**, *supra*, the learned judges Majanja J. and Korir J. respectively, opined that the High Court has inherent jurisdiction to review its order granted under order 53 of the Civil Procedure Rules in ensuring that justice is done and to prevent an abuse of its process. The foregoing proposition being from the courts of the concurrent jurisdictions with this Honourable Court is not binding but only persuasive.

33. I must however examine another angle to this this case which has a bearing on the decision that I will make. It appears that the applicants and other former members of the *Ex-Parte* Applicant which is a Cooperative society are aggrieved by its decision to seek the issuance of the lease certificates herein. The *Ex-Parte* Applicant, **Turbo Munyaka Cooperative Society Limited** through its purported Chairman,

Onesmus Gichiri Njoroge sought the mandamus order which was granted on behalf of the said **Turbo Munyaka Cooperative Society**.

34. On the other hand, the applicants, led by one **Joseph Mbugua Hosea** who alleges to be the chairman of **Munyaka Trading Centre** are disowning the Ex-Parte Applicant that is **Turbo Munyaka Cooperative Society Limited**, together with its purported chairman Mr. **Onesmus Gichiri Njoroge**, and alleges that the said **Turbo Munyaka Cooperative Society Limited** does not exist having changed its name to **Munyaka Marketing Co-operative Society Limited** on 7th April 1986.

35. It follows therefore that the members herein appear to have internal disputes within the management of their societies. This is so because the Applicants are accusing the said **Onesmus Gichiri Njoroge**, of not being the chairman of a defunct **Turbo Munyaka Cooperative Society Limited** and of concealing information from the court. It follows therefore that if the members are not agreeable on the membership and / or ownership of the plots secured by their respective Co-operative Societies then it is the mandate of the Co-operative Societies Tribunal as established under **Sections 76 and 77 of the Co-operative Societies Act Cap 490 Laws of Kenya** to deliberate on their dispute. **Section 76** states as follows:-

“76. Disputes

(1) If any dispute concerning the business of a co-operative society arises:-

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between members, past members or deceased members, and the society, its Committee or any officer of the society; or

(c) between the society and any other co- operative society.

It shall be referred to the Tribunal.

(2) A dispute for the purpose of this Section shall include

(a) a claim by a co-operative society for any debt or demand due to it from a member or past member, or from the nominee or personal representative of a deceased member, whether such debt or demand is admitted or not; or

(b) a claim by a member, past member or the nominee or personal representative of a deceased member for any debt or demand due from a co-operative society, whether such debt or demand is admitted or not;

(c) a claim by a Sacco society against a refusal to grant or a revocation of licence or any other due, from the Authority.” (Emphasis added).

37. The Applicants who appear to be the members of **Munyaka Trading Centre** an entity under **Munyaka Marketing Co-Operative Society Limited** are demanding their plots allegedly being taken by the Ex-Parte Applicant, **Turbo Munyaka Cooperative Society Limited** and also contesting the position held by a Mr **Onesmus Gichiri Njoroge** who filed the instant Judicial Review in his capacity as the Chairman of **Turbo Munyaka Cooperative Society Limited**. These issues can be competently solved by a tribunal as established under **Section 77** as read together **Section 76 of the Co-operative Societies Act**, in my humble opinion.

38. It follows therefore that this Honourable Court may not be able to usurp the jurisdiction and mandate of the Tribunal established under **Section 77 of the Act** in determining who owns what.

The Court may only issue/writs/prerogative orders pursuant to **Order 53 of the Civil Procedure Rules** in

regard to lease certificates herein after the internal disputes amongst the members of the Co-Operative Societies are determined by the tribunal.

For now I am persuaded that this court can not look into the merits of the applicant's claim to the parcels of land subject matter of the dispute. Can this court determine in these proceedings whether the said Gichiri was or was not the chairman, or whether the plots are owned by the applicant or by the respondent? The answer is "no". This court is ill equipped to do that, given the restrictive parameters within which judicial review applications should be considered and determined. Granting the applicants' application may raise questions as to whether this court has not gone beyond the mandate granted it in matters judicial review.

In my view, the issue of non-service only forms part of the other grounds of appeal that the applicants may have in the matter and they do not have to have any other ground to sustain an appeal. It is only the Court of Appeal which may open its eyes to claims made by the applicants and, if it finds that the applicants are entitled for reasons placed before it to be in those appeal proceedings, the Court of Appeal will issue the necessary orders. I have taken the position that not even the gravity of the consequences of the judgement in this matter alleged by the applicants ought to affect this position. I have been urged to take note of the High Court decision in *Republic versus Chief Land Registrar, Ex parte James Njoroge Njuguna (supra)* in which the court cited at **paragraph 29** a Court of Appeal decision stating that from its nature an order of certiorari can not be stayed pending appeal by interlocutory proceedings and that it can only be set aside in the appeal itself. I will only add that in appropriate cases where a stay can not issue, the rules made under the Appellate Jurisdiction Act do provide for an injunction.

For the above reasons I find that the preliminary objection dated 7th July 2017 has merit. Consequently I hereby uphold that Preliminary Objection and strike out the applicant's application dated 10/3/2017.

Dated, signed and delivered at Kitale on this **20th** day of **December, 2017**.

MWANGI NJOROGE

JUDGE

20/12/2017

Before – Mwangi Njoroge Judge

Court Assistant – Isabellah

M. Teti for the Applicant

Ms. Mufutu for Respondent

MWANGI NJOROGE

JUDGE

20/12/2017