



Mugwika, Liquidator of Abogeta Farmers Cooperative Society Ltd v CECM Lands, Housing, Urban Areas and Physical Planning of the County Government of Meru & 8 others; Meru Youth Service & 3 others (Interested Parties) (Judicial Review Application E001 of 2024) [2024] KEELC 976 (KLR) (21 February 2024) (Ruling)

Neutral citation: [2024] KEELC 976 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
JUDICIAL REVIEW APPLICATION E001 OF 2024**

CK NZILI, J

FEBRUARY 21, 2024

BETWEEN

CHARLES MUCHUI MUGWIKI, LIQUIDATOR OF ABOGETA FARMERS COOPERATIVE SOCIETY LTD APPLICANT

AND

CECM LANDS, HOUSING, URBAN AREAS AND PHYSICAL PLANNING OF THE COUNTY GOVERNMENT OF MERU 1ST RESPONDENT

CECM PUBLIC SERVICE AND LEGAL AFFAIRS OF COUNTY GOVERNMENT OF MERU 2ND RESPONDENT

CHIEF OFFICER LANDS, HOUSING, URBAN AREAS AND PHYSICAL PLANNING OF COUNTY GOVERNMENT OF MERU 3RD RESPONDENT

DIRECTOR PHYSICAL PLANNING COUNTY GOVERNMENT OF MERU 4TH RESPONDENT

NATIONAL LAND COMMISSION 5TH RESPONDENT

EVANS MAWIRA KAARIA, MCA MITUNGUU WARD 6TH RESPONDENT

ROYFORD KIMATHI MITUNGUU WARD ADMINISTRATOR 7TH RESPONDENT

THE COUNTY GOVERNMENT OF MERU 8TH RESPONDENT

OFFICE OF THE MERU COUNTY ATTORNEY 9TH RESPONDENT

AND

MERU YOUTH SERVICE INTERESTED PARTY



POOR HANDMAIDS OF JESUS CHRIST CONGREGATION INTERESTED PARTY

EAST AFRICAN PENTECOSTAL CHURCH AND SCHOOL INTERESTED PARTY

MWAMBA FAMILY INTERESTED PARTY

RULING

1. The court is asked to grant leave to the ex parte applicant a liquidator of the Abogeta Cooperatives Society held under (liquidation), to commence judicial proceedings for orders of certiorari and prohibition against the respondent's minutes and decisions to alienate L.R No. Nkuene/Mitunguu/190 belonging to the Society.
2. The grounds are set on the face of the application and a supporting affidavit of Charles Mugwika sworn on 9.2.2024.
3. Briefly the ex parte applicant avers that the subject land being alienated by the respondents belongs to a society under liquidation and as an appointed liquidator he is not party to and was not involved with the alleged public participation to collect views, to alienate the land under his custody.
4. Further, the applicant avers that the proceedings, minutes and decisions of the respondents are ultra vires are against a previous court decree and contrary to his mandate under the law.
5. The ex parte applicant has attached copies of the appointment as a liquidator, gazette of the society as placed under liquidation, judgment in the previous suit, extensions of the liquidation period; copy of records showing that the land reverted to the initial status; letters to vacate the land; minutes and decision of the respondents as annexures marked CMM "01-06", respectively.
6. In oral submissions made by Mr. Kiautha Arithi learned counsel appearing for the ex parte applicant it was submitted that the liquidator is exercising his statutory mandate under Section 66 of the *Cooperative Societies Act* as a custodian of the subject land and that it took time to access or collect the annexures.
7. Further, counsel submitted the application before the court was filed within six months as stipulated under Sections 8 & 9 of the *Law Reform Act* as read together with Orders 50 and 53 (1), (2), (3) & (4) of the *Civil Procedure Rules*.
8. Additionally, the ex parte applicant urged the court to grant the reliefs sought, for leave to act as a stay of the implementation of the minutes and decisions of the respondents whose effect was underway following a visit by land surveyors to the locus in quo in February 2024.
9. The ex parte applicant termed the acts of the respondents to alienate the land as null and void and done without involving him as the liquidator as held by this court in the judgment delivered in June 2022.
10. The application came under certificate before the Environment and Land Court No. 1. The court directed that the matter be heard by this court in view of the previous judgment attached to the application as annexure marked CMM "3".
11. The purpose of an application for leave to commence judicial review is to act as a sieve against undeserving, frivolous, hopeless, vexatious and unmeritorious attempts to stifle or interfere with administrative decisions of quasi-judicial tribunals, persons or entities bestowed with powers to handle



- administrative duties. See [Republic vs Public Procurement Administrative Review Board and others exparte Mia International Ltd and another](#) (2016) eKLR, [Republic vs County Council of Kwale and another exparte Kondo & others](#) MSA HMCA No. 384 of 1996.
12. At leave stage the burden is on the exparte applicant to demonstrate a *prima facie* case why the court should grant him or her an opportunity to advance to the next level by filing the substantive notice of motion.
 13. Waki J as he then was in [Republic vs County Council of Kwale exparte Kondo](#) (*supra*) held a party must satisfy the court at leave stage that there is a case fit for further consideration to prevent the time of the court from being wasted by busybodies with misguided or trivial complaints or administrative errors and to remove uncertainty in which public officers and other authorities might be left as to whether they could safely proceed with administrative action while proceeding for judicial review were actually pending even though misconceived. The court said an exparte applicant must surmount the hurdle by bringing material before the court, the test being whether the court has a fit case for further investigations at a full hearing through a substantive notice of motion.
 14. The court at that stage does not delve in-depth into the arguments of the parties but cursorily peruses the evidence before it and decides on whether the exparte applicant merits or is justified for leave. The court has to be satisfied that the application is filed within six months of the decision sought to be quashed the statutory framework under Section 9 (3) of the [Law Reform Act](#) and Order 53 Rule (2) [Civil Procedure Rules](#) has been met.
 15. As to whether leave can act as a stay under Order 53 (1) (4) of the [Civil Procedure Rules](#) the court in granting leave has the discretion to order the leave to operate as a stay of the proceedings in question, until the determination of the proceedings or further orders of the court.
 16. The purpose of a stay is to preserve the status quo pending the final determination of the claim for judicial review.
 17. In [Taib Ali Taib vs The Minister For Local Government and others](#) MSA HCMISCA No. 158 of 2006, the court said the purpose of stay in judicial review proceedings is to prevent the decision maker from continuing with the decision-making process if the decision has not been made, or to suspend the validity and the implementation of the decision that has been made by the public board or entity. See [Uwe Meixner & another vs AG](#) (2005) eKLR.
 18. The application before the court though exparte nature was served upon the respondents on 14.2.2024 and 16.2.2024. A return of service was filed on 19.2.2024. no grounds of opposition or replying affidavit has been filed to oppose the motion. Be that as it may, the exparte applicant has furnished the court with a gazette and documents to show that the subject land forms part of the properties belonging to Abogeta Cooperative Society Ltd under liquidation whose custodian under Sections 65 and 66 of the [Cooperative Societies Act](#) is the liquidator.
 19. The exparte applicant says there is a court decree which invalidated previous attempts by the 8th respondent to alienate the land liquidation without the favour of third parties among them the interested parties. Further, the exparte applicant has attached copies of minutes and decisions by the respondents who seem to be aware of the court decree and are in the process of purporting to implement it albeit illegally and irregularly, by omitting, ignoring and or overlooking the mandate of the exparte applicant, who is the statutory custodian of the subject land.
 20. Additionally, the exparte applicant has brought the material to show that following the decisions or minutes, land surveyors have been directed by the respondents to implement the resolutions and share out the subject land without involving the bonafide custodian of the property.



- 21. The issues raised by the exparte applicant touch on Articles 40, 60, 61, 62 and 63 of the Constitution and the mandate of the 8th respondent to alienate land belonging to a cooperative society in liquidation and especially against a valid court decree.
- 22. The said issues are not frivolous, vexatious and hopeless. On the contrary, they raise weighty statutory and constitutional questions on how court decrees on alienation of land otherwise recovered through a legal process can still resort to alienation as an otherwise illegal and irregular process by the 8th respondent, who holds it as a trustee.
- 23. The danger is real in the implementation and the implications, loss and damage are profound to the rights and interests of the exparte applicant and members of the society under liquidation.
- 24. The upshot is I find that the exparte applicant deserving leave to institute judicial review proceedings. The substantive notice of motion shall be filed and served within 7 days from the date hereof.
- 25. Leave shall also act as a stay of the implementation, alienation, subdivision, transfer, leasing, charging or any other actions, taken without the concurrence, knowledge, involvement and consultation of the liquidator. Further, the title to the land shall be inhibited until the proceedings herein are heard and determined.
- 26. The exparte applicant shall file an undertaking as to damages for Kshs.10,000,000/= within 3 days from the date hereof, otherwise the order of stay shall lapse. The notice of motion to be served through a newspaper advertisement for any interested parties affected by the same to participate in these proceedings.
- 27. Mention on 22.5.2024 for further directions.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 21ST DAY OF FEBRUARY 2024

HON. CK NZILI

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JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

In presence of

C.A Kananu

Miss Kerubo for Arithi for the exparte applicant

